

ASURAM
SADA SUK
v.
SUB-COL-
LECTOR,
RAJAH-
MUNDEY.

decree of the High Court made the claimants 1 and 2 in the two appeals before it liable for costs of the Government. In these circumstances, we uphold the order as regards costs as well.

MADEHAVAN
NAIR, J.

In the result, the Civil Miscellaneous Appeal is dismissed with costs.

CORNISH, J.—I agree.

K.R.

APPELLATE CIVIL.

Before Mr. Justice Ramesam and Mr. Justice Cornish.

1929,
October 17.

O. M. SUBRAMANIAN (PLAINTIFF), APPELLANT,

v.

C. APPADURAI MUDALI AND ANOTHER (DEFENDANTS),
RESPONDENTS.*

Original Side Fee Rules, O. VI, r. 1 (b) and (c)—Suit on Original Side—Posted for final disposal—Some defendants admit claim, others ex parte—Plaintiff calls one defendant to prove claim against ex parte defendants—Whether suit “disposed of”—Applicability of clause (b) in r. 1.

Where a suit on the Original Side of the High Court came on for final disposal, and the first and the second defendants admitted the plaintiff's claim, and the third and the fourth defendants were *ex parte*, and the plaintiff had to call the first defendant to prove his claim against the third and the fourth defendants, and the suit was decreed, *held*, that the suit was not “disposed of” within the meaning of Order VI, rule 1 (c) of the Original Side Fee Rules, but that the suit was decided “*ex parte*” with reference to some of the defendants, and “on confession of judgment” with reference to the other defendants, and that therefore the plaintiff would be entitled to tax his costs only under clause (b) of the above rule.

* Original Side Appeal No. 32 of 1929.

ON APPEAL from the order of KUMARASWAMI SASTRI, J.,
 dated the 28th February 1929, and passed in the
 exercise of the Ordinary Original Civil Jurisdiction of
 the High Court in C.S. No. 165 of 1928.

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The relevant portion of Order VI, rule 1, of the High Court Fees Rules, 1925, is as follows:—

The fees to be allowed on the Original Side of the High Court, Madras, to an adversary's vakil in suits for money, effects, or other personal property, or for land or other immoveable property of any description, in cases where such vakil appears, acts, and pleads, shall be on the following scale:—

(a) * * * *

(b) where the suit is decreed or decided *ex parte*, or on confession of judgment, or is dismissed for default after the requisite pleadings have been filed, or is withdrawn, or compromised after the defence is put in:—

[The scale].

(c) when a suit is set down in the final disposal board and disposed of, or is settled, withdrawn, or compromised after a partial or complete trial but before delivery of judgment, fees are payable on the following scale:—

[The scale]

S. Krishnamurti Ayyar for appellant.

T. D. Srinivasachari for respondents.

JUDGMENT.

The rules are no doubt inartistically framed, but they have been interpreted, vide *Official Trustee of Madras v. Kamalamma*(1), where "disposed of" is construed to mean adjudication after trial. If the words mean disposal in any manner whatever, the words following are unnecessary. We have got here a confession of judgment though at a very late stage, and clause (b) applies; and clause (b), on its face, is not

(1) (1926) 24 L.W., 808.

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confined to cases which have not reached the final disposal board.

If the result is somewhat unsatisfactory, it is a matter for recasting of the rules.

The learned Judge is right and the appeal is dismissed with costs.

B.C.S.

APPELLATE CIVIL.

Before Mr. Justice Ramesam and Mr. Justice Cornish.

1929,
November 8.

ELUMALAI NAICKER AND ANOTHER (PLAINTIFFS),
APPELLANTS,

v.

KUPPAMMAL AND FIVE OTHERS (DEFENDANTS), RESPONDENTS.*

Code of Civil Procedure (Act V of 1908), sec. 35—Next friend or guardian of minor party to a proceeding—Jurisdiction of Court to direct next friend or guardian to pay costs—Scope of sec. 35—Next friend or guardian instituting suit in forma pauperis—Liability to pay Court-fee to Government.

A Court has jurisdiction to direct the next friend or guardian of a minor who is a party to a proceeding to pay the costs of such a proceeding.

Section 35 of the Code of Civil Procedure (Act V of 1908) which refers to costs of and incident to all suits is wide enough to cover even Court fees; and a person, who as next friend or guardian of a minor institutes a suit in *forma pauperis*, may, on the disposal of the suit, be directed to pay the Court-fee to Government.

APPEAL against the judgment and decree of VENKATASUBBA RAO, J., dated 1st November 1927 and passed in the exercise of the Ordinary Original Civil Jurisdiction of the High Court in C.S. No. 395 of 1925.

* Original Side Appeal No. 53 of 1928.