

**Pappammal and ors. Vs. Sethammal and ors.**

**Pappammal and ors. Vs. Sethammal and ors.**

**SooperKanoon Citation :** [sooperkanoon.com/776835](http://sooperkanoon.com/776835)

**Court :** Chennai

**Decided On :** Mar-15-1940

**Reported in :** (1940)1MLJ813

**Appellant :** Pappammal and ors.

**Respondent :** Sethammal and ors.

**Judgement :**

**Horwill, J.**

1. The petitioners filed this suit for a declaration that the property left by first petitioner's deceased husband belonged to her and for an injunction restraining the first defendant, a co-widow, from interfering with her possession. The first defendant resisted the suit on the ground that the property was the self-acquired property of her husband and that he had left a will by which he bequeathed all the property with the exception of items 9 and 10 to the defendants. The first plaintiff replied that her husband was not then in a sound disposing state of mind and that the will was therefore not binding on her. The plaintiff paid such Court-fee as she thought sufficient; but during the course of the trial, the Court-Fee Examiner discovered that a higher Court-fee was payable. The plaintiff then declared that she was unable to pay that higher Court-Fee and prayed for permission to continue the suit in forma pauperis. That petition was dismissed by the District Munsif of Tirumangalam on the ground that whether on the plaintiff's case or on

the defendants' case, the plaintiff had an interest in items 9 and 10 upon which she could raise the amount necessary for paying the additional Court-fee.

2. The first point that arises is whether items 9 and 10 can be said to be the subject-matter of the suit; and if so whether they are excluded by Order 33, Rule 1, Civil Procedure Code, for the purpose of evaluating the property of the plaintiff. It seems to me that the comma after the word 'suit' separates the first part of the explanation to Rule 1 from the second part; from which it would follow that the expression 'other than his necessary wearing apparel and the subject-matter of the suit' qualifies only the second part of the explanation and not the first. If this expression were intended to qualify the whole of the explanation, then the comma after 'suit' would be wrong. I am fortified in this opinion by the commentary in Mulla's 'Civil Procedure Code' and by the judgment of Jackson, J. in *Mahalakshmi Ammal in re* (1925) 50 M.L.J. 114, in which he follows *Krishna Bai v. Manohar* (1906) 30 Bom. 593, and disagrees with *Bai Balagauri v. Motilal Ghellabai* (1922) 47 Bom. 523, in which, he says, the earlier Bombay decision had been overlooked. It is true that *Madhavan Nair, J. in Ramaswami Naidu v. Vaiyapuri Nadan* (1934) 67 M.L.J. 581, seems to express an opposite opinion; but he did not consider the point which we are now discussing. All that he said was that

In the explanation to Order 33, Rule 1, Civil Procedure Code the definition of 'pauper' is given from which it appears that in considering whether a person is a pauper, the subject-matter of the suit should be excluded.

3. So he did not consider the question whether the words 'other than his necessary wearing apparel and the subject-matter of the suit' qualify only a part of the explanation to Rule 1 of Order 33 or the whole.

4. In a sense, the subject-matter of this suit may be considered as far as these two items are concerned to be the difference between half the widow's life-estate and the whole value of the property. Where both sides agree that the plaintiff has a saleable interest in these two items, it would be contrary to the spirit of Order 33 if the plaintiff could ignore this property on which she can undoubtedly raise money.

5. It is no doubt true that even if she has a saleable interest in items 9 and 10, she is entitled to continue the suit as a pauper unless the Court is satisfied that she can sell whatever interest she has in these items and raise sufficient money to pay the deficit Court-fee. With so much doubt as to what title she had in the lands and the existence of the question whether, if she had a widow's estate, a sale would bind the reversion, she would probably obtain very little for them in the open market. This difficulty has however been removed by the offer of the defendants to pay the plaintiff what she states to be the full; value of the two items, namely, Rs. 350. The defendants are willing to take the risk of it being found by the Court that the plaintiff is not entitled to more than half the widow's estate in those items. They are also willing to bear the risk that some reversioner at some future time might succeed in having it declared in a Court of law that the alienation is not binding on him. There can therefore be no doubt that the plaintiff can raise money on items 9 and 10 to pay the deficit Court-fee of Rs. 171-6-0.

6. This revision Petition is therefore dismissed with costs. Two months from this day will be allowed to the plaintiffs for payment of the requisite Court-fee.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**