

ALT 663, wherein their Lordship clinchingly held that party seeking to adduce secondary evidence in relation to a document under Section 65(b) of Indian Evidence Act *i.e.*, for producing the certified copy of the Original lost, foundation is a condition precedent; what is that foundation? Such a kind of foundation should be pleaded and evidence is to be let in after satisfying the Court in evidence that the original is lost. Foundation once again mean, that it should be pleaded as to under what circumstances the original is lost, the contents of the document, the author of the document, witnesses and the descriptive particulars of the scribe also.

If the evidence being allowed on such a certified copy postponing the decision, the entire cross-examination again becomes *otiose*. If the objection is heard at the final disposal of the case, there is no chance for the party to seek for lying foundation as contemplated under Section 65(b) of the

Indian Evidence Act. There is a lot of case law had been flown to the effect that the objection should be heard and decided at first instance itself.

The Legislators or the Law Commission did not focus their attention for the anomalies that are going to take place by such a kind of amendment. There could have been a lot of debate between the Juries, Judges and Advocates before the Law Commission putting its motion for the bill.

There are a lot of changes to be made in CPC, but ignoring those aspects which are settled at naught by number of precedents, unworthy amendments are brought in. The said amendment as discussed above, have got more negative aspects rather than positive. The same is a negative approach which is not for progress in law. I apprehend every danger of injustice being caused to the litigant public. After all it is my opinion and one may accept or negative it.

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## LAW ON COURT-FEES AND SUITS-VALUATION IN A NUTSHELL

*By*

**—B. SHIVA SANKARA RAO,**  
Additional Director,  
A.P. Judicial Academy

### **INTRODUCTION:**

*Levy of Court fees is unknown to ancient India.* Tracing to the history, during Moghul rule and the period prior to that, there was no fees even on the administration of civil justice since administration of justice was totally free. Before the advent of British rule in India, the administration of justice was considered to be the basic function of the Ruler as guardian of the people without levy of any charge on the party approaching for redress of his grievance. It was only after the British rule that regulations imposing

Court fees were brought into existence in or about 1795. In the beginning the imposition of fees was nominal but, in the course of time, it was enhanced gradually under the impression that it would prevent the institution of frivolous and groundless litigation and as an effective deterrent to the abuse of process of Courts, without causing impediment to the institution of just claims. It is from that background the Central Court Fees Act, 1870 was enacted - See AIR1996 SC 676 at Para 6.

The Central Court Fees Act, 1870 consists of 36 Sections in 6 chapters, out of it

Section 7 deals with computation of Court fees payable on certain suits. Section 8 is computation of fee on memorandum of appeal against orders relating to compensation. Sections 9 to 11 deal with profits and accounting. Section 12 deals with valuation of relief in suit or appeal for collection of Court fees. Sections 13 to 15 deals with refund of fees for review and for remand of appeal *etc.* Section 17 deals with multifarious suits. Section 30 deals with cancellation of stamps received by Court by punching out the figurehead so as to leave the amount designated on the stamp untouched.

*As per CPC Amendment 1999 by Chapter 6 Section 34, in the Central Court fees Act, 1870 Section 16 for refund of Court fees was introduced consequent to new Section 89 CPC. Section 16 CCF (Amended) Act says that where the Court refers the parties to the suit to any one of the modes of settlement of dispute referred to in Section 89 CPC (Arbitration, Conciliation, Judicial Settlement including settlement through Lok Adalat or mediation), the plaintiff shall be entitled to a certificate from the Court authorising him to receive back from the Collector, the full amount of the fees paid in respect of such plaint.*

Since the Central Court fees Act, 1870 was found to be defective, unscientific and no way exhaustive and administration of justice is allocated as one of the main functions of the State, consequently the State has not only to maintain system of administration of justice for the maintenance of law and order but it has also to provide a system to enable its citizens to canvass their rights against wrongs done to them as well as the State itself, most of the States either amended the provisions or enacted their own Court fees Acts. In that way while the Andhra area was under the composite State of Madras, the Madras Government amended the Central Court fees Act-by-Act

5 of 1922 and also the Suits Valuation Act 7 of 1887. For the State of Hyderabad (originally under Nizam rule), there was a Court fees Act of 1324 Fasli.

After separation of Andhra area from composite State of Madras, the A.P. Court fees and Suits Valuation Act, 1956 is enacted which came into force with effect from dated 1.5.1956. Subsequently the said Act was extended to erstwhile Hyderabad State by Act 4 of 58 and Act 17 of 58, it was therefrom the Hyderabad Court fees Act, 1324 Fasli was repealed and the A.P. Court fees Act 1956 is applicable to the entire State of A.P.

N.B: The provisions of the A.P. Court fees Act, it appears, are applicable even to agency areas as per the Madras agency rules (A.P. amendment) regulation 4 of 1960 dated 13.12.1960

As per Section 79 of the A.P. Court fees Act which deals with Repeal and Savings-(1) The Court Fees Act, 1870 (Central Act VII of 1870), in its application to the State of Andhra (it is to be read as State of AP because of amended Act 1958) and in relation to the fees and stamps other than fees and stamps relating to documents presented or to be presented before an officer serving under the Central Government and the Suits Valuation Act, 1887 (Central Act VII of 1887), in its application to the State of Andhra are hereby repealed. (2) All suits and proceedings instituted before the commencement of this Act and all proceedings by way of appeal, revision or otherwise arising therefrom, whether instituted before or after such commencement, shall, notwithstanding the repeal of the Court-fees Act, 1870 (Central Act VII of 1870), and the Suits Valuation Act, 1887 (Central Act VII of 1887), be governed by the provisions of the said Acts and the rules made thereunder.

The A.P. Court fees and Suits Valuation Act not only deals with

computation of Court fees but also deals with valuation of suits etc. The Act prescribes different types of Court fees i.e., levy of fixed fees as well as advalorem fees depending upon the nature of the proceedings.

**The Act consists of 79 Sections in 8 Chapters, 3 Schedules with 2 tables and 36 Rules** (Rules framed in 1987). As per the R4 every Plaint shall contain the full particulars of the subject-matter of suit and the valuation thereof for CF & for Jurisdiction. **Coining to the sections :**

Chap. I - Preliminary	- Sections 1 to 3
Chap. II - Liability to pay CF	- 4 to 9 read also 67.
Chap. III- Determinations of CF	- 10 to 18
Chap. IV- Computation of CF	- 19 to 49

*(In case of suits or appeals for money or compensation or damages or profits or accounting, immovable and movable properties for possession or injunction or declaration or profits or partition with or without accounting or profits, for specific performance or to set aside attachment or cancellation of decrees or documents or suits under survey and boundaries Act or suit to alter or cancel an entry in a register or other suits relating to declaration, injunction, adoption, maintenance and annuities suits, suits relating to trust property, suits relating to public matters, suits relating to landlord and tenant, partnership suits, administrative suits and the like.)*

Chap. V Pecuniary-Valuation of-subject matter for jurisdiction	- 50 & 51
Chap. VI Probate, letters of Administration etc.	- 52 to 62
Chap VII Refund and Remissions	- 63 to 68
Chap VIII Miscellaneous	- 69 to 79

The A.P. Court fees and Suits Valuation Act, 1956 includes not only the 79 Sections in eight chapters but also the three schedules with two tables and Rules held in 1969 (2) APLJ 155 - Bulusu Venkaiah v. Forest Dept.

N.B.: The Sections in the Act empower to collect proper Court fees while Schedules determine mode of assessment. The tables 1 & 2 of Schedule 1 speak as to what is the advalorem Court fees on the value mentioned in the Schedule-1. Table-I-is for small cause suits etc., on value or subject-matter up to Rs.500/- it speaks as to what is the Court fees payable thereon, and- the table-II is for suits etc. on the subject matter up to Rupees. Three lakhs-it speaks as to what is the Court fees payable thereon up to Rs.5426/- and above Rs.3 lakhs for every Rs.10,000/- or part thereof Rs.100/- Court fees. The Schedule 2 speaks of proper and fixed Court fees on different petitions or appeals or applications. The Schedule 3 read with Sections 52 to 62 deals with Probate of will or administration of estate of deceased.

**Court fees whether fees or tax.:** In 1996 (1) ALD 519 = (2) APLJ 277 = (1) AnWR 137 -it was held that Court fees is neither tax nor duty. It must have relation to administration of justice. In AIR 1996 SC 676 Paras 9 and 10 it was held that the co-relationship between services rendered (cost of administration of justice) and the levy of Court fees (fees collected) must exist though not of arithmetical exactitude. It was further held that, since about past two decades the levy of Court fees on higher scales would seem to find its justification, not in any purpose related to the sound administration of justice but in the need of the State Government for revenue as a means for recompense.

The Court fees Act is a fiscal legislation, which must be construed in favour of the subject. See AIR 1971 A.P. 142, 1958 Madras 291, 1929 Madras 60, 769 (FB) and 1924 Madras 420 (FB). In AIR 1955 A.P. 140 = An.W.R. 36 it was held that the terms of the A.P. Court Fee Act must be understood in their natural and ordinary sense.

**Chapter-I (Sections 1 to 3): As per Section 2** of the Act, the AP Court Fees Act shall not apply to documents being presented before a Central Government

Officer (read with Section 79 in this context). Section 2 further speaks that, when there is a special provision made for levy of Court fees under any special law, this Court Fees Act provisions will not apply. For ex: AP Tenancy Act and AP Buildings Lease, Rent and Eviction Control Act *etc.*

In 1963 (1) An.WR 124, it was held that where a document is chargeable under a special provision, the general provisions would have no application.

### Definitions:

**As per Section 3** - Clause 1 - an appeal includes a cross objection. See 1934 All.LJ 743, 1968 (2) An.W.R. 301 and AIR 1968 AP 239 (FB).

As per Section 3 Clause 2, **Court** means any civil, revenue or criminal Court and includes a tribunal or other authority having jurisdiction under special or local law to decide questions affecting the rights of the parties.

In 1990(3) ALT 386 *Council of A.P. Trade Union v. State of AP*, it was held that, for levy of Court Fees on applications and documents filed under Industrial Disputes Act, in Labour Courts and Industrial Tribunals they come under the definition of Court.

In ILR 1960 AP 145 *Satyanarayana v. Y.K.Rao*, it was held that, Collector exercising powers under Section 46 Income Tax Act comes within the definition of a Court. See also AIR 1969 S.C. 724 and 1940 Cal.286.

In 1949 Mad. 595 - it was held that Dy. Registrar of Co-operative Societies acting under that act is a Court within the meaning of Section 38 C.F. Act.

