the temple should be restored as a place of public worship. On these facts the place is, in my view, incapable of being the subject of a dispute as to whether it is a temple to which the Act applies and consequently the Board had no jurisdiction under section 84 (1).

H.R.E. BOARD, MADRAS v. RUGMINI.

G.R.

APPELLATE CIVIL.

Before Mr. Justice Wallace and Mr. Justice Cornish.

CHINTAKAYALA THAMMAYYA NAIDU, PETITIONER,

1932, February 3.

v.

CHINTAKAYALA VENKATARAMANAMMA AND ANOTHER, RESPONDENTS.*

Court-fee—Land Acquisition Act (I of 1894), sec. 32—Compensation money awarded to Hindu widow having life-interest only directed to be invested in Bank under—Appeal by another claimant claiming exclusive right to—Court-fee payable on memorandum of—Excess court-fee paid in appeal—Refund of—Order for—Inherent power of High Court to make—Court-Fees Act (VII of 1870), ss. 13, 14 and 15—Cases not covered by—Code of Civil Procedure (Act V of 1908), sec. 151.

On a reference under section 18 of the Land Acquisition Act (I of 1894) the District Judge held that one of the claimants, a Hindu widow, was entitled to a life-interest in the compensation money awarded for the melwaram, but, on account of the limited interest held by her, he, under section 32 of the Act, ordered the money to be invested in a Bank, which was accordingly done. In an appeal filed by another claimant claiming that the compensation was payable to him alone,

held that the proper court-fee payable on the memorandum of appeal was not a court-fee *ad valorem* on the amount of the award but a court-fee as for a mere declaration.

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*Civil Miscellaneous Petition No. 4190 of 1931.

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The compensation money was not payable to the widow in person but was held in trust for her by the Court, and therefore a mere declaration of the appellate Court to the lower Court directing that the money is not any longer to be so held in trust for the widow but is to be handed over to the appellant is sufficient.

Even in cases not covered by sections 13, 14 and 15 of the Court-Fees Act, the High Court can, under section 151 of the Code of Civil Procedure, order refund of court-fee paid in excess when obvious injustice would be done if it were not repaid.

PETITION praying that in the circumstances stated in the affidavit filed therewith the High Court will be pleased to issue an order directing refund of the court-fee paid in excess of legal requirements on the memorandum of appeal in Appeal Suit No. 277 of 1929 preferred to the High Court against the award dated 30th March 1929 and passed in Original Petition No. 34 of 1926 on the file of the Court of the Subordinate Judge of Vizagapatam.

Y. *Suryanarayana* for petitioner.

Government Pleader (*P. Venkataramana Rao*) for the Crown.

The ORDER of the Court was delivered by

WALLACE J.

WALLACE J.—This is a petition by the appellant in Appeal Suit No. 277 of 1929 on the file of this Court for refund of the excess court-fee paid on the memorandum of appeal. The appeal was in a land acquisition matter. On a reference by the Land Acquisition Officer under section 18 of the Land Acquisition Act the District Judge held the third claimant, who is a widow, entitled to a life-interest in the compensation money awarded for the *melwaram*, but on account of the limited interest held by this widow he, under section 32 of the Act, ordered the money to be invested in the Imperial Bank and that was so done in April 1929. The present

petitioner, who was the second claimant, appealed, claiming that the compensation was payable to him alone. He paid a court-fee *ad valorem* of Rs. 2,332–7–0 on the amount of the award, but he now claims that the proper court-fee was as for a mere declaration, and that Rs. 500 would have been sufficient, and he claims refund of the difference. Notice was given to the learned Goverment Pleader and we heard the petition argued.

Two points arise, first, whether the court-fee paid was right or in excess, and secondly, whether the Court has power to order the refund. On the first point it cannot be doubted that as a general principle, where a successful claimant before the District Judge is declared entitled to immediate payment, the appeal against such an order would be an appeal praying for the recovery of the money from the successful claimant and would have to be valued *ad valorem* as a claim for money; see *Mahalinga Kudumban* v. *Theetharappa Mudaliar*(1), which enunciates the general practice of this Court. The petitioner however maintains that his case has to be distinguished from the general case because here the compensation money was not payable to the widow in person but was held in trust for her by the Court, and that therefore a mere declaration of this Court to the lower Court directing that the money is not any longer to be so held in trust for the widow but is to be handed over to the petitioner is sufficient. We think that contention is well-founded. The widow never got possession and never could get possession of the principal amount. The possession and control of it lies with the District Court and the property is in *custodia legis*. No doubt, if any interest on the principal had been paid out to the widow, the petitioner, if he sought

(1) (1928) 56 M.L.J. 387.

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to recover that also, would have to pay court-fee *ad valorem* on that, but there is no question of that sort here since the petitioner does not include any such interest in his appeal memorandum of valuation. The ruling in *Mangaldas Girdhardas* v. *The Assistant Collector of Prant, Ahmedabad*(1), which was cited by the learned Government Pleader, enunciates the same principle as *Mahalinga Kudumban* v. *Theetharappa Mudaliar*(2) and does not cover the present point. The ruling in *Vedanayaga Mudaliar* v. *Vedammal*(3), although not a parallel case, is on a similar point and supports the petitioner. We therefore think that the proper stamp fee payable was Rs. 500.

As to the second point the learned Government Pleader maintains that this Court has no power to go beyond the provisions of the Court-Fees Act, which allow refund of court-fee stamps only in cases covered by sections 13, 14 and 15 and these sections do not cover the present case. It is true that an early Bench of the Calcutta High Court in 1873 has taken this uncompromising view; see *In the matter of Peary Mohun Gooho*(4). But there is a series of decisions in Calcutta itself and by other High Courts, based on a still earlier decision of the Calcutta High Court, *In re Mr. G. H. Grant*(5), which lay down that section 151, Civil Procedure Code, enables a High Court to order refund of court-fee paid in excess when obvious injustice would be done if it were not repaid; see *Harihar G[illegible]* v. *Ananda Mahanty*(6), *Girish Chandra Mali* v. *Girish Chandra Dutta*(7), a judgment of the Allahabad High Court in *In the matter of Chaube Munna Lal*(8)

(1) (1920) I.L.R. 45 Bom. 277.
(2) (1928) 56 M.L.J. 387.
(3) (1904) I.L.R. 27 Mad. 591.
(4) (1873) 11 Beng. L.R. 312, 317.
(5) (1870) 14 W.R. 47.
(6) (1912) I.L.R. 40 Calc. 365.
(7) (1931) 36 C.W.N. 190.
(8) (1930) I.L.R. 52 All. 546.

and judgments of the Patna High Court in *Chandradhari Singh* v. *Tippan Prasad Singh*(1), *Muhammad Reza* v. *Rajballabhnath Singh*(2) and *Sasibushan Mazumdar* v. *Manik Lal Chandra*(3). This seems to us the reasonable view to take. It would be unreasonable and unjust for the High Court not to assist a party to recover excess court-fee erroneously paid under its own order or under the orders of Courts subordinate to it. Of course what the High Court really does judicially in such a case is to decide judicially what is the proper court-fee and then issue a certificate to the party that excess court-fee has been levied. It still lies with the revenue authorities to decide whether or not they will refund the excess in the circumstances. We direct that in this case the necessary certificate do issue. In the circumstances of the case we pass no order as to costs.

A.S.V.

(1) (1918) 3 P.L.J. 452. (2) (1927) 107 I.C. 320.
(3) (1928) 107 I.C. 825.