

APPELLATE CIVIL.

Before Mr. Justice Venkatasubba Rao.

PINDIPROLU FERRAJU AND TWO OTHERS (PLAINTIFFS),
PETITIONERS,

1934,
December 13.

v.

PINDIPROLU SUBBARAO AND TWENTY-EIGHT OTHERS
(DEFENDANTS 1 TO 29), RESPONDENTS.*

Court Fees Act (VII of 1870) (as amended by Madras Act V of 1922), Sch. II, art. 17-A (i)—Hindu joint family—Partition—Suit for—Creditors made parties to—Debts due to—Declaration of non-binding nature against plaintiff of—Prayer in plaint for—Separate court-fee in respect of each debt as upon a declaration—Necessity.

Where, in a suit for partition of joint family property, certain creditors were made parties on the ground that the debts alleged to be due to them were not binding on the plaintiffs and the plaint prayed for the delivery to the plaintiffs of their share free of the specified debts,

held that in respect of each debt a separate fixed court-fee was payable as upon a declaration under article 17-A (i) of Schedule II of the Court Fees Act.

PETITION under section 115 of Act V of 1908 praying the High Court to revise the order of the Court of the District Munsif of Cocanada dated 9th January 1934 and made on Court-fee Examiner Check Slip No. 74 of 1933 in Original Suit No. 198 of 1933.

PETITION under sections 115 of Act V of 1908 and 107 of the Government of India Act praying the High Court to revise the order of the Court of the Subordinate Judge of Bapatla dated 6th December 1933 in Original Suit No. 54 of 1931.

* Civil Revision Petitions Nos. 133, 561 and 758 of 1934.

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PETITION under sections 115 of Act V of 1908 and 107 of the Government of India Act praying the High Court to revise the order of the Court of the District Munsif of Tenali dated 2nd December 1933 and made in Check Slip No. 3127, Guntur of 1933 in Original Suit No. 470 of 1932.

V. Subramaniam and *V. Satyanarayana* for petitioners.

P. V. Rajamannar for *Government Pleader* (*P. Venkataramana Rao*) for respondents.

JUDGMENT.

These civil revision petitions raise a question of court-fee. The suits are for partition of the joint family property, but certain creditors have been made parties on the ground that the debts, alleged to be due to them, are not binding on the plaintiffs. There is a prayer that their share should be delivered to them free of the specified debts. The lower Court has held that, in respect of each debt, a separate fixed court-fee of rupees fifteen should be paid as upon a declaration under article 17-A (i) of Schedule II of the Court Fees Act. It is contended for the petitioners that the order of the lower Court is wrong and that they are not liable to pay any additional court-fee in respect of the debts mentioned.

Mr. Subramaniam puts his argument thus: It is within the proper scope of a partition suit that the debts should be ascertained and discharged. The Civil Rules of Practice expressly provide that at the hearing of a suit the Court shall determine whether there are any outstanding debts and liabilities of the family; they also contemplate the bringing in of claims by third

parties on a notice issued by the Court. It is contended that, inasmuch as such claims should therefore be adjudicated upon, there is no reason why the plaintiff, who in the first instance, making the creditors parties, seeks a declaration, should be penalised by being required to pay a separate court-fee. It seems to me that this argument, though plausible, is not sound. In such a suit as this, where the creditors have been impleaded, any decision rendered is necessarily binding upon them. Though no doubt the deciding of the claims of third parties would conduce to the proper disposal of a partition suit, there is no procedure by which they, not being originally impleaded, can be compelled to bring in their claims for adjudication. There is a provision in the Civil Rules of Practice which says that, where a co-owner has alienated any portion of the joint property for other than family purposes, the alienee shall be made a party and the plaint shall set out the particulars of the alleged alienation. Supposing the unauthorised alienation was made by the plaintiff, in such a case the plaint would naturally not set it out, but it would be to the interest of the defendant to refer to it and apply that the alienee should be impleaded. No court-fee would in that event be payable, although the propriety of the alienation has been made the subject of enquiry. Does it follow from this that the plaintiff should escape the payment of court-fee when he himself attacks in his plaint the alienation and impleads the alienee? The analogy relied on by the petitioners seems therefore to be misleading. Take a case again, where a co-sharer other than the plaintiff makes the

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alienation, but the plaintiff does not choose to attack it in his plaint. If in such a case a defendant co-sharer, impeaching the alienation, gets the alienee added, no liability to pay a court-fee arises. Merely therefore on the ground that to decide such matters falls within the scope of a partition suit, the plaintiff cannot be absolved from the payment of court-fee, if, in the plaint itself, such questions are expressly raised and he prays for suitable reliefs. If the petitioners' argument were sound, it would equally follow that when decree debts are attacked in the plaint, no court-fee would be leviable, nor even when the plaintiff seeks to set aside attachments, such as are referred to in section 7 (viii) of the Court Fees Act. It has been no doubt held that creditors are proper parties to a partition suit, *Shanmuka Nadan v. Arunachelam Chetty*(1), *Babusami Ayyar, In re*(2) and *Ramaswami Chettiar v. Vellayappa Chettiar*(3), but that has no bearing on the present point; for, in their absence, the adjudication regarding the debts is binding only upon the parties to the partition suit; see *Tara Chand v. Reeb Ram*(4).

It has been held by BEASLEY C.J. and CURGENVEN J. that even where, as against a member of a family, relief is claimed in the partition suit on the ground that he is in adverse possession of a particular item, a separate court-fee in regard to it, as on a claim for possession, should be paid; *Kandunni Nair v. Raman Nair*(5). Again, where, in addition to partition, rendition

(1) (1921) I.L.R. 45 Mad. 194.

(2) (1928) I.L.R. 51 Mad. 417, 439 (F.B.).

(3) (1930) 60 M.L.J. 229.

(4) (1866) 3 M.H.C.R. 177, 180, 181.

(5) (1930) I.L.R. 53 Mad. 540.

of accounts is prayed for, an additional court-fee has been levied ; *Manikkam Pillai v. Murugesam Pillai*(1).

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I am therefore of the opinion that the lower Court has correctly decided the point ; and the civil revision petitions accordingly fail and are dismissed with costs—one set to be paid in equal moieties by the petitioners in Civil Revision Petitions Nos. 561 and 758 of 1934.

A.S.V.

APPELLATE CIVIL.

*Before Sir Owen Beasley, Kt., Chief Justice,
and Mr. Justice King.*

A. VENKATASAMI CHETTIAR (FIRST DEFENDANT),
APPELLANT,

1934,
September 10.

v.

SANKARANARAYANAN CHETTIAR AND SIX OTHERS
(SECOND DEFENDANT, PLAINTIFF AND DEFENDANTS 3, 8 AND 9),
RESPONDENTS.*

Mortgage—Prior and subsequent mortgagees—Suit by each without impleading the other—Sales in execution of decrees in, and purchases thereat by strangers—Suit on prior mortgage and sale under decree therein subsequent respectively to suit on subsequent mortgage and sale under decree therein—Purchaser under decree on prior mortgage resisted in getting possession by purchaser under decree on subsequent mortgage—Suit for sale on prior mortgage by—Maintainability.

In a case in which property was subject to a prior and a subsequent mortgage in favour of different persons, each of the mortgagees sued upon his mortgage without impleading the other

(1) (1933) 64 M.L.J. 576.

* Second Appeal No. 576 of 1932.