**Market value** -is not defined in Section 2. Market value is in fact the value that the property (subject-matter of the suit) will fetch in open market under the state of things prevailing

on the date of the plaint-held in 1924-Mad-19 (FB). The market value should be determined by the Court itself irrespective of the plaintiff's valuation-held in 1924-Lah-I (FB)

**Subject-matter-** is not defined in Section 2. Subject matter is the substance for adjudication and it has reference to the right of party who seeks relief *i.e.*, enforce the right. The valuation of suit depends upon the value of the subject-matter thereof. See 1999(1) ALD-222(FB). paras-7 & 8.

**Cause of action:**—to understand is a bundle of essential facts and refers entirely to the media upon which the plaintiff asks the Court to arrive at the conclusion in their favour. See 1966 (2) An.W.R. 253, 1960 SC 309; 1954 Mad. 594, 1949 P.C. 78 and also AIR 2001 SCW-4690 **In AIR 1957 A.P. 1019 = 1956 An.W.R.377, it was held that the word subject in Court Fee Act should be given a meaning synonymous with the expression cause of action.**

Under Order 2 Rules 1 to 3 C.P.C., all persons may be joined in one suit as plaintiffs or defendants in whom or against whom any right to relief arising out of the same or series of acts or transactions alleged to adjust whether jointly or severally or in the alternative, when if such persons brought separate suits or separate suits were brought against them as the case may be any common question of law or fact would arise

For payment of Court Fees, the criteria is plea regarding cause of action and its value to claim relief, if no cause of action no question of valuing any future relief even claimed. See AIR-1967-SC-155.1958-AP-517& 1951 Madras 938 (FB) The Court fees Act becomes applicable only on the claim preferred before Court-held in 1958 AP 267 = (2) An.W.R. 349.

**Chapter 2 (Sections 4 to 9): As per Section 4**, no document which is chargeable

with fee under the Act, without payment of the Court fee, shall be recorded or exhibited or be acted upon except in a Criminal Court that too if the Court considers necessary to do so.

In this context it is necessary to read Section 67 of A.P.C.F. Act which says that, no Court fee be payable on (I) Memorandum of appearance for accused in criminal cases, (viii) Bail bonds in criminal cases; (x) Any petition by a prisoner or other person in duress or under restraint of any Court or its officer; (xi) Complaint of a Public Servant relating to matters arising out of or in connection with discharge of his official duty; (xiii) Petition of appeal against Municipal Tax; (xiv) Application for compensation under Law relating to acquisition for public purpose and (xvi) Plaints, Appeals, all types of petitions and applications, memorandum of appearance and Vakalatnama filed by State Government or its' Lawyers before any Court or Tribunal or other authority. As per Section 9 where a document falling within two or more descriptions of Court fee Act, the fee chargeable is only with the highest of the fee chargeable under any one of the descriptions. A document chargeable under a special description if it is charged under the description, it is suffice. As per Section 5 when a document is not affixed with proper Court fee, even received by Court or public office the party can be directed to pay the Court fee or part thereof that is payable by fixing time for payment and upon such payment the document shall be dealt with as if the full Court fee was paid on the document at the first instance.

See also Section 149 CPC power of Court to make up deficiency of Court fees on documents in this context as per which, where any Court-fee prescribed by law for any document is not paid, the Court may at any stage allow to pay and upon such payment the document shall have the same force and effect as if such fee was paid at the first instance. See 1983 Kerala 236.

The procedure to be followed under Section 149 CPC when the Court exercises the power to make up deficiency of Court fee, is laid down in 2003 (9) Indian Legal Decisions (Mad) 274, in *K.Natarajan v. P.K.Rajashekaran*, as follows

- (1) Section 149 CPC is a proviso to Section 4 of the Court fees Act
- (2) The order (document) employed in Section 149 would include plaint also
- (3) Whenever a plaint is received, the same shall be verified and if found to be not in order, the same shall be returned at least on the third day (excluding the date of presentation so also the intervening holidays)
- (4) If the suit is presented on the last date of limitation affixing less Court fee, then the one mentioned in the details of valuation in the plaint, and affidavit shall be filed by the plaintiff giving reasons for not paying the requisite Court fee.
- (5) In such cases, the Court shall before exercising its' discretion and granting time to pay the deficit Court fee, shall order notice to the defendant and consider their objections, if any. However, such notice is not necessary in cases where the plaintiff has paid almost entirely of the requisite Court fee and the Court is satisfied on affidavit by the party that the mistake happened due to some *bona fide* reasons such as calculation mistake or the alike.
- (6) The discretion referred to in Section 149 is judicial discretion and the same has to be exercised in accordance with the well established principles of law.
- (7) But however, in cases where the time granted to pay the deficit Court fee falls within the period of limitation, the defendant need not be heard.



- (8) In cases where the plaint is presented well within the period of limitation with deficit fee and the Court returns the plaint to rectify the defect giving some time (two or three weeks), which also falls within the period of limitation, but the plaint is represented paying deficit Court fee after the period of limitation, the Court is bound to hear the defendant, notwithstanding the fact that the plaintiff has paid substantial Court fee (not almost entirely) at the first instance, before condoning the delay in paying the deficit Court fee.
- (9) In cases where part of the time granted to pay the deficit Court fee falls outside the period of limitation and the deficit Court fee is paid within the time of limitation (that is the plaint is represented with requisite Court fee), the Court need not wait for the objections of the defendant and the plaint can be straight away numbered.
- (10) The Court should exercise its' judicial discretion while considering as to whether time should be granted or not. Cases where the plaintiff wrongly (*bona fide* mistake) valued under particular provisions of law under Court fee Act or where he could not pay the required Court fee for the reasons beyond his control, due to some *bona fide* reasons, the Court shall condone the delay. Payment of substantial Court fee is a circumstance which will go in favour of the claim of the plaintiff that a *bona fide* mistake has crept in. But however, in cases where the plaintiff acted wilfully to harass the defendant (like wilful negligence in paying Court fee, awaiting the result of some other litigation, expecting compromise *etc.*)
- (11) If the Court had exercised its' discretion without issuing notice, then

it is open to the defendant to file application under Section 151 for proper relief. It will be open to the defendant to file a revision under Article 227 of the Constitution of India. That apart, objection can also be raised at the trial or even at the appellate stage, since the failure to exercise judicial discretion in a manner known to law (as laid down in various decisions of the Supreme Court) amounts to Court applying a wrong provision of law.

In 2003 (5) ALD 577 (AP) - *S.A. Khadeer v. G.V.R. Anjaneyulu* - it was held that as per Section 149, A.P.C.F. Act and Order 7 Rule 11 proviso to clause (d) CPC the power of Court in extension of time for making up deficiency of Court Fee is discretionary - which can be exercised for cause of exceptional nature and after recording reasons. It was observed that repeated applications and extension of time frequently on ground of inability to raise money is not legal.

In 1995 SC 1945 para 9 it was held that there shall be *bona fides* on the part of the party, even for the Court to take the aid of Section 149 to permit to pay additional Court fee by extending the benefit, otherwise it would create unhealthy practice and would become a game of chess and a matter of chance which could not be conducive and proper for orderly conduct of litigation.

In AIR 1951 All. 64 (F.B), it was held that where deficit Court fees on a document not paid, Court can return the document.

In 1968 (2) ALT 17 (NRC) - *B. Atma Singh v. P.V.S.Rao*; it was held that Court cannot dismiss appeal for non-payment of deficit Court fee on plaint.

In AIR 1957 Mad. 667 and 1958 Patna 560, it was held that the remedy for non-payment of deficit Court fee generally is to recover the same as arrears of land revenue.

In AIR 1975 All. 189 it was held that the Court fee can be affixed on a separate sheet and treat as duly stamped. If it is enclosed to the plaint or document requires Court fee stamp, it is sufficient.

In AIR 1978 AP 297 (DB) It was held that to release the accused in jail on a petition and memo of appearance no Court fee need be paid and vakalat be filed even accused appearing through advocate as per Section 67(1) and (10) read with Article 111(s) and Article 11(u) does not apply. In 1965 (2) ALT 223 = 2 An.W.R. 248 and AIR 1966 AP 239; it was held that on behalf of complainant for complaint and vakalat or appearance there is no exemption from payment of Court fee since Section 67, C.F. Act won't apply.

In AIR 1966 A.P. 137 it was held that a certified copy of judgment of a Subordinate Court has to bear Re.1/- Court Fee Stamp to file in any Court.

In AIR 1971 A.P. 114 it was held that no Court fee need be affixed on a compromise memo in suit for recovery of possession.

**Section 7 of A.P.C.F. Act says that** where the fee payable under this Act depends on the *market value* of any property, such value shall be determined as on the date of presentation of the plaint

**Market value** is the value that the property (subject matter of the suit) will fetch in open market under the state of things prevailing on the date of the plaint-held in 1924 Mad. 19 (FB). The market value should be determined by the Court itself irrespective of the plaintiff's valuation-held in 1924 Lah. 1 (FB). In 1934 Mad. 714-it was held that a temple has no market value since it is unalienable.

In 2002 (6) ALD 772 - *M. Bal Reddy v. N. Anthamma*, it was held that in a suit for setting aside decree, CF payable is on present

market value of suit property and not on the value mentioned in the suit decreed that sought to be set-aside.

In this context, it is desirable to read Rule 3 of 1987 Rules and Section 10 APCF Act as per which it is mandatory to file along with plaint certificate from Sub-Registrar of Market Value of immovable property as per basic value registers maintained by the Registering authorities. See 1995 (3) ALD 439 *T.N. Ravi v S.K. Rao*. See also 1990 (1) An.W.R. 384 = (1) LS 133 = (1) ALT 18 NRC in *Bar Council of State of AP v. Government of A.P.*

The Court fees payable on a plaint or petition has to be determined with reference to law in force at the time of institution of the suit or other proceeding. See AIR 1963 AP 68 and 267. In case there is a change of law relating to Court fees between date of suit and date of appeal the law relating to Court fees at date of appeal will govern for payment of Court fees on appeal (though it is the value of the subject-matter at the date of the suit that determines jurisdiction and Court fees for appeal). See AIR 1955 AP 221(FB) and 1958 AP 267.

The date of presentation of plaint will determine the Court fees payable in appeal as per Civil Courts Act. The test is to determine the subject-matter of the appeal and relief claimed by the appellant. See AIR 1971 AP 177 and 1986(1) ALT 297.

**Section 8 of the Court Fee Act says that** a written statement pleading set off or counter-claim shall be chargeable with fee in the same manner as a plaint.

