

## APPELLATE CIVIL.

Before Mr. Horace Owen Compton Beasley,  
Chief Justice and Mr. Justice Cargenven.

1930.  
April 9.

RAMI REDDI AND ANOTHER (DEFENDANTS), APPELLANTS,

v.

CHENCHU POLAMMA (PLAINTIFF), RESPONDENT.\*

*Civil Procedure Code (V of 1908) O. XXXIII, rr. 10 and 11—  
Suit in forma pauperis, partly successful—Extent of defen-  
dant's liability for court-fee.*

If a plaintiff who is allowed to sue *in forma pauperis* succeeds only in part, the court-fee recoverable under Order XXXIII, rules 10 and 11, Civil Procedure Code, from the unsuccessful defendant is only proportionate to that part and not more, the rest being payable by the plaintiff.

APPEAL against the decree of the Court of the Subordinate Judge of Nellore in Original Suit No. 89 of 1925.

*T. V. Ramanatha Ayyar* for appellants.

*B. Somayya* for respondent.

The JUDGMENT of the Court was delivered by

BEASLEY  
C.J.

BEASLEY C.J.—This is an appeal from the Court of the Subordinate Judge at Nellore. The defendants in the suit are the appellants and there are also objections by the successful plaintiff in the suit, the respondent here.

The plaintiff whose deceased husband and the first defendant were undivided brothers filed the suit claiming maintenance. The second defendant is the undivided minor son of the first defendant. The plaintiff's husband died on the 12th June 1919 and the suit was filed on 21st December 1923 claiming current maintenance at Rs. 250 a month and arrears from the 12th June 1919 to the date of the plaint. The total valuation of the

\* Appeal No. 171 of 1927.

claim was Rs. 16,500. The learned District Judge awarded the plaintiff Rs. 50 in cash per mensem and three putties of paddy per annum equivalent to Rs. 240 per annum in respect of current maintenance and arrears at the rate of Rs. 35 per mensem ; and with regard to costs, he directed the first defendant to pay the plaintiff's costs of the suit and also the whole of the court-fee payable to Government by the plaintiff who brought her suit *in forma pauperis*.

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The members of the first defendant's family consist of himself, his wife, a minor son, two minor daughters, his mother and a widowed sister. The plaintiff's case was that the net income of family amounted to about Rs. 20,000 a year; on the other hand the first defendant's case was that the net income was only Rs. 6,000 a year and he offered to pay only Rs. 25 per mensem as current maintenance. The learned Subordinate Judge took the gross income of the family to be Rs. 24,000 from which he made deductions for kist and estimated the net income at about Rs. 15,000 although there does not seem to be anything on the record which would justify a reduction of the family income below Rs. 19,000 a year. He seems to have been generally satisfied with the evidence as to the family income given on behalf of the plaintiff. Though the first defendant, the managing member of the family, admitted that he had accounts he did not produce them. He must have known that, on the question of maintenance, it was all-important that he should show to the Court not only what the expenditure of the family was but what its profits were and assist the Court in arriving at the proper figure of the income of the family. He chose not to disclose these books and the learned trial Judge has quite properly drawn all inferences adverse to him by reason of the non-production of those books. The inference to be

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drawn is that had he produced them, the figures therein as to the income of the family would have been more approximating to those given on the plaintiff's behalf than those given by the defendants. We see no reason for thinking that the estimate of the income of the family arrived at by the learned Subordinate Judge erred on the side of liberality to the plaintiff, and we are prepared to take it that the net income of the family was about Rs. 15,000 a year. We have got to see whether he has on that net income awarded to the plaintiff the proper amount of maintenance. The net income of Rs. 15,000 means a monthly income to the family of Rs. 1,250. In fixing maintenance at the rate of Rs. 50 per mensem in cash and the equivalent of another Rs. 20 per mensem in paddy making a total of Rs. 70 per mensem, we think he has not been liberal to the plaintiff. We are not fixing maintenance in this case by taking any particular proportion of the net income but we are taking into consideration the fact that Rs. 1,250 per mensem is a very good income for a family of this size which, after all, is quite a small one consisting of some seven members only; and we think that the evidence shows that the plaintiff who is a young woman of about 18 years of age has been educated and is still in need of education and that her requirements certainly are more than those of a woman older than herself. The conclusion we have come to with regard to this is that the current maintenance should be fixed at Rs. 80 per mensem plus the three putties of paddy awarded by the learned Subordinate Judge. This gives the plaintiff a monthly maintenance of approximately Rs. 100.

The first defendant has been directed to pay the court-fee of Rs. 1,004-15-0 to the Government, that being the sum which the plaintiff would have to

pay to Government, she having been allowed to bring the suit as a pauper. The first defendant's contention is that he should be ordered to pay court-fee only on the amount the plaintiff has succeeded in getting under the decree and that that would amount to Rs. 247. In support of this contention, *Srinivasa Ayyar v. Lakshmi Ammal*(1) is relied upon. There it was held that under Order XXXIII, rules 10 and 11 of the Civil Procedure Code, it is not open to the Court to direct the defendants to pay court-fees exceeding the amount which is payable on that portion of the plaintiff's claim which is successful; and another case to the same effect is *Ganga Dahal Rai v. Musammatt Gaura*(2). We think that the order of the trial Judge directing the first defendant to pay the court-fee in respect of the amount in excess of that recovered in the suit under the decree by the plaintiff is wrong and we accordingly modify that part of the decree and direct the first defendant to pay court-fee on the amount the plaintiff has succeeded in getting. The plaintiff will pay the balance of court-fee payable to Government.

In the result, the appeal, except as regards the question of the court-fee, is dismissed and the cross-appeal of the respondent allowed in part with costs. The respondent will get costs on the appeal to the extent the appellant is unsuccessful and the appellant will get costs to the extent he is successful in the appeal. In the cross-appeal the appellant will pay the respondent's costs to the extent the respondent is successful.

N.R.

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(1) (1927) 54 M.L.J., 530.

(2) (1916) I.L.R., 38 All., 469.