

**Bhaskaran Vs. Dy. Tahsildar**

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**SooperKanoon Citation :** [sooperkanoon.com/719274](http://sooperkanoon.com/719274)

**Court :** Kerala

**Decided On :** Feb-22-2006

**Reported in :** 2006(2)KLT6

**Judge :** Thottathil B. Radhakrishnan, J.

**Acts :** [Code of Civil Procedure \(CPC\) , 1908](#) - Order 33, Rule 10 - Order 44, Rule 1; [Constitution of India](#) - Article 227

**Appeal No. :** W.P. (C) No. 5177 of 2006

**Appellant :** Bhaskaran

**Respondent :** Dy. Tahsildar

**Advocate for Def. :** M.A. Fayaz, Government Pleader

**Advocate for Pet/Ap. :** B. Krishnamani, Adv.

**Judgement :**

**Thottathil B. Radhakrishnan, J.**

1. This writ petition is filed challenging revenue recovery proceedings initiated to recover court fee.

2. The petitioner suffered a decree in O.S. No. 236 of 1997 filed against him by the second respondent herein, before the Additional Sub Court, North Paravur. He

challenged that decree in A.S. No. 228 of 2004 before the Court of the Additional District Judge, North Paravur, on being permitted to sue as an indigent person, for the purpose of Order XLIV read with Order XXXIII of the Code of Civil Procedure. That appeal was allowed on 14-11-2005, as per Ext.P2 decree of which Ext.P1 is the judgment.

3. By the force of Rule 1 of Order XLIV, Order XXXIII applies to appeals. Rule 10 of Order XXXIII provides that where the plaintiff succeeds in the suit, the court shall calculate the amount of court-fees which would have been paid by the plaintiff if he would had not been permitted to sue as an indigent person and that such amount shall be recoverable by the State Government from any party ordered by the decree to pay the same. By the nature of incorporation, by reference, made by Rule 1 of Order XLIV, Rule 10 of Order XXXIII will have to be read, in the context of appeals, by substituting the word 'plaintiff occurring therein as 'appellant'. So much so, when the appellant succeeds in the appeal filed by him, the Court is bound to order, in the decree, as to what shall be the amount recoverable as court fee and who, among the parties to the suit, has to pay the same. This authority is given to the Court, to exclude any adjudication as to such an issue, at the hands of the recovering authority under the State Government. The legislative wisdom behind such exclusive conferment of authority on the Court is that the determination of the fee due under the relevant laws is a matter for decision by the Court, in case of dispute, and further, such court fee may become part of costs ordered in the proceedings and it is for the Court to decide as to imposition of costs. Hence, in suits or appeals to which Rule 10 of Order XXXIII applies, the Court shall, calculate and state in the decree, the amount of court fee payable and shall order in the decree, as to who among the parties to the suit/appeal has to pay the same. It is only on the basis of such a term in the decree that the State Government can proceed to recover. Going by the provisions in Rule 10 of Order XXXIII, there has to be a term in the decree as regards court fee and as to who, among the parties has to pay the same.

4. In so far as the case in hand is concerned, the appellate decree has been passed directing the parties to suffer their respective costs. However, this does not take away the duty of the Court, in terms of Rule 10 of Order XXXIII, to calculate

the amount of court fee and state it in the decree, and further, to order as to who among the parties to the suit (appeal in this case) has to pay the court fee.

5. This writ petition is filed since the State Government has initiated revenue recovery proceedings against the writ petitioner though Ext.P2 decree does not contain any order as to who shall pay the court fee. This, obviously, is on the mere assumption that he is liable to pay the court fee since he has instituted the appeal. There is no warrant for such an approach, going by the statutory provisions contained in Rule 10 of Order XXXIII.

6. The situation has to be remedied. Hence, in exercise of authority under Article 227 of the [Constitution of India](#), the Court of the Additional District Judge, North Paravur is hereby directed to recast the decree in A.S. No. 228 of 2004 after giving notice to the parties thereto and hearing them on the question as to who shall pay the court fee in terms of Rule 10 Order XXXIII. Having regard to the interest of the State Government to recover the court fee, this shall be done, within six months from the date of receipt of a copy of this judgment. Any recovery proceedings by the Government shall be only on the basis of the recast decree as directed. The impugned proceedings will stand deferred until then.

The office will communicate this judgment to the Court of the Additional District Judge, North Paravur. The office will bring this judgment to the notice of the Registrar (General) and Registrar (Subordinate Judiciary) of this Court, to ensure that this judgment gains immediate attention of the subordinate courts.