In 2000 (1) LS 43 = (1) ALD 312, ALT 221 at 225 and AIR 2000 AP 242 *Durga Pharma v. Geoffrey* it was held that (1). When various claims made by defendant in written statement are in the nature of a set off or a counter-claim, the defendant is liable to pay CF in respect of the said claim.

(2) In respect of claim for damages, the defendant is liable to pay CF only on past damages before date of W/S, for future damages CF to be paid only after the same duly ascertained by the Court. The counter-claim shall be treated as a plaint for all purposes including in applying the rules applicable to the plaint as per Order 8 Rule 6A (4). See 1987 (2) ALT 47.

Court can take cognizance of events that happened during pendency of litigation as a defence of action, held in 1966 (1) An.W.R. 1.

Where set off is pleaded in W/S it is liable for stamp duty like a plaint see AIR 1935 Mad.-115. In 1989(1) ALT-195 it was held that payment or adjustment is not set off, since defendant has no independent right to recover the amount without settling the claim of plaintiff in the suit. In AIR 1960 AP 520 and 1965 AP 18 it was held that set off is a statutory defence to plaintiffs action and counter-claim being a cross action which the defendant can claim by separate suit.

**Section 6 Multifarious Suits:** (1) In any suit in which separate and distinct reliefs based on the same cause of action are sought, the plaint shall be chargeable with a fee on the aggregate value of the reliefs. Provided that if a relief sought is only ancillary to the main relief, the plaint shall be chargeable only on the value of the main relief.

(2) Where more reliefs than one based on same cause of action are sought in the alternative in any suit, the plaint shall be chargeable with highest of the fees leviable on the reliefs.

(3)(a) Where a suit is based on two or more distinct and different causes of action and separate reliefs are sought in respect thereof, either alternatively or cumulatively, the plaint shall be chargeable with the aggregate amount of the fees that would

be chargeable on the plaints under this Act if separate suits were instituted in respect of the several causes of action:

Provided that, where the causes of action in respect of reliefs claimed alternatively against the same person arise out of the same transaction, the plaint shall be chargeable only with the highest of fees chargeable on them.

(b) Nothing in this sub-section shall be deemed to affect any power conferred upon a Court by Rule 6 of Order 11 in the First Schedule to the Code of Civil Procedure, 1908.

(4) The provisions of this section shall apply *mutatis mutandis* to memorandum of appeals, applications, petitions and written statements.

Explanation: For the purpose of this section, a suit for possession of immovable property and for *mesne profits*, the reliefs shall be deemed to be based on the same cause of action. Section 6 of Court

Fee Act emphasis is mainly on same or different causes of action and more than one relief independent or in alternative and main relief and ancillary (consequential) reliefs. The Section 6 deals with suits for distinct reliefs based on same cause of action (Section 6(1), alternative reliefs based on same cause of action (Section 6(2), distinct reliefs based on single or more than one relief based on different and distinct causes of action whether out of the same transaction and against the same person or otherwise. (Section 6(3).

The cause of action to understand is a bundle of essential facts and refers entirely to the media upon which the plaintiff asks the Court to arrive at the conclusion in their favour. See 1966 (2) An.W.R. 253, AIR 1960 S.C. 309; 1954 Mad.594, 1949 P.C. 78. See also AIR 2001 SCW-4690. In AIR 1957 A.P. 1019 = 1956 An.W.R.377, it was held that



the word **subject** in Court fee Act should be given a meaning synonymous with the expression **cause of action**. Under Order 2 Rules 1 to 3 C.P.C., all persons may be joined in one suit as plaintiffs or defendants in whom or against whom any right to relief arising out of the same or series of acts or transactions alleged to adjust whether jointly or severally or in the alternative, when if such persons brought separate suits or separate suits were brought against them as the case may be any common question of law or fact would arise. In addition to such joinder of persons, there may be several causes of action which are combined in one suit and several reliefs prayed for cumulatively or alternatively. Where more than one relief is sought each having a distinct value and an entirety by itself, each of those reliefs should be valued separately and Court fee collected should be on the total value of such reliefs. Where the reliefs are in the alternative, plaintiff should be liable to pay fee only on that relief which is chargeable with higher Court fee. If the relief sought is only ancillary to main relief the plaint shall be chargeable only on the main relief. Where a suit comprises two or more separate or distinct causes of action and distinct reliefs are sought in respect of each cause of action, the plaint shall be chargeable with total Court fee that would be chargeable if separate suits were filed in respect of each such cause of action. See AIR 1963 A.P. 63, 1957 Madras 163, 1954 Madras 289 and 594, 1953 Madras 592, 1949 Madras 125 and 464, 1935 Madras 313 and 419, 1933 Madras 178 and 431, 1924 Patna 496, 558 and 1970 (2) An.W.R. 58. See also 1959(1) An.W.R. 326, 1956 An.W.R. 377 and 842, 1958(2) MLJ 94, 412 and 442, 1941 Madras 115, 1930 Madras 833 (FB).

In 1969(2)-ALT-2- (NRC) - in reference to L.A.O's. case, it was held that Court fee is payable on each claim separately under Section 6(3), since the claims are independent and not on one cause of action. See also 1991(3) ALT 408.

In 1960 ALT 192 (Sections 17 and 6) it was held that for alternative reliefs, Court fee paid on highest relief is enough and separate Court fee not liable to be paid on each relief. In 1969(1) APLJ 84 (SN) - *Balakotaiah v. Hanumayya* - it was held under Section 6 that when plaintiff seeks cancellation of 3 different deeds executed in favour of 3 different persons, Court Fee payable is on the value of each such deed.,

In *Dr.V.Rajeswara Rao v. N.Yadagiri Reddy etc.* 2000 (4) ALT 366 = (3) LS59 = (5) ALD102 it was held under Sections 6, 24 & 26 that in a Comprehensive suit by amendment from injunction to possession and mandatory injunction by allegations of trespass and constructions after suit date which thus even based on different causes of action for reliefs included in one comprehensive suit, highest Court Fee is leviable on the reliefs as per Section 6(2) CF Act.

In 1975 (1) APLJ 82 - it was held that, in a suit for declaration of title and for possession besides *mesne profits*, the Court fee payable is on the aggregate amount of value for declaration and past profits claim. See also 1930 Mad. 833 (FB).

### **Chapter 3 (Sections 10 to 18): Determination of Court Fees:**

**As per Section 10**, in every suit in which fees payable under this Act on a plaint depends on the market value of the subject-matter, the Plaintiff shall mention in plaint or file with the plaint a statement in the prescribed form, of particulars of the subject-matter of the suit and his valuation thereof. (For further information see notes under Section 7 of the Act and Rule 3 of 1987 Rules).

**As per Section 11**, in every suit the Court shall before ordering the plaint to be registered, decide on the allegations contained in the plaint and the material furnished by the plaintiff the proper fees payable thereon. The

decision of the Court shall be subject to review from time to time as and when occasion requires. (See AIR 1962 AP 90& 1968(2) An.W.R. 616 FB)

The defendant may plead that the subject matter of the suit has not been properly valued or that the fees paid is not sufficient and such questions shall be heard and decided before hearing of the suit as per Order 18 CPC. If the Court decides in negative to plaintiff, it shall fix a date for plaintiff to value the subject matter and pay deficit Court fees as per the Court's decision. If the plaintiff within the time allowed fails to comply, the plaint shall be rejected and the Court shall pass such order as it deems just regarding costs of the suit. (See ILR 1969 AP 498) A Court of appeal in the appeal (whether filed on entire subject matter or on part) either of its own motion or on application of any party consider the correctness of any order of the lower Court regarding Court fees payable and determine the proper fees payable thereon and require the party to pay the deficit fees within the time fixed and in default, if the default is in respect of relief decreed by lower Court the deficit fees shall be recoverable as arrears of land revenue and if the default is in respect of relief dismissed by lower Court the appeal shall be dismissed for non-payment of deficit fees. If the fee paid in lower Court is in excess of proper fees the appellate Court can direct for refund of the said excess to the party entitled. (See 1980(2) APLJ 456) Any questions relating to value for determining jurisdiction of Court shall be heard and decided before hearing of the suit as per Order 18 CPC

In AIR 1953 SC 431 it was held that once Court permitted payment of deficit Court fees, such power of Court will not be effected by bar of limitation.

In 1999 (6) ALT 166 = (6) ALD 223 - *Satyam Constructions Ltd.*, case it was held

that, in respect of application filed under Section 11(6) Arbitration Act 1996, no Court fees is necessary under Article 11(u) since comes under residuary provision and not under Article 11(u)(3).

Criteria for deciding payment of Court fee and determination of valuation: Unless specific provision governs for payment of Court fees with certainty, the general principle to guide the Courts to arrive at a proper value for purposes of Court fees is the advantage one wants to derive or the loss one wants to avert. See 1965 (1) An.W.R. 138, 1969(1) An.W.R. 411 and 2003 (4) ALD 345 (D.B.) at Para 6 pg. 353 following the 1969 (1) An.W.R. 411 - *Jabber v. State of A.P.* In 2000 (1) ALT 221& 225- *Durga Pharma v. Geoffrey* it was held that in respect of claim for damages (past and future), the defendant is liable to pay CF only on past damages before date of W/S, for future damages CF to be paid only after the same being duly ascertained by the Court. In AIR-1961-SC-1299-it was held that, whether proper CF paid or not is primarily a question between plaintiff and State and not to arm the contesting party (defendant) with a weapon of defence to obstruct trial. The plaint allegations alone are decisive to determine Court fees and not written statement pleas or final decision in suit on merits. The guiding factor is substance and not the form of the plaint. The Court in deciding the question of Court fees should look into the allegations in the plaint as a whole to see what is the relief that is asked for with reference to the pleadings and not from the form of the mere prayer in this suit. Where valuation made by plaintiff is unreasonable or if he under valued, the Court can revise and enhance at any time after presentation of plaint but not after pronouncement of judgement. - See also 1998(9) SCC 157; 1994(4) SCC 349, 1994 (1) An.W.R. 274; AIR 1992 SC 1526, AIR 1988 SC 1150, AIR 1980 SC 691, AIR 1973 SC 2384, AIR 1971 AP 142, 1968 (1) An.WR 296, 1960 ALT 53, 991, 1960 (1) AnWR 106, AIR

1958 SC 245 at 251, and AIR 1955 AP 200, 1955 An.W.R. 348.

Further, in AIR 1958 SC 245 and 1987-Patna 156- it was held under Section 7 of Central Court fees Act that plaintiff's estimate of relief generally be accepted, however, where he undervalues the Court can interfere with the valuation and enhance reasonably. See also AIR 1992 SC 17.

