

APPELLATE CIVIL.

Before Sir Lionel Leach, Chief Justice, and Mr. Justice
Krishnaswami Ayyangar.

1939,
November 21.

IN RE CHIDAMBARAM CHETTIAR (PLAINTIFF),
APPELLANT.*

Court Fees Act (VII of 1870), sch. II, art. 17-A and sec. 12 (ii)
—*Suit for declaration without consequential relief in District
Munsif's Court transferred to Subordinate Judge's Court
to be tried with a connected suit—Value of transferred suit
less than Rs. 10,000—Dismissal of both suits by common
judgment—Memorandum of appeal from judgment in
transferred suit to District Court—Court-fee to be calculated
under art. 17-A of sch. II of Act—Mistake in calcula-
tion of court-fee by lower appellate Court—Power of High
Court when appeal comes before it to correct court-fee under
sec. 12 (ii) of Act.*

A suit for a declaration that a certain alienation was a fraud on creditors was filed in a District Munsif's Court. It was transferred to a Subordinate Judge's Court to be tried along with another similar suit filed by the same plaintiff in that Court. The suits were dismissed by a common judgment. The plaintiff filed an appeal to the District Court against the decision in the transferred suit and paid a court-fee of Rs. 15 on the memorandum of appeal which was accepted by the District Judge as being the correct court-fee.

Held that the District Court erred in accepting the memorandum as properly stamped. The decree in the transferred suit that was challenged in the appeal was a decree of the Court of the Subordinate Judge and not of the Court of the District Munsif. Since the value of the suit for purposes of jurisdiction was less than Rs. 10,000 the proper court-fee under article 17-A of Schedule II of the Court Fees Act was Rs. 100.

Held further that section 12 (ii) of the Court Fees Act gives an appellate Court power, when an appeal comes before it, to correct a mistake made in the lower Court.

* Appeal No. 251 of 1939.

APPEAL against the decree of the Court of the Subordinate Judge of Coimbatore, dated 22nd November 1937, in Original Suit No. 176 of 1937.

CHIDAMBARAM
CHETTIAR,
In re.

K. V. Ramachandra Ayyar for appellant.

T. Krishna Rao for Government Pleader (*B. Sitarama Rao*) for Government.

The ORDER of the Court was delivered by LEACH C.J.—This appeal has been placed before us to-day on a question raised with regard to the court-fee payable. The memorandum of appeal bears a court-fee stamp of Rs. 15 and the Deputy Registrar has called upon the appellant to pay an additional fee of Rs. 85 on the ground that the memorandum should be stamped with a fee of Rs. 100 under the provisions of article 17-A of the Second Schedule of the Court Fees Act. As the appellant questioned the validity of the Deputy Registrar's decision a notice was issued to the Government Pleader. The facts are these. The appellant filed a suit in the Court of the District Munsif of Dharapuram for a declaration that a certain alienation was a fraud on creditors. He filed a similar suit in respect of another alienation in the Court of the Subordinate Judge of Coimbatore. The suit filed in the Court of the District Munsif was subsequently transferred to the Court of the Subordinate Judge and tried along with the suit which the appellant had filed in that Court. By a common judgment the two suits were dismissed. The appellant then filed an appeal to this Court against the decision in the suit which he had filed in the Court of the Subordinate Judge and filed an appeal to the Court of the District Judge of Coimbatore in respect of the decree of the Subordinate Judge in the suit which was originally filed in the

LEACH C.J.

CHIDAMBARAM
CHETTIAR,
In re.
LEACH C.J.

Court of the District Munsif. This is the appeal which has given rise to the question of stamping.

The memorandum of appeal was stamped with a fee of Rs. 15 when it was presented to the Court of the District Judge and the District Judge accepted it as being correct. Article 17-A provides that the court-fee on a memorandum of appeal in a suit for a declaration without consequential relief in a District Munsif's Court shall be Rs. 15. The District Court, however, erred in accepting the memorandum as having been properly stamped. The decree which was challenged was a decree of the Court of the Subordinate Judge and not of the Court of the District Munsif and article 17-A clearly states that in the case of a memorandum of appeal against a decree of a District Court or a Sub-Court the fee shall be Rs. 100 if the value for purposes of jurisdiction is less than Rs. 10,000, as in this case. The argument of the appellant that the fact that the suit was originally filed in the Court of the District Munsif makes it a decree of that Court cannot be accepted. The decree was passed by the Court of the Subordinate Judge and is rightly declared to be a decree of that Court.

The learned Advocate for the appellant has suggested that this Court has no jurisdiction to require payment of the difference between Rs. 15 and Rs. 100 by reason of section 12 of the Court Fees Act. He says that there was no question raised when the appeal was filed in the Court of the District Judge and, not having been raised there, it cannot be raised here. This argument ignores the facts and the wording of the section. The District Court in accepting the memorandum of appeal at Rs. 15 did decide that that was the proper fee. Section 12 (ii) gives an appellate Court power when an appeal comes before it to correct a

mistake made below, and this mistake was corrected by the direction of the Deputy Registrar. There is no substance in the appellant's objections and they must be overruled. As he has insisted on these questions being argued and as the Government Pleader has been served the appellant must pay costs which we fix at Rs. 50. The appeal will not be accepted until both the court-fee and costs which we have now awarded have been paid.

CHIDAMBARAM
CHETTIAR,
In re.
LEACH C.J.

G.R.

APPELLATE CIVIL

*Before Sir Lionel Leach, Chief Justice, and Mr. Justice
Krishnaswami Ayyangar.*

S. V. SUBBA RAO (THIRD RESPONDENT), APPELLANT,

1939,
November 23.

v.

THE CALICUT CO-OPERATIVE URBAN BANK,
LTD., CALICUT (PETITIONER), RESPONDENT.*

*Indian Limitation Act (IX of 1908), art. 182—Applicability
to execution of awards under the Co-operative Societies
Act (II of 1912).*

Article 182 of the Indian Limitation Act applies to the execution of an award passed under section 51 of the Co-operative Societies Act, 1912.

Co-operative Credit Society, Arungunam v. Chinnaswami(1) overruled.

APPEAL under Clause 15 of the Letters Patent against the judgment of VENKATARAMANA RAO J., dated 12th April 1938 and passed in Appeal against Appellate Order No. 2 of 1938 preferred to the High Court

* Letters Patent Appeal No. 74 of 1938.

(1) I.L.R. [1937] Mad. 495.