

Lakshmi Ammal

Vs

K. M. Madhavakrishnan and Others

Civil Appeal No. 1264 of 1978

(V. R. Krishna Iyer, D. A. Desai, O. Chinnappa Reddy JJ)

07.08.1978

ORDER

1. Leave granted.

2. 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 in the clear. Courts should be anxious to grapple with the real issues and not spend their energies on peripheral ones. Secondly, the 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.

3. 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 Section 37(2) which corresponds to Article 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.

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