In 1976 ALT 209 (NRC) *N. Rathnam v. Elizabeth* it was held that, the Courts have no jurisdiction to fix the market values arbitrarily and direct plaintiff to pay the same, since the discretion of the Court to enhance or revise the value must be reasonable.

In AIR 1976 AP 199 *Md. Shabbuddin v. Ahmed*: it was held that deficit Court fees payable may be ordered to be paid even at the time of pronouncing judgment.

In 1968 (2) ALT 17 NRC it was held that the Court has no power to collect deficit Court fees after the suit was disposed off, unless there is a direction to pay deficit Court fees, during disposal in the judgment or before.

In AIR 1973 AP 125, it was held that where Court got jurisdiction to entertain suit;

Relief cannot be refused on the ground that proper CF has not been paid.

The Apex Court in AIR 1988 SC 1150 and 1987 SC 2085 held that the tentative valuation stated by the plaintiff must not be arbitrary and unreasonable, since the plaintiff has no absolute right or option to place any valuation whatever on relief of accounting *etc.*

In 1968(2) An.W.R. 616 (FB) it was held that, a suit for accounting under Section 32 or for dissolution of firm under Section 33, the word estimate to mean the plaintiff is bound to state the approximate amount as near reality as possible, since plaintiff is not

the soul arbiter of the amount at which the relief sought is valued to his caprice or to give an arbitrary figure by deliberately undervaluation. He is bound to make a genuine and honest effort to value the relief sought by him. See Order 7, Rule 2 CPC.

In 2003(4) ALD 66 (DB) *State of AP v. Thrishul Eng. Works*; it was held that in a suit for settlement of accounts under Section 32 AP Court fees Act filed by estimating the value at Rs.50,000/- by underestimating for payment of Court fees, it cannot be allowed where the amount he can claim comes to Rs.Seven lakhs - Since he could have estimated the value and claimed the exact amount due to him, the final decree cannot be passed exceeding the tentative value (amount) he mentioned in the plaint.

*In AIR 2001 Delhi 338 NGOC. Kumar v. Ashok Kumar; it was held following 1941 Madras 929 (FB), 1937 PC 163 and 1924 PC 196 with reference to Section 11 Central Court fees Act, Section 33 and Order 20 Rule 6 CPC that even if there is direction to pay additional Court fees in judgment, for non-payment the suit cannot be dismissed since there is no legal hurdle for preparing decree as per judgment wherein the direction to pay additional Court fees made. The drawing of decree is the obligation of the Court in terms of judgment, the only bar is for non-payment of deficit Court fees the decree drawn up become unexecutable until DCF paid. The non-payment of balance Court fees only postpones the date on which decree to be executed; however it will not save from running of limitation for execution from date of decree. The Court has no power to stay drafting of decree once judgment is pronounced, merely because balance Court fees ordered to be paid in the judgment. Therefore the proper procedure is that the decree shall bear an endorsement that the same shall not be executed until difference Court fees is paid.*

In AIR 1962 AP 372 also under Section 11 Court fees Act it was held that decree has to be drawn up, however it cannot to be allowed to be executed till deficit Court fees is paid.

In 1949(1) MLJ 331 it was held that if the Court allows any amendment of pleading which require sufficient Court fees to be payable by proper valuation, the Court has power to direct amendment of the plaint only after demand for additional Court fees, for substituting the new prayer or plea allowed for amendment.

**Preliminary issue on sufficiency of Court fees:** Under Section 11(2) and (4) of Court Fees Act objection regarding Court Fees and Valuation as not proper, need not be decided as a preliminary issue, if it encroaches upon other issues or once trial is started held in 1989(3) ALT 629 = (2) APLJ 477 = 1990 (1) LS 89 - *Sri Satyanarayana v. Omprakash and A.V.Subrahmanyam v .Venkataramanamma* 1980(2) ALT 85 NRC, 1983 (2) APLJ 258, 1960 ALT 670 and 1998 (5) ALD-1= (4) ALT 384 - *Valluri S.Prasad v. Alluri K.Naidu*.

In 1968 AP 239 and (2) An.W.R. 301 (FB) and also 1944 Madras 315(FB) *it was held that when a plaint is rejected as per Order 7 Rule 11 for non-payment of deficit Court fees within the time granted by Court the plaintiff can prefer appeal. However if the decision is favourable to plaintiff the defendant since no way affected cannot question the decision in revision.*

**Section 12 of the Act says that** where a plaintiff required to pay additional Court fees relinquishes a part of his claim and apply for amendment of the plaint suitably to show that the Court fees already paid be suffice, the Court may allow the amendment and it may even permit the plaintiff to add the claim that was relinquished at a latter stage subject to payment of the required additional Court fees. In AIR 1931 Madras-716-it was held that in such case the Court could not

dismiss the suit when plaintiff wants to amend the claim and relinquish part of his claim to avoid Court fees.

**Section 13 of the Act says that** where fees payable on written statement of a defendant, the provisions of Section 11 shall apply for determination and levy of Court fee and such defendant for the said purpose be regarded as plaintiff and the plaintiff or co-defendant or a third party against whom the relief claimed be regarded as defendant for the said purpose.

In AIR 1931 Madras 716 it was held that in such case since this is the provision enabling the plaintiff, the Court could not refuse relinquishment or it can dismiss the suit. In 1953 SC 28 it was held that it is always open to plaintiff to abandon any part of his claim even it is to avoid payment of additional Court fees.

The cases in which the need to pay Court fees by defendant under Section 3 are considered in 1971 AP 114 and 1931 Madras 683.

**Section 14 reads that** in determination and levy of Court fees on plaints in suits the provisions covered by Sections 10 to 12 shall apply *mutatis mutandis* to appeals, cross objections and LPAs. A Memorandum of Appeal can be rejected for non-payment of deficit Court fee as per Section 14 read with 11. Appellate Court is competent to reopen the question of payment of proper CF on plaint in lower Court and can order for payment of deficit C F if any before disposal of the Appeal-held in 1958 (2) ALT-17 (SN) and 1960(1) MLJ-527.

In 1998 (3) ALD 403 = (3) ALT 282 = (1) LS 636 = (2) APLJ-38(SN)-*Nandika Narayana Swami's* case-It was held that Appellate Court no doubt got jurisdiction to order payment of deficit Court fees by assessing the market value of the subject matter, however, if it was done without notice



to the appellant and even without consulting the basic value register it is not legal.

**Section 15 reads that** the provisions of Sections 10 to 12 shall apply to the determination and levy of Court fees in respect of petitions, applications and other proceedings in Courts in the same way as they apply to the determination and levy of fees on plaints in suits. Section 15 is to be read with Sch.2 and Section 47- 1995 (2) ALD 194. *A.P.S.F. Corporation v. Colombia Products*. In 1972(2) APLJ 49(SN) it was held that Sections 12 to 14 cannot be applied to a case where plaintiff or appellant omits to include the whole of the claim in the first instance in the plaint or memorandum of appeal as the case may be.

In 1974 (2) An.W.R. 245 it was held that the Appellate Court has power to permit the plaintiff who has relinquished his claim in respect of a portion of the suit claim to make it again part of the subject-matter of the suit, on payment of additional Court-fee.

**Section 16 reads that** the High Court may depute Court fees Examiners to inspect the records of subordinate Courts to examine the correctness of valuation of subject-matter and sufficiency of fees in respect of the proceedings in such Courts and orders if any passed by the Courts in relation thereto. *The questions relating to valuation of subject-matter and sufficiency of fees in respect of proceedings in a Court raised in the reports submitted by the Court fees Examiners shall be heard and decided by such Courts.*

Section 16 applies only to pending cases. It enables the Court based on report of Court fees Examiners to reopen the question of sufficiency of Court fees. The decision of the Court shall be after hearing the party being effected therefrom. Such decision of the Court shall be final See 1960(2) MLJ 527. If the defendant has no grievance he has no right to be heard under Section. 16 See 1963(2) An.W.R. 30 (SN) *Devadanam v.*

*Purusottam* and 1961 SC 1299. In 1933 Madras 353 it was held that the Courts shall not rely so much on the check slips issued by Court fees Examiners, but on the provisions of law which requires payment of Court fees to decide proper Court fees and valuation.

In 1972(2) ALT 191 it was held that Appellate Court also can exercise the power under Section 16(2). Under Sections 16 and 26(C)-in 1996 (4) ALT-730 = 1996 (4) ALD 1057 = 1996(2) LS-560 *Komanduri Bhanumurthi v. Guntur Municipal Council* - it was held that Single suit filed by nineteen (19) plaintiffs as owners of separate plots for permanent Injunction against Municipality - Since reliefs sought are individual, they are liable to pay separate C.F. The District Judge is competent on administrative side and can rectify the defect in payment of C.F. and can order plaintiffs to pay the required CF.

**Section 17 says that** for purpose of deciding the valuation of the subject-matter and payment of Court fees are proper or not, the Court may hold necessary enquiry as it thinks fit and can issue a commission for local inspection or other investigation and to report.

*In 1974(2) APLJ 27 SN and 1976(2) APLJ 9 = ALT 346 it was held that the Court has no power to appoint commissioner to ascertain market value, before registration of the suit. Regarding value of such commission report-see 1972 (2) ALT-191.*

**Section 18 says that** in any enquiry relating to valuation of the subject-matter and Court fees payable, the Court may if it considers just or necessary, give notice to State Government and decide by deeming as if the Government is party to the proceeding.

#### **Chapter 4 (Sections 19 to 49) Computation of Court fees:**

**Section 19 says that** the Court fee payable shall be computed as per chap-4,6



and 7 and Sch-1 and 2 In 1999 (1) ALD 650 = (1) LS 214 = (1) ALT 699 = AIR AP 100 *H.C. Mehata v. Addl. Chief Judge*, it was held that **State can fix different rates of CF for different proceedings under the Act. As per Section 20 in Suits for money** (including for damages or compensation or arrears of maintenance or annuities or other sums payable periodically) fee shall be computed on the amount claimed.

In 1979 (1) ALT 127 -*V. Venkatratnam v M.V. Sravanthi Devi*, it was held that in a suit filed by Plaintiff for Possession, when compensation for improvements made by Defendant claimed, the Proper CF payable by the Defendant is on the money claim.

In AIR1968 AP 239(FB), it was held that in money claims Court fee payable is *advolarem C.F.*

In 1975(2) An.WR 320 it was held that in suit for past and future maintenance, Court fees on past maintenance payable by treating it as claim for money.

