

In Re: Dandamudi Sarojini Devi

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Court : Andhra Pradesh

Decided On : Nov-25-1958

Reported in : AIR1960AP34

Judge : P. Chandra Reddy, C.J. and ;Mohd. Ahmed Ansari, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 151; Court-fees Act, 1870
- Sections 13

Appeal No. : Civil Misc. Petn. No. 6985 of 1956

Appellant : In Re: Dandamudi Sarojini Devi

Advocate for Def. : Second Govt. Pleader

Advocate for Pet/Ap. : A. Sanjeevarao, Adv.

Judgement :

Munikannaih, J.

1. In this application, filed under Section 151, C. P. C. the petitioner prays for the issue of the necessary certificate for refund of the court-fee paid in S. R. No. 18129 of 1956.

2. The counsel for the petitioner has argued before me that the first appeal filed by him was not numbered or heard by this Court, that the memorandum of appeal

has been stamped with the court-fee, that the court-fee stamps have been defaced by the High Court office in the usual course of routine and that his purpose in filing this petition is to get a certificate so that he can approach the Government with that certificate for refund of the money which he had invested on the stamps less deduction at the rate of one anna in the rupee.

For this he relies upon the decision in *Naga-ratnam, In re*, : AIR1950 Mad629 , where Panchapakesa Aiyar, J., has pointed out that there could possibly be no objection by courts to grant such certificates.

3. The Government Pleader opposes the application on the ground that the adoption of the same procedure adopted by Panchapakesa Iyer J. in that decision tantamounts in effect to the refund of the court-fee and that such a course is not possible as in *Chidambaram Chettiar, In re*, 67 Mad LJ 321 : (AIR 1934 Mad 566), it has been decided that refund can occur only when any of the three situations pointed therein exist. These three situations are : (1) where the refund is by virtue of an application under the Court-fees Act; (2) where the court-fee has been paid by mistake by the party; and (3) where the court has compelled the party to pay in excess of the court-fee already paid.

It is pointed out that none of these situations has arisen in the instant case and therefore, construed as a case for refund, the order asked for cannot be made.

4. I consider the point raised in this application as of such importance that it should be decided by a Division Bench.

ORDER OF THE DIVISION BENCH

Chandra Beddy, C.J.

5. This is a petition for refund of. court-fee under Section 151 C, P. C.

6. The petitioner filed an appeal against the preliminary decree in O. S. No. 162 of 1954 on the file of the Subordinate Judge's Court, Guntur, affixing a court-fee stamp of the value of Rs. 111-8-0. The papers were returned to the petitioner for complying with certain things. Without representing the appeal, the petitioner has

sought the refund of the court-fee alleging that she had no money to prosecute the appeal, that she was satisfied with the decree as passed by the Subordinate Judge and that she did not intend to represent the papers,

7. The point for decision is whether the request of the petitioner could be complied with. It looks to us that a certificate for refund could be granted only in one of the three circumstances, namely; (1) where the refund is by virtue of an application under the Court-fees Act; (2) where the court-fee has been paid by mistake by the party; and (3) where the court has compelled the party to pay in excess of the court-fee already paid. It is in any of these three circumstances alone that a certificate of refund of court-fee can issue.

This is not a case which falls under any of the three categories. It follows that this court cannot, in exercise of its inherent power under Section 151 C. P. C. issue the certificate asked for. However, we can direct the issue of a certificate that the appeal has not been registered or numbered or heard, that the appeal memorandum has been stamped with a court-fee of Rs. 111-8-0 and that the court-fee stamps have been defaced by the office in the usual course of routine (vide : AIR1950 Mad629) and Chandaji Khubaji v. State of Andhra, 1956 Andh WR 698: (AIR 1957 Andli Pra 255). A certificate on the lines indicated above will accordingly be given to the petitioner.

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