

(1968) 07 KL CK 0039**High Court Of Kerala****Case No:** C.R.P. 1302 of 1967

Valia Veettikomappan

APPELLANT

Vs

Karthiyayani and others

RESPONDENT

Date of Decision: July 5, 1968**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 7 Rule 10

Citation: (1968) KLJ 721**Hon'ble Judges:** K. Sadasivan, J**Bench:** Single Bench**Advocate:** A. P. Chandrasekaran, for the Appellant; A. Achuthan Nambiar and T. P. Kelu Nambiar 1 and 2, for the Respondent**Judgement**

@JUDGMENTTAG-ORDER

K. Sadasivan, J.

The question arising in this revision is whether the court fee paid on a plaint presented in the wrong court could be given credit to when the plaint is represented in the proper court. The suit was originally filed in the Munsiff's Court of Quilandy. It was found on a preliminary enquiry that the plaint claim was undervalued with a view to bring it within the jurisdiction of the Munsiff's Court. The plaint was accordingly returned. From that order the plaintiff appealed to the District Judge and the learned District Judge in dismissing the appeal pointed out that the plaint could be re-presented after deleting the prayer for recovery, thereby bringing it within the jurisdiction of the Munsiff court. From that order a revision was preferred to this court in C.R.P. 16/64 and in dismissing that petition this court observed:-

The learned Judge has pointed out that the plaintiff can re-present the plaint with the prayer for recovery of the buildings deleted. In view of this, no interference is necessary. Dismissed.

2. After this the prayer for recovery of the building was deleted and the plaint was re-presented in the self-same Munsiff's Court. There the question arose whether the plaintiff could get the court fee paid on the first occasion credited, so that he may pay only the balance, if any, on the plaint as presented on the second occasion. According to the learned Munsiff the plaintiff cannot get credit for the court fee already paid, the reason being that he has made changes in the plaint in such a way as to make it appear to be a fresh plaint, and such plaint can be entertained only on payment of court fee afresh. The position is well covered by authorities. One of the earliest decisions cited before me is the Full Bench decision of the Madras High Court in *Visvesara Sarma v T. K. Nair* (I.L.R. 35 Mad. 567). There, the court after receiving the plaint and cancelling the stamp, returned it for presentation to the proper court under O.7, R.10 C.P.C. The court in which the plaint was re-presented was directed to give credit to the fee already levied by the former court. In giving the direction the Full Bench observed:-

This is the existing practice in this Presidency and there is nothing in the new CPC in the Presidency Small Cause Courts Act or in the City Civil Courts Act to indicate that the legislature intended to interfere with such practice.

3. In *Bimala Prasad Mukerji v Lal Moni Devi* (A.I.R. 1925 Cal. 355) Division Bench of the Calcutta High Court is seen to have taken the same view. There, in the interval between the return of the plaint and its presentation to the proper court, the Court Fee Act was amended. The learned Judges held:-

When the plaint which has been returned is presented in a court of competent jurisdiction the suit, even for purposes of court fee, must be taken to be instituted on the date of such representation and therefore on such plaint the court fee should be leviable under the law which was in force at the time when the plaint was re-presented. If the Act is amended in the meantime increasing the amount of fee payable thereunder the plaintiff should be credited with fee originally paid.

4. The same view was taken by the Madras High Court in a later decision in *Vasavattula Sarabhamma Vs. Vasabattula Peda Veeranna and Another*. There the learned Judge held:-

Where a court after receiving a plaint and cancelling the stamp affixed thereto returns the plaint for presentation to the proper court under O.7, R. 10 the latter court to which the plaint is presented is bound to give credit for the fee already levied by the former court.

5. In that Case the learned Judge further observed:-

But this applies only to cases in which the same plaint is presented to the court. Where the plaint as presented to the proper court is not substantially, if not "verbatim et literatim", the same and there are substantial changes made in the allegations part, as well as in the causes of action part, no credit, can be given for

the court fee paid on the original plaint which had been filed in the wrong court.

6. This restriction, however, cannot be availed of in the present case since the plaint re-presented does not contain any change much less substantial either in the allegations part or in the causes of action part. All that the plaintiff has done on the second occasion was that the prayer for recovery of the building was deleted. From this it cannot be argued with justification that the re-presented plaint is a fresh one in all respects. There is no provision in the Court Fees Act for refunding the court fee paid on a plaint presented in a wrong court. Refund is provided only in cases of compromise or remand of the suit for fresh disposal. In a case of this nature the only order that the court can pass in the ends of justice, is to give credit to the fee paid on the former occasion. But according to the Bombay High Court, even a refund of court fee can be ordered in the case of return of the plaint invoking the inherent jurisdiction of the Court. Chagla, C.J., for instance, has held in [The Anglo-French Drug Co. \(Eastern\) Ltd. Vs. The State of Bombay and Another](#) .

In the interest of justice an order for refund of court fees should be made by the court which returns the plaint under O.7, R.10 Hence the Bombay City Civil Court has jurisdiction under S. 151 to make an order for refund of court fees when it returns a plaint under O.7., R.10.

7. [Bhura Mal Dan Dayal Vs. Imperial Flour Mills Ltd. and Others](#), is another decision falling in the same category. There it was held:-

When a court after receiving a plaint and cancelling the stamp affixed thereto returns the plaint for presentation to the proper court under O.7, R.10 of the C. P. C. the latter court to which the plaint is re-presented is bound to give credit for the fee already levied by the former court.

8. There the representation was in a court situated in a different State. Even then it was ordered that credit should be given to the fee paid on the first occasion. The suit (in that case) was originally instituted in, the civil court at Delhi; but it was held that Delhi Court has no jurisdiction, with the result that the plaint was returned for being presented to the proper court. The plaintiff thereupon re-presented the plaint in the court at Ambala. The court fee stamp affixed on the plaint originally instituted bore the words "Delhi State" having been purchased at Delhi. The trial court thought that administration of justice, except where it relates to the Supreme Court and the High Court, is a State subject and therefore the court fee stamps purchased in Delhi could not be used in the court in the State of Delhi. On this view the plaintiff was ordered to make up the deficiency in court fee. The learned Judge of the Punjab High Court held:-

that "the court at Ambala was bound to give credit for the fee already paid. The scheme of the Act, shows that a litigant is, normally speaking, not made liable to pay court fee twice over for the same adjudication by the same court or by its successor court or on account of the mistakes of courts.

It is thus obvious that the plaintiff is entitled to get credit for the court fee already paid by him. In the interests of justice it has to be held that he should not be made to pay twice on the same matter. The order of the learned Munsiff is wrong and it is hereby set aside. The plaintiff will get credit for the court fee paid by him on the first occasion.