

APPELLATE CIVIL—FULL BENCH.

Before Mr. Justice Kumaraswami Sastri, Mr. Justice Cargenven and Mr. Justice Pakenham Walsh.

1929,
November 1.

VYTHILINGA PANDARA SANNADHI, PETITIONER.*

Consolidation of civil revision petitions by one person—Single vakalat and one process fee—Sec. 20, Court-fees Act.

The High Court has no power to consolidate two or more revision petitions filed by a single petitioner, though the cases in respect of which the petitions are filed may be related and disposed of by the lower Court in one judgment or order, so as to enable the petitioner to file one vakalatnama in all the petitions or to pay one process fee for such respondents as are common therein, as such a course would be contrary to Rules 41 and 61 of the Appellate Side Rules of the High Court framed under section 20 of the Court-fees Act and Rule 2 (1) of Order XLI-A of the Civil Procedure Code; *In the matter of the application of Studd*, (1898) I.L.R., 26 Cal., 124, followed.

PETITIONS praying that in the circumstances stated in the affidavits filed therewith, the High Court will be pleased to consolidate the Civil Revision Petitions presented to the High Court against the order of the Court of the Sub-Collector of Negapatam in S.S. Nos. 39 etc., of 1928, for the purpose of filing a single vakalat and payment of one process fee for common respondents.

Rule 2 of Order XLI-A, Civil Procedure Code, is as follows:—

(1) "The Memorandum of Appeal shall be accompanied by the prescribed fees for service of notice of appeal. . . ."

Rule 41 of the Appellate Side Rules of the High Court is as follows:—

"Civil Revision Petitions . . . shall be accompanied by the fees prescribed for service of notice on the respondent."

* Civil Miscellaneous Petitions Nos. 1194 and 1259 of 1929.

Rule 61 of the above rules is as follows:—

“The following fees shall be chargeable for serving and executing processes issued by the High Court of Madras in its appellate jurisdiction. For each . . . notice (a) to single respondent . . . Re. 1, (b) to every additional respondent . . . residing in the same village, if the processes be applied for at the same time As. 8.”

These petitions coming on for orders, the Court (KUMARASWAMI SASTRI and PAKENHAM WALSH, JJ.) made the following

ORDER OF REFERENCE TO A FULL BENCH:—

These petitions are for consolidating Civil Revision. Petitions; and the question here also is whether the Court has power to consolidate so as to entitle a party to file only one vakalat and pay only one process fee so far as the common respondents are concerned. For the reasons given in C.M.P. No. 2016 of 1929, we refer this question also to a Full Bench as to whether the Court has inherent jurisdiction to consolidate Civil Revision Petitions in cases which have been disposed of by a single judgment of the lower Court so as to enable the party to file one vakalat in the petitions and pay one process fee for the common respondents.

ON THIS REFERENCE—

Government Pleader (P. Venkataramana Rao).—A single process fee for the common respondents in the revision petitions cannot be filed. Process fees are prescribed by the High Court for appeals by rules framed under section 20 of the Court-fees Act; and those rules require separate process fee for the respondent in each appeal or petition; see rules 41 and 61 of the Appellate Side Rules of the High Court, Chapter VII and also rule 2 (1) of Order 41-A, Civil Procedure Code. The fact that the same person may be respondent in more than one petition is immaterial; see *In the matter of the application of Studd*(1). It is true there is no separate rule for revisions, but there is a general rule that rules for appeals apply also for revisions.

R. Sundaralingam (with K. Bashyam) for the petitioner.—Though under the rules we pay process fee when filing revision petitions, the notices go only after they are admitted. Rules 60 and 61 apply only for appeals and not for revisions.

VYTHILINGA
PANDARA
SANNADHI,
In re.

(1) (1898) I.L.R., 26 Cal., 124.

VYTHILINGA
PANDARA
SANNADHI,
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CURGEN-
VEN, J.

OPINION.

CURGENVEN, J.—The question referred to us is whether the Court has inherent jurisdiction to consolidate Civil Revision Petitions in cases which have been disposed of by a single judgment of the lower Court, so as to enable the party to file one vakalat in the petitions and to pay one process fee for the common respondents. In C.M.P. No. 2016 of 1929(1), we have held generally that this Court has no power to consolidate appeals in such a manner as to conflict with the provisions of any statutory enactment, and specifically that it cannot so consolidate as to permit a single vakalat to be filed in a number of appeals or a single Court-fee, calculated upon the aggregate value of the appeals, to be paid. This decision of course applies equally to the case of Civil Revision Petitions and it accordingly settles the question with regard to vakalats.

There remains the question of process fees,—whether, when one person figures as respondent in a number of cases, a single process can be issued to him, to embrace all the cases, upon payment of a single fee. We have to see whether such a course would transgress any provision of law. Section 20 of the Court-fees Act empowers the High Court to make rules regulating the fees chargeable for serving and executing processes issued by it in its appellate jurisdiction, which comprises also its revisional jurisdiction. Rule 2 (1) of Order XLI-A provides that a memorandum of appeal shall be accompanied by the prescribed fees for the service of notice of appeal, and Appellate Side rule No. 41 makes a similar provision in the case of Civil Revision Petitions. The rules for the service of notices form the subject of Chapter VII of the Appellate Side Rules, rule 61 fixing the fees chargeable. The schedule to that rule prescribes

a fee of Re. 1 for each summons or notice "to a single respondent or witness". This is a rule framed under section 20 of the Court-fees Act and has the force of law. Unless, therefore, we can construe the word, "single respondent" as embracing any one person, though he may be a respondent in a number of cases, permission to consolidate would involve permission to pay a single fee where the rule prescribes a separate fee in each case. We do not think that such a construction would be correct. The rule, in our view, makes no provision for the circumstances, accidental from the point of view of procedure, that the respondent in one case may be the same individual as the respondent in another, but requires that each respondent be treated independently of the other. Accordingly, it would conflict with the rules to allow process to issue in two or more cases on payment of a single process fee, and, as we have held in C.M.P. No. 2016 of 1929 (1), we have no power to relax the terms of an enactment or statutory rule for the purpose of consolidation. A similar application to consolidate was refused by a Bench of the Calcutta High Court in *In the matter of the application of Studd*(2), RAMPINI, J., basing his refusal upon the inability of the Court to relax a statutory rule.

We accordingly answer the question referred to us in the negative. We would add that there appears to be no objection to issue a single consolidated process with several causes entered in it, provided that the amount of process fees for the issue of process in each case is paid. We give the petitioners one month from this date to file duly stamped vakalats and pay process fees.

KUMARASWAMI SASTRI, J.—I agree.

PAKENHAM WALSH, J.—I agree.

N.R.

(1) Page 243 *ante*.

(2) (1898) I.L.R., 26 Cal., 124.