Section 20 deals with both principal and interest for amount claimed- AIR 1960 AP-319 and 1942 Mad-205.

In 1998 (6) ALT 60 - it was held that, in a suit by temple for recovery of rents CF payable is under Sec 20 on the amount claimed - see also 1957 ALT 403.

*The valuation for purpose of jurisdiction is the value for purpose of Court fees.*

**Section 21- In Suits for immovable property- Subject to other provisions of the Act,** fees shall be computed on 3/4th of the market value of the property: -This section is in nature of a residuary provision or Omnibus provision to cover all suits relating to immovable property, save those that are specifically covered by specific provisions.

In 1993 (2) ALT 554 *Mir Jaffer Ali v. Syed Rabbani*, it was held that the CF payable in a suit for possession of the immovable property is on 3/4th of market value of the property under Section 21CF Act In AIR 1966-AP-65 and AIR-1959-AP-118, it was held that the **value for purpose of jurisdiction for immovable property is same value taken for purpose of CF.**

**Section 22 - in suits for maintenance and annuities,** fee shall be computed as follows:

- (a). In a maintenance suit on the amount claimed to be payable for one year,
- (b) In a suit for enhancement or reduction of maintenance, on the amount by which the annual maintenance is sought to be enhancement or reduced;
- (c) In a suit for annuities or other sums payable periodically, on five times the amount claimed to be payable for one year;

Suit for enhancement or reduction of maintenance falls under Section 24-held in 1935 Mad. 655.

In 1969(1) AnWR 379 = (1) APLJ 20 *N.V.R Murthy v Srirama Reddy* - It was held that in a Suit for declaration that the decree for maintenance obtained against defendant does not bind creditors are equated to suits for annuities under Section 22(2) and CF payable is 5 times to the annual maintenance claimed.

In 1975(2) AnWR-320 - Held in a suit for past and future maintenance, as per Section 20 CF on past maintenance is payable treating it as a claim for money and for future maintenance CF is payable on the amount claimed for one year. Likewise in appeal, arrears of maintenance be treated as money claim under Section 20 to pay CF.for arrears. *The value for purposes of CF and jurisdiction is the same.*

**Section 23 (1)** In suits for movable property other than documents of title, fees shall be computed as follows (a) Where the subject-matter has a market value, on such value; (b) Where the subject-matter has no market value, on the amount at which the relief sought is valued in the plaint or at which such relief is valued by the Court, whichever is higher.

(2) In a suit for possession of documents of title, (a). Fee shall be computed on one fourth of the amount or of the market value of the property secured by the document where the plaintiffs' title to the money or the property secured by the document is denied. Provided that where such denial relates only to a portion of the amount or property, fee shall be computed on one-fourth of such portion of the amount or on one-fourth of the market value of such portion of the property.

(b). Where the plaintiff's title to the money or the property secured by the document is not denied, fee shall be computed on the amount at which the relief sought is valued in the plaint or at which such relief is valued by the Court, whichever is higher.

**Explanation:** The expression 'document of title' means a document which purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, in any property.

This section is intended to provide for suits in respect of movable property including money, which has a market value.

In AIR, 1964 AP 201 - *Md. Sultana v. Firm R.P.K. Lal* - It was held that, in a Suit for recovery of pledged movables or for recovery of documents, relating to movables CF payable is under Section 23(2) and If mortgage under Section 31(5) and it was

further held that it all depends upon the nature of the transaction. In 1977 (2) An.WR 92 = (1) APLJ 57 it was held that in a suit file for recovery of possession of promissory notes if defendant denied plaintiffs title to the pronotes, the CF payable is on 1/4 of the value of the pronotes.

Shares of a Limited Company falls under Section 23(2) See AIR 1984 - Madras 67 and 1963 (1) An.WR 394.

**The value for purposes of jurisdiction will be the same value for purposes of CF.**

**Section 24 in suits for declaration with or without consequential relief not falling under Section 25**

(a) Where the prayer is for a declaration and for possession of property to which the declaration relates, fee shall be computed on the market value of the moveable property or 3/4 of the market value of the immoveable property or on rupees three hundred, whichever is higher;

(b) Where the prayer is for declaration and for consequential injunction and the relief sought is with reference to any immoveable property, fee shall be computed on one-half of the market value of the property or on rupees three hundred, whichever is higher;

(c) Where the prayer relates to the plaintiff's exclusive right to use, sell, print or exhibit any mark, name, book, picture, design or other thing and is based on an infringement of such exclusive right, fee shall be computed on the amount at which the relief sought is valued in the plaint or at which such relief is valued by the Court whichever is higher.

**(d) In other cases, whether the subject-matter of the suit is capable of valuation or not, fee shall be computed on the amount at which the relief**

sought is valued in the plaint or at which such relief is valued by the Court whichever is higher.

In a suit for declaration and consequential relief under Section 24(d) or (c), plaintiff is free to make his own estimation of the reliefs and show the valuation for the purpose of both Court Fee and Jurisdiction, unless it is found unreasonable by Court it has to be accepted. Where it is found that the valuation of plaintiff is absolutely low or unreasonable, the Court can enhance the same for that the guiding principle is the advantage to be derived or loss to be averted by the plaintiff. See AIR 1987 SC 2085 = (2) APLJ 40 (SC), 1958 SC 245, 1998(4) A.L.T.384, 1993 (1) LS 67, 1990 (2) ALT 117, 1978(2) ALT 4 (NRC), 1968 (2) AnWR 104, (2) ALT 54, 1968(1) AnWR-296 and 350, 1960(2) AnWR- 434, (1) AnWR 350 and 106. See also 1973 (1) APLJ 133, 1965 (2) AnWR 434 and (1) AnWR 138.

Unless specific provision governs for payment of Court fees with certainty, the general principle to guide the Courts to arrive at a proper value for purposes of Court fees is the advantage one wants to derive or the loss one wants to avert.-See 1965(1) AnW.R-138, 1969(1) An.W.R. 411 and 2003(4) ALD 345(DB) at Para 6 pg. 353 following 1969(1) An.W.R 411- *Jabber v. State* In a suit for declaration that order of dismissal was illegal and consequential injunction for re-instatement, the reasonable value of relief will be one year's salary. See 1975(1) APLJ 204. Further, it was held that all such suits for declaration fall within the scope of Section 24(d) but not under Section 47 See 1962 (1) An.W.R 310 = AIR 1963 AP 25, 1963 AP 68 and 1981 LS 9 (AP). In a suit for declaration of plaintiffs date of birth, the suit falls under Section 24 (d) held in 1975 APHC Notes 133.

#### **Section 25 -in suits for declaration**

involving a question as to the factum or validity of an adoption, fees shall be computed on 1/2 of the market value of moveable and immoveable property

involved or affected by such a declaration or on Rs.500/-, whichever is higher.

In 1961(2) An.WR 28 (NRC) - *Venkataratnam v Malleswara Rao* - It was held that in a Suit for declaration that the adoption is invalid and for consequential relief, the plaintiff has to assess the value at 1/2 of market value of the property under Section 25.

In 1956 An.WR 1033 Sections 25 and 34. It was held that in a suit for partition and Separate Possession of Joint Family property by a co-widow though setting aside and declaration as not valid of adoption made by another widow asked as ancillary relief, the CF paid on main relief is suffice see **AIR 1955 AP 255, AIR 1996 Mad. & 1940 Mad (FB)**

#### **Section 26 in suits for injunction**

(a) Where the relief sought relates to any immovable property, and where the plaintiff's title to the property is denied, fee shall be computed on one-half of the market value of the property or on rupees two hundred, whichever is higher.

(b) Where the relief sought relates to the plaintiff's exclusive right to use, sell, print or exhibit any mark, name, book, picture, design or other thing and is based on an infringement of such exclusive right, fee shall be computed on the amount at which the relief sought is valued in the plaint or at which such relief is valued by the Court whichever is higher;

(c) In any other case, whether the subject-matter of the suit has a market value or not, fee shall be computed on the amount at which the relief sought is valued in the plaint or at which such relief is valued by the Court, whichever is higher

Under Section 26 (c) in *Viraj Constructions v. P. Pandu* 1998 (6) ALT 262 = (6) ALD 563 = (2) LS 545 = (3) APLJ 292 = 1999 (1) An.W.R 140. It was held that in a suit

for mere injunction the market value of the suit land as such is not criteria for valuing the relief, as the relief has to be valued on the basis of advantage sought to be derived or loss which sought to be averted by the plaintiff. It is the value of the relief given by plaintiff or determined by the Court for purpose of Court fees that also determines the jurisdiction of the Court, See also *Yellamilli v. State* 1996 (2) ALT-194 = 1996 (2) ALD-759 = 1996 (1) LS-20 4=1996 (1) APLJ-383 and also 1969 (1) AnWR 411, (1) APLJ 211, 1968(2)-AnWR-104, (2) ALT-54, 1958 SC 245, 1987 Pat-156 and 2003 (4) ALD 66 Para 9. Section 24 provides for all classes of suits for declaration with or without consequential relief. If the main relief asked for is declaration, Section 24 applies though the relief of injunction follows from main relief, is sought for as a consequential or incidental relief, held in 1968 (1) An.W.R-305. see also 1937 Madras 529 and 1918 Mad 502. It was held in. 1963 A.P.25 and 68, that all suits for declaration fall under Section 24 but not under Section 47.

*Under Section 26 in suits for injunction as per Section 26(c) (if the suit not covered by Clause (a) i.e. where plaintiff's title to immovable property denied, or by Clause (b) if it relates to infringement of plaintiff's exclusive right), the fees shall be computed on amount at which relief sought is valued by the plaintiff or by the Court whichever is higher whether the subject-matter has market value or not. Similarly under Section 24 in suits for declaration as per Section 24 (d) and (c), (if the suit is not covered by Clause (a) i.e. for declaration and possession of property (movable or immovable), or by clause (b) i.e., for declaration and consequential injunction (relating to immovable property), the fees shall be computed on amount at which relief sought is valued by the plaintiff or by the Court whichever is higher, whether the subject-matter has market value or not. As per Section 24 (a) and (b) the minimum valuation is Rs.300/. Section 24 applies to suits not falling under Section 25 (i.e. declaratory suit as to validity of or factum of adoption and property involved or affected by it). Allegations in the plaint are decisive to*

*decide a case falls under Section 26(a) or (c) - 1971- AP- 142 = 1970 (2) AnWR- 351. In 1979(1) ALT-352 = 1979 (2) AnWR 480-I LTD.Co. Ltd v. Agri. Market Committee, Kandukur, it was held under Sections 20 and 24(1)(d) that in a suit by Traders in representative Capacity Questioning the notice issued by Market Committee demanding returns of purchases for levy, the Court fees paid on notional value under Section 24 (d) is not proper.*

In 2003 (4) ALD-345= 2003 (5) ALT 51 *State v. V.N. Reddy*, following 1969 AnWR 411 it was held that in the suit filed to set aside the demand notice for Rs.1,88,06,826/- and for mandatory injunction for refund of the amounts of plaintiff in deposit with State -Since both these amounts are known to the plaintiff-the suit should be valued on the said amounts under Section 24(d) but not under Section 47.C.F. Act.

