

Krishna Bhatta Vs. Madhava Bhatta

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Court : Kerala

Decided On : Jan-06-1961

Reported in : AIR1962Ker24

Judge : M. Madhavan Nair, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Order 33, Rule 1

Appeal No. : C.R.P. No. 21 of 1960

Appellant : Krishna Bhatta

Respondent : Madhava Bhatta

Advocate for Pet/Ap. : A. Madhava Prabhu, Adv.

Disposition : Revision dismissed

Judgement :

ORDER

M. Madhavan Nair, J.

1. The plaintiff who admits himself to be the owner in possession of 1/3 of the suit properties has sought leave to institute the suit in forma pauperis. On account of the explanation added to Rule 1 of Order XXXIII C. P. C. the Court below refused to take into consideration his capacity to pay the Court-fee by virtue of his

possession of the subject-matter of the suit, and finding that, apart from the above said properties, he is not possessed of means to pay the Court-fee on the plaint in the case granted him leave to institute the suit as a pauper. Even in the suit the plaintiff claims only a partition of 1/3 of the properties for himself. The suit has been instituted to set aside an ex parte decree for partition in which the identical properties were involved, the division in which did not seem to be agreeable to him. He sought relief under Order IX Rule 13 in the prior case but did not succeed.

Needless to say when the person is admittedly in possession of 1/3 of the properties he must necessarily have the means to pay court-fee on the value of such 1/3 share which alone is the court-fee payable in this suit. But the explanation added to Rule 1 of Order XXXIII seems to be imperative that such share, being the subject-matter of the suit, should not be taken into account in assessing the means of the petitioner to pay court-fee. As the rule now stands the order of the court below appears to be correct and the C. R. P. has only to be dismissed.

2. The matter will be placed before the Rule Committee to consider the desirability of retaining this explanation in our C. P. C. The commentary of Chittaley and Rao on the Code of Civil Procedure, 6th (1957) Edition, page 3712 point 3 and the several cases noted as authorities therefor indicate that the view elsewhere is that when the subject-matter of the suit is in the possession of the applicant for leave to sue as a pauper, it cannot be excluded in considering the means of the applicant to pay the court-fee.

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