

A

## LAKSHMI AMMAL

v.

MADHAVAKRISHNAN (K. N.) AND ORS.

August 7, 1978

B

[V. R. KRISHNA IYER, D. A. DESAI AND O. CHINNAPPA REDDY, JJ.]

*Court Fees and Suit Valuation Act, (Central Act) Section 17-D—Read with Civil Procedure Code, (Act V) 1908 Order VII Rules 1(i) and 11(b)—Duty of the Court regarding the Court fee to be paid.*

C

The appellant paid the correct court fee under Section 37(2) of the Madras Court Fees and Suits Valuation Act clearly alleging in para 14 of the plaint that she is in joint possession and is seeking partition and separate possession of her half share in the suit properties as heir of deceased Paramayee. The preliminary objection as to the correct court fee payable raised and taken up resulted in the final appeal before this Court.

Allowing the appeal by Special Leave, the Court

D

HELD : (a) Courts should be anxious to grapple with the real issues and not spend their energies on peripheral ones. [68H, 69A]

(b) Court fee, if it seriously restricts the right of a person to seek his remedies in Courts of justice should be strictly construed. Since access to justice is the basis of the legal system, where there is a doubt, reasonable of course, the benefit must go to him who says that the lesser court fee alone be paid. [69A]

E

In the instant case, the court fee that is payable is under s.37(2) of the State Act, which corresponds to Art. 17-D of the Court Fees & Suits Valuation Central Act, which is the predecessor legislation on the subject. [69C]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1264 of 1978.

F

Appeal by Special Leave from the Judgment and Order dated 11-8-1976. of the Madras High Court in CRP. No. 2084/76.

*K. S. Ramamurthy, A. T. M. Sampath, S. Gopalakrishnan and A. N. Ramjani* for the Appellant.

*K. Jayaram and K. A. Bala Subramaniam and K. Ram Kumar* for the Respondents.

G

## ORDER

Leave granted.

H

It is unfortunate that long years have been spent by the courts below on a combat between two parties on the question of court fee leaving the real issues to be fought between them to come up leisurely. Two things have to be made clear. Courts should be anxious to

grapple with the real issues and not spend their energies on peripheral ones. Secondly, court fee, if it seriously restricts the rights of a person to seek his remedies in courts of justice, should be strictly construed. After all access to justice is the basis of the legal system. In that view, where there is a doubt, reasonable of course, the benefit must go to him who says that the lesser court fee alone be paid.

In this particular case there is hardly any difficulty in holding that the plaintiff in paragraph 14 of the plaint has clearly alleged that she is in joint possession and is seeking partition and separate possession of her half share in the suit properties as heir of deceased, Paramayee. Obviously, the court fee that is payable is as she has claimed, namely under sec. 37(2) which corresponds to Art. 17(b) of the Central Act, which is the predecessor legislation on the subject. We allow the appeal and send the case back to the trial court and direct that court to proceed with the suit expeditiously. We make it clear that our decision on the question of court fee does not have any implications on the merits including the validity or otherwise of the Will. No costs.

S.R.

*Appeal allowed.*