In 1998 (5) ALD 399 *ABC India Ltd.* case - it was held under Section 26(c) that in a suit for permanent injunction restraining encashment of bank guarantee-C.F. is payable on the said amount and the value for purposes of jurisdiction is the same.

In 1993(1) LS AP 67 - *P.Rama Rao v Srikakulam Market* fees under Agri. Markets Act, Municipality it was held that, in a Suit for declaration that the proceedings of the Municipality Canceling the contract are arbitrary, illegal and for ancillary relief of mandatory injunction, when the relief is not capable of valuation, CF can be paid on notional value under Section 24(d).

In 1993(3) ALT 85 - *Aitha Ravindra v Peddireddy* it was held that, in a Suit for declaration against APSEB that Plaintiff is not liable to pay arrears of consumption charges claimed and to restore service connection by mandatory consequential injunction, when CF paid advaloram on entire amount in dispute, *no separate CF payable for*



*the consequential injunction relief.* See also AIR 1977 AP 200.

In 1975 (1) APLJ 82 = 1975 ALT 63 it was held under Section 24 that CF payable is Rs.15/- in a Suit for declaration that the property is Wakf property.

In 2000 (5) ALD 102 = 2000 (1) LS 59 = 2000 (4) ALT 366 - *Dr. V. Rajeswara Rao's* case it was held that where a suit filed originally for mere injunction and later on by amendment substantial reliefs of possession and mandatory injunction were added, additional CF is payable on the substantial reliefs added as main relief.

In 1990 (2) ALT 117 = 1998 (1) LS 239 - *Venugopal v. Vijaya* - it was held that, in Suit for declaration to operate Locker and to take possession & control of articles in the locker - CF payable is under Section 24(d) on the plaintiffs estimation of the relief and not on the value of the property.

In 1993 (3) ALT 554 - *Mir Jaffer Ali v. Syed Rabbani* - under Sections 21, 24(d) and 47 (IV) it was held that, in Suit for confirmation of possession and injunction CF paid under Section 47(IV). Lower Court directed to pay CF on half of market value of the subject-matter under Section 24(b) held not proper, since plaintiff is liable to pay CF only under Section 21 (on 3/4 of market value of the property).

In 1983 (1) ALT 147 - *Krishna Pratap v. Madgi Pochaiah* - under Section 26(a) and 26(c) it was held that in a Suit for injunction restraining defendants from felling Gullmohra-trees- plaint has to be valued at 1/2 of market value of the trees .See also AIR-1998 AP 34 = (4) ALT 461 = 1998 (4) ALD 626 = 1998 (2) LS 76 = 1998 (2) APLJ 451, AIR 1994 AP 34 and 1947 (2) MLJ 182.

In 1978 LS (AP) 116 = AIR 1977 AP 200 = 1977 (1) APLJ 154 = 1997 (2) An.WR 366 under Sections 24(a) and 26(c) *APSEB v*

*K.R. Reddy* - Test for valuing reliefs is indicated. It was held that Court fees is payable on the amount demanded by APSEB for consumption in the suit for declaration as not liable to pay and for consequential injunction.

In 1957 (2) AnWR 203 - It was held that suit for possession of vacant site after removal of structures is a suit for declaration and possession under Section 24(a) and is to be valued as such.

In 1963 (1) AnWR 16(SN) - It was held that in a suit for declaration that the order of Rent Controller rejecting the plaint is illegal and for permanent injunction restraining defendants from interfering with the possession of plaintiff, CF payable is under Section 24(b) 1974(1) APLJ 177.

In 1972 Mad. 129 it was held that in a suit for declaration of right to fishery and long grass in tanks and for consequential injunction, plaintiff could estimate the relief and value of the suit at his estimate.

In 1971 (2) ALT 208 and APLJ (SN) 30, it was held that in a suit for declaration of plaintiff's 1/9th Share in her Late father's property and injunction restraining Government from its attachment and sale for recovery of arrears due from plaintiff's brother, *CF paid on the plaintiffs 1/9th share is proper which is the advantage she derives or loss she averts. She need not pay CF on the arrears due to Government from her brother.*

In 1981 LS (AP) 9 - under Section 24(d)- *G. Prakasham v State*- In Suit for declaration and mandatory injunction governed by Section 24 CF Act, residuary Provision Section 47 has no application.

In 1978 (2) ALT (NRC) 4 *K.S. Naidu v. Adilakshamma*, under Section 24(c) it was held that in a suit for mere injunction, Legislature gave liberty to plaintiff to value the relief at his own estimate. If the valuation



is absolutely low, Court can enhance the same. See AIR 1978 AP-464 = 1978 (2) An.W.R 359 = 1978 LS 223 = 1978 APHC Notes 250, 1998(4) ALT-384 and 461 and also 1998(6) ALT 262.

In 1997 (6) ALT 243 = 1997 (6) ALD 576 - *Ravipudi Brahmayya's* case under Section 26(a) and (c) it was held that in a Suit for bare injunction on immovable property, CF payable is under Section 26(c) and not under Section 26(a)

In AIR 1973 AP 351 = (2) ALT 191, (2) APJ 170, 1972 APHC Notes 126 and 1979 (1) ALT 224, 1956 Mad. 179, 1970 (2) AnWR 351, 1971 AP 142 it was held under Section 26(c) by laying the distinction between Section 26 (a) to (d) with Section 24 that, in suit for mere injunction without declaration of title, when there is no averment in the plaint showing denial of plaintiff's title, even in an injunction suit question of title incidentally need be gone into, no Court fees payable under Section 24 (a or b) or under Section 26(a). In such matters plaintiff can estimate the relief and pay Court fees under Section 26(c), which can be accepted by the Court unless it is unreasonable.

In 1956-Mad-52-it was held that, when the plaint itself contains an allegation that plaintiff's title is denied, Court fees has to be paid under Section 26(d)

In 1996 (2) ALT-194 - *Yerramilli v State of A.P.* under Sections 26(c) and 50 it was held that in Suit for bare Injunction CF can be paid on notional value and the valuation of suit for purposes of Court fees and Jurisdiction is the same. Also 1996 (2) ALD 75 = (1) ALT 924 - *Karanam Ram Murthy v E.O., Panchayat Rao* 1998 (5) ALD 399 - *ABC India Ltd.*, 1998 (5) ALD 1 - *Valluri. S.V.S. Prasad's* case and 1958 SC 245.

In 1996(4) ALT 330 - *K. Bhanumathi and others* case it was held under Section 26(c) read with Section 6 of the Court Fee Act

that even single suit filed for injunction by 19 plaintiffs - when they are respective owners of their separate plots for which injunction relief sought against Municipality, separate CF for each plot be payable.

**27 Suits relating to trust property:** (1) In a suit for possession or joint possession of trust property or for a declaration, with or without consequential relief, between trustees or rival claimants to the office of a trustee or between a trustee and a person who has ceased to be a trustee, fee shall be computed on one-fifth of the market value of the property subject to a maximum fee of rupee two hundred and where the property has no market value, on rupees one thousand.

(2) Where the property has no market value, value for determining the jurisdiction on Courts shall be the amount stated in the plaint.

*Explanation:* For the purpose of this section, property comprised in a Hindu, Muslim or other religious or charitable endowment shall be deemed to be trust property and the manager of any such property shall be deemed to be the trustee thereof. In 1979 (1) ALT 224 - *A.Bapeswara Rao v. Sitarama temple* it was held under Sections 27 and 32 that in a suit for declaration and possession of trust property and for accounts or profits on it, CF paid under Section 27 is suffice, Section 32 not attracted.

In 1965 (2) An.W.R. 374 it was held that since Muthavali is not a trustee, suit for possession by Muthavali and others does not come under Section 27 of the Act.

In 1989 (1) ALT 646 - it was held that where wife contributed half of amount for purchase of property and for constructions in her husband's name she is entitled to claim half share in it.

**28. Suits for possession under the Specific Relief Act, 1877:** In a suit for possession of immovable property under Section 9 of the Specific Relief Act, 1877 (equal to Section 6 of Specific Relief Act, 1963), fee shall be computed on one-half of the market value of the property or on rupees two hundred, whichever is higher. See the decisions AIR 1990 AP 161 = 1990 (1) ALT 310 = 1989 (2) APLJ 435; 1982 AP 253; 1967(2) An.WR 48 and 1968 SC 433;

**29. Suits for possession not otherwise provided for:** In a suit for possession of immovable property not otherwise provided for, fee shall be computed on three-fourths of the market value of the property or on rupees three hundred, whichever is higher.

This is a residuary and general section relating to suits for possession of immovable property. When there is a specific provision; this general provision has no application - See 1967 (2) An.WR 117, wherein, it was held that suit for specific performance since governed by Section 39, merely because possession against a subsequent vendee asked, the suit won't come under Section 29. See also 1969(1) AnWR 162, 1954 Mad 200, 1955 AP 140 and 200.

In 1955 Nagpur 184, it was held that where plaintiff does not recognize the defendant as his tenant, Court fees payable is as an ordinary suit for possession.

Right to catch and carry fish being a *profit a prendre*, a profit or benefit arising out of land is immovable property held in 1977 SC 2149, 1971 SC 2097, 1956 SC 17; Growing trees are immovable property held in 1958 SC 532.

**30. Suits relating to Easements:** In a suit relating to an easement by the dominant or the servant owner, fee shall be computed on the amount at which the relief sought is valued in the plaint or

at which such relief is valued by the Court, whichever is higher.

Provided that, where compensation is claimed in addition to the relief relating to such easement, fee shall be paid on the amount claimed as compensation in addition to the fee payable on the relief relating to the easement.

The section covers the cases where subject-matter of the suit is not land or building alone but an easementary right arising out of the land or building or other immovable property. See AIR 1946 Mad. 235, 1955 Mysore-65 (FB), 1956 AnWR 183, 1938 Patna-106 and 1936 Mad 201. *The value for purposes of Court fees and jurisdiction is the same.*

**31. Suits relating to mortgages:** (1) In a suit to recover the money due on a mortgage, whether the sale of the mortgaged property is prayed for or not, fee shall be computed on the amount claimed.

(2) If the holder of a prior mortgage or charge impleaded as a defendant in such a suit prays in his written statement for the determination of the amount due on his mortgage or charge and for a direction in the decree for the payment of such amount to him, fee shall be payable on the written statement computed on the amount claimed.

Provided that, where the holder of the prior mortgage or charge has paid a fee in any other proceeding on the claim to which his written statement relates, credit shall be given for the fee paid by him in such other proceedings.

(3) Where, in such a suit, the mortgaged property is sold and the holder of a prior or subsequent mortgage or charge applies for payment to him, out of sale proceeds, of the amount due on his mortgage or charge, such holder of the prior or subsequent mortgage or charge, shall pay

on his application a fee computed on the amount claimed by him;

Provided that, where the holder of a prior or subsequent mortgage or charge is a party to the suit in which the sale was held and has paid fee on the written statement filed by him in the suit; no fee shall be payable by him on the application for payment out of the sale proceed

Provided further that, where the holder of a prior or subsequent mortgage or charge, not being a party to the suit in which the sale is held, has paid a fee in any other proceeding on the claim to which his application relates, credit shall be given for fee paid by him in such other proceedings.

(4) In suit by a co-mortgage fee shall be computed on the amount claimed on the entire mortgage Provided that where any other co-mortgagee impleaded as defendant in such suit claims on the entire mortgage a sum larger than that claimed in the plaint, the difference between the fee computed on the entire sum claimed in such defendant's written statement and the fee computed on the entire sum claimed in the plaint shall be payable on the written statement.

(5)(a) In a suit by a sub-mortgagee to recover the amount claimed on the sub-mortgage by sale of the mortgage's interest in the mortgaged property, fee shall be computed on the amount claimed under the sub-mortgage.

(b) In a suit by sub-mortgagee, if the prayer is for the sale of property mortgaged to original mortgagee and the original mortgagor is also impleaded as a defendant, fee shall be computed on the entire amount claimed on the original mortgage, which is sub-mortgaged to him.

(6) Where the holder of a prior or subsequent mortgage or charge is

impleaded in a suit by a co-mortgagee to which sub-section (4) applies, or in a suit by a sub-mortgagee to which sub-section (5) applies, the provisions of sub-sections (2) and (3) shall apply *mutatis mutandis* to a written statement or an application filed by such holder of mortgage or charge.

(7) Where the original mortgagee who is impleaded in a suit to which the provisions of sub-section (5)(b) apply claims on the mortgage sub-mortgaged by him a larger amount that is claimed in the plaint, the provisions of sub-section (4) shall apply *mutatis mutandis* to the W/S of such original mortgagee.

(8) In a suit against a mortgagee for redemption of a mortgage, fee shall be computed on the amount due on the mortgage as stated in the plaint or on one-fourth of the principal amount secured under the mortgage, whichever is higher.

Provided that, where the amount due on the mortgage is found to be more than the amount on which fee has been paid by the plaintiff, no decree shall be passed until the deficit fee is paid:

Provided further that, in a case of any usufructuary or anomalous mortgage, if the plaintiff prayed for redemption as well as for accounts of surplus profits, fee shall be levied separately on the relief for accounts as in a suit for accounts.

(9) In a suit by a mortgagee to foreclose the mortgage or mortgage by conditional sale, to have the sale declared absolute, fee shall be computed on the amount claimed in the plaint. *This section covers all kinds of mortgage suits viz: suits to recover money due on mortgage, suit by sub-mortgagee or co-mortgagee, suit for redemption or foreclosure with other ancillary or additional reliefs.*

Under Section 31(8) Proviso and Section 32 - in 1979 (2) ALT 50 (NRC) = 1979 (2) APLJ 2(NRC)= 1979 (2) AnWR16(SN) *S.Venkata Subbaiah v. L.V.S.Reddy*, it was held that in Suit for accounting and recovery of money of mortgage debt discharged, suit be valued under Section 31(8) on 1/4 of principal amount secured. Suit for redemption of mortgage falls under this section for computation of Court Fee. See *Habeeb Khan v. Valasula Devi* - 1996(2) ALD 822 =1996 (1) An.WR 655 = 1997 AP 53. In 1942 Mad. 205 - it was held that in suit for redemption or foreclosure of mortgage, fees should be computed on the principal sum secured. See also 1937 Mad 922 and 1956 AnWR 377 and further 1951 Mad. 187 (FB), 1947 (1) MLJ 231, 1946 Mad. 181, 1926 Mad. 667, 1933 PC 143.

In 1964-AP-201-it was held that for pledged or hypothecated shares to recover the suit will not come under Section 31. See also 1953-Mad-754.

**32. Suits for Accounts:** (1) In suit for accounts fee shall be computed on the amount estimated in plaint

(2) Where the amount payable to the plaintiff as ascertained in the suit is in excess of the amount as estimated in the plaint, no decree directing payment of the amount as so ascertained shall be passed until the difference between the fee actually paid and the fee that would have been payable had the suit comprised the whole of the amount so ascertained, is paid.

(3) Wherein any such suit it is found that any amount is payable to the defendant, no decree shall be passed in his favour until he pays the fee due on the amount.

(4) Whether or not a decree is passed under sub-section (2) or sub-section (3), the fee payable under either of the said sub-sections shall be recoverable as if it were an arrear of land revenue.

In 2003 (4) ALD 66 (DB) - *State of A.P. v. Thrishul Engineering Works*- it was held that in suit for settlement of accounts and recovery of amount, where Plaintiff is quite aware at the time of filing the suit the amount actually due, he cannot be allowed to underestimate the suit and pay Court fee. It was further held that it is manifest that Trial Court also at no point of time made an endeavour to find out correctness of Court fee and valuation of suit at plaintiff's estimate. It is the duty of the plaintiff make a claim which would have been definite and it would be prudent to expect that plaintiff's claim would be very near to the real outstanding. Relying upon 1968 (2) An.W.R - 616 (FB) - *C.C. Reddy v. K.C.Reddy*; it was held that the word **Estimate** in Section 32 C.F. Act involves an active mental element and that plaintiff is bound to state the approximate amount as near reality as possible and not give an arbitrary figure. The choice of the Forum and the liberty to pay nominal Court fee are not to be left to the caprice of plaintiff. The difficulty experienced by a plaintiff in giving a precise valuation doesn't entitle him to arbitrarily and deliberately undervalue the relief sought by him. He is bound to make a genuine and honest effort to value the relief if he doesn't do so and if the valuation given by him bears no relation to reality, the Court can and indeed must intervene and exercise its power under Order VII Rules 10 and 11 C.P.C. after due regard and proper appreciation of the difficulty of plaintiff since there is bound to be an element of speculation and uncertainty in estimating the value of the relief in suit for accounts, but there must be a genuine effort on the part of plaintiff to estimate which should not be deliberate underestimation or pretended estimation or indifferent estimation. It should be a real estimate acceptable to a prudent and reasonable man. The Court has the power to amend the valuation if the estimate of plaintiff is not acceptable to a prudent and reasonable man. The investigation for correcting such estimation by Court as

per Section 11 C.F. Act the base not only on the plaint allegations but also on the material furnished by the plaintiff including admissions if any made in the proceedings and in the interlocutory matters of the proceedings. So also all undisputed facts brought to the Court notice by the defendant to consider with other fact, without going to the main controversy between the party since the investigation must not encroach upon the principal issues to be decided at trial of the suit. In 1995 S.C. - 1945 para-9 it was further held that there was *bona fides* on the part of the party estimating the relief, even for the Court to take the aid of Section 149 to permit to pay additional Court fee by extending the benefit, otherwise it would create unhealthy practice and would become a game of chess and a matter of chance which could not be conducive and proper for orderly conduct of litigation. See also 1988 S.C. 1150 to the conclusion that the estimation of value by plaintiff could not be arbitrary and unreasonable. In 1979 S.C. 989 at page-993 it was also held that the plaintiff could not arbitrarily and deliberately undervalue the relief. In 1987 S.C. 2085 at 2086 it was held that the plaintiff has not been given an absolute right or option to place any valuation whatever and where plaintiff manifestly and deliberately underestimate the relief tentatively, the Court is entitled to examine the correctness of plaintiff's valuation and can revise the same if it is patently arbitrarily or unreasonable.

### 33. Suit for dissolution of partnership:

(1) In a suit for dissolution of partnership and accounts or for accounts of dissolved partnership, fee shall be computed on the value of the plaintiff's share in the partnership, as estimated by the plaintiff.

(2) If the value of the plaintiff's share as ascertained in the suit exceeds the value as estimated in the plaint no decree or where there has been preliminary decree, no final decree shall be passed in favour of the plaintiff, no payment shall be made out

of the assets of the partnership and no property shall be allotted towards the plaintiff's share, until the difference between the fee actually paid and the fee that would have been payable had the suit comprised the whole of the value so ascertained, is paid.

(3) No final decree shall be passed in favour of a defendant, no payment shall be made out of the assets of the partnership and no property shall be allotted towards his share in any such suit until the fee computed on the amount or value of his share of the assets of the partnership is paid.

(4) Whether or not a decree is passed, payment made or property allotted under sub-section (2) or sub-section (3), the fee payable under either of the said sub-sections shall be recoverable as if it were an arrear of land revenue.

Under Section 33 in AIR-1992-SC-1526 - it was held that in a Suit for dissolution of partnership and accounting, plaintiff's valuation may be accepted, but Court can examine the correctness. See the above notes under Section 32 in this regard.

In 1975(2) APLJ-4 (NRC) - it was held that in a suit for rendition of accounts and cancellation of deed of dissolution of partnership firm said to be obtained by fraud, misrepresentation and undue influence, the relief of cancellation of the deed should also be asked.

**34. Partition Suits:** (1) In a suit for partition and separate possession of a share of joint family property or of property owned, jointly or in common, by a plaintiff who has been excluded from possession of such property, fee shall be computed on the market value of the movable property or three-fourths of the market value of the immovable property, included in the plaintiff's share.



(2) In a suit for partition and separate possession of joint family property or property owned, jointly or in common, by a plaintiff who is in joint possession of such property fee shall be paid at the following rates:

When the plaint is presented to:

(i) A District Munsiff Court Rs.50/-

(ii) A Subordinate Judge's Court Rs.100/-  
if the value of plaintiff's share is less than Rs.10,000/-

Or a District Court Rs.200/-  
if the value is above Rs.10, 000/-

(3) Where, in a suit falling under sub-section (1) or sub-section (2) the plaintiff or the defendant seeks also cancellation of decree or other document of the nature specified in Section 37, separate fee shall be payable on the relief of cancellation in the manner specified in that section.

In 1940(1) MLJ-32(FB) - It was held that there is no difference between a suit for partition of joint family properties and a suit for partition of other common properties.

In 1994(1) ALT-365 (DB) *Md Saleba v Md Yunus* - Held in a Suit for partition of property by a Mohammadin or Christian or Hindu, irrespective of religion -(a) CF is payable under Section 34(2) if he proves his joint possession or co-ownership and (b) CF is payable under Section 34(1) if he is not in joint possession.

Where plaintiff who is out of possession asks for partition and separate possession with or without profits or compensation for his share, Section 34(l) applies-held in 1997(1) ALD -443 *Parvathamma v. Tulsiram* and 1996(2) AnWR- 25(NRC) *D.Veeramma v K.Dharma Reddy*.

In *A.Divakrupamani v. A.Sakuntala Devi*-2000(2) ALD-754=2000 (2) ALT-275=2000

(1) APLJ-443- It was held that suit for partition and possession alleging joint possession and paid fixed Court fees, Court has to act on the plaint allegations - however, if defendant disputes the allegations, Court can decide it in trial and any addl. Court fees if payable can be ordered to be paid under Section 11 CF Act.

In 1994(1) AnWR-274-it was held that to determine as to a case comes under Section 34(2) or (1) the plaint averments are basis.

In 2002(1) ALD 15 1(DB) *Savanthi Bai v. Mandodari* - it was held under Section 34 (1 and 2) that in a Suit for partition and separate possession, CF paid on value of share of plaintiff claimed, then plaintiff need not pay CF separately for consequential relief of accounting for rents derived by defendant. Separate CF payable only if relief for cancellation of decree or document asked for.

In 1953 Mad.-846 it was held that in a Suit for partition and accounting, since the relief of accounting or such other relief is implied in the main relief of partition, the Court fee paid on the main relief of partition would cover the other relief also.

In 1930 Mad-833(FB) - it was held that Court fees payable for past profits need not be on separate valuation .The claim for past profits to be shown with value of primary relief to pay Court fees on the aggregate only.

In 1967-SC-155 - it was held that in view of Order 7 CPC and Section 7 Central CF Act, for claim of past profits plaintiff must plead cause of action and specifically claim decree for past profits, value the claim and pay Court fees. With regard to future profits, the plaintiff has since no cause of action as on the date of institution of the suit, it is not possible to plead cause of action or value the relief and pay Court fees in respect

of future profits. Further, he can obtain relief in respect of the future cause of action of future profits in the suit as per Order 20 Rule 12 or 18 CPC. The Court has discretionary power to pass a decree directing an enquiry into future profits and can grant the general relief even it is not asked for in the plaint. Relied upon 1951-Mad-938 (FB) and 1958- AP-517. Explained 1952-SC-358.

In 1957 AP 724 - it was held that even an alienee from co-parcener, when once in possession and asks for partition and separate possession, only fixed CF under Section 34(2) payable. See 1951-Mad-846.

In 1956 ALT-337 - it was held that where a Co-parcener was not a party to prior partition suit. He can ignore the decree and file suit seeking partition

In 1980-SC-691 - it was held that when plaintiff pleaded joint possession, however says no income given, then even under Section 34(2) full value of share of plaintiff in respect of immovable property to be taken into consideration for payment of fixed Court fees. For purposes of jurisdiction, it is 3/4th value of immovable property under Section 50(2). So the principle in Section 50(1) is not applicable.

In 1982-Kerala 304 (FB), it was held that in a suit for partition based on joint possession under Section 34(2) filed by plaintiff by payment of fixed Court fees, the value of the suit for purposes of jurisdiction is the market value of plaintiff's share. The same value determines the forum of appeal by plaintiff or defendant.

In 1959 (2) AnWR 238, it was held that in a suit for partition filed by plaintiff out of possession, the value for Court fees under Section 34(1) and jurisdiction under Section 50(1) is on the value of plaintiff's share.

Wherein, in case of immovable property it shall be taken as 3/4th of its market value.

In case of joint possession, where suit filed on fixed Court fees under Section 34 (2), the value for purposes of jurisdiction under Section 50(2) is also the value of plaintiff's share. Wherein, in case of immovable property it shall be taken at 3/4th of its market value. See also 1966(2) AnWR-25(SN) 1958 SC 245 - value for purposes of Court fees determines the value for purposes of jurisdiction. In 1982-AP-60 and 1971-AP-142 - it was held that even if part of property in joint possession Section 34(2) attracts to pay only fixed CF. To determine as to what is the Court fee payable *viz.*, fixed or advalorem fees - the allegations in the plaint are decisive and Court has to carefully gone through the same in deciding the correctness of the Court fee paid, since it is the substance and nature of the claim that is the criteria. Where the allegations show that plaintiff is excluded from joint possession Section 34(1) attracts to pay Court fee as if it is a suit for possession. Mere denial of the plaint averments by defendant will not be suffice to make plaintiff liable to pay Court fee as if not in possession. The averments in the plaint that plaintiff was not given any income from the joint family property that by itself cannot be construed as excluded from joint possession. See also 1955 A.P. 200 = An.WR 348, 1960 ALT 670, 1970 (2) An.W.R. 351; 1979 APHC Notes-287, 1958 S.C. 245; 1980 S.C. 691; 1956 Mad 179, 1954 Mad. 1126; 1943 Mad.6 55; 1940 Mad 113 (FB), 1938 Mad.471; 1920 Mad.585; 1924 Mad.207, 1952 Mad -539 & 810 and 1964 Ker. 142.

In 1960 A.P. 313 it was held that a Widow seeking partition on the strength of a will pleading joint possession of her husbands' share can pay only fixed Court fee.

In 1943 Mad. 654, it was held that a Widow claiming partition as per her right under Hindu Women's Right to Property Act, pleading joint possession can pay fixed

Court fee since her status is that of a member of joint family. 1937 Mad. 606, it was held that in the absence of an allegation of Ouster fixed Court fee is suffice. In 1974 (2) AnWR 245- it was held that when the plaintiff is in constructive possession of all suit properties merely because in appeal she was permitted to include the properties which she relinquished in trial Court, no additional Court fee be payable.

In 1971 (1) AnWR 266 - it was held that for claiming separation of share by defendant in partition suit he need not pay separate Court fees. However he is liable to pay stamp duty to his share on separation. See also 1960-AP-454 and 1956-Mad-207.

In 1997 (3) ALD 261 - it was held that the N J stamps that to be called for by Court after passing of final decree on merits or by compromise to engross final decree is at 3% of the market value of the property as on the date of the passing of final decree, but not on value mentioned in plaint.

**35. Suits for joint possession :** In a suit for joint possession of joint family property or of property owned, jointly or in common, by a plaintiff who has been excluded from possession, fee shall be computed on the market value of the movable property or three fourths of the market value of the immovable property included in the plaintiff's share.

In 1961 (2) MLJ-481 - it was held that relief of joint possession should be a substantive one.

**36. Administrative suits :** (1) In a suit for the administration of an estate, fee shall be levied on the plaint at the rates specified in Section 47.

(2) Where any amount or share or part of the assets of the estate is found due to the plaintiff, and the fee computed on the amount or the market value of such share of part of the assets exceeds the fee paid

on the plaint, no payment shall be made and no decree directing payment of money or confirming title to such share or part of the assets shall be passed until the difference between the fee actually paid and the fee computed on the amount or value of such share or part of such assets is paid.

(3) No payment shall be made and on the decree directing payment of money or confirming title to any share or part of the assets of the estate shall be passed in favour of a defendant in a suit for administration until the fee computed on the amount or value of such share or parts of such assets is paid by such defendant.

(4) In computing the fee payable by a plaintiff or by a defendant under sub-section (2) or sub-section (3) credit shall be given for the fee, if any paid by such plaintiff or by such defendant in any other proceeding in respect of the claim on the basis of which such amount or share or part of the assets of the estates becomes due to such plaintiff or to such defendant.

(5) Whether or not payment is made or decree passed under sub-section (2) or sub-section (3), the fee payable under either of the said sub-sections shall be recoverable as if it were an arrear of land revenue.

The object of the administrative suits is to administer the estate as per decree of Court. Administrative suit is different to suit for accounts-See 1942-Mad-247, 1953-Mad-576.

What are the suits that come under Section 36. See 1928-Mad-760, 1951-Mad-296, 1960-Mysore-53, 1932-PC-146, 1923-Cal-329, 1937-Rangoon-55, 1931 Mad 683, 1959 (2) MLJ 120 and 1961 (2) MLJ-33.

**37. Suits for cancellation of decrees etc.:** (1) In a suit for cancellation of a decree for money or other property having a money value, or other document, which purports or operates to create, declare, assign, limit or extinguish, whether

in present or in future, any right, title or interest in money, movable or immovable property, fee shall be computed on the value of the subject-matter or the suit, and such value shall be deemed to be—

- (a) if the whole decree or other document is sought to be cancelled, the amount or value of the property for which the decree was passed or other document was executed
- (b) if part of the decree or other document is sought to be cancelled, such part of the amount or of value of the property.

(2) If the decree or other document is such that the liability under it cannot be split up and the relief claimed relates only to particular item of property belonging to the plaintiff or to the plaintiff's share in any such property, fee shall be computed on the value of such property, or share or on the amount of the decree, whichever is less.

*Explanation:* A suit to set aside an award shall be deemed to be a suit for cancellation of a decree within the meaning of this section.

In 2002-(6) ALD-772 - *Maddi Balreddy v. Merugu Anthamma* - it was held under Sections 7 and 37(1) that in a suit for setting aside a decree passed in respect of a property - CF has to be paid on the present value of suit property but not on value of property on which CF was paid in the Suit whose decree is sought to be set aside - See also 1939 Mad.462(FB); 1950 Mad.458; 1968 A.P. 333, 1969 (1) An.W.R 162 and 1974- Mad -152.

In AIR 1975-AP-122 = 1974 (2) An.W.R.-208- *A.V. Reddy v. G.V. Narayana* - it was held that where the suit is for cancellation of document, CF payable is on face value of document and not on market value of property under.

In 1935 Mad.-671- it was held that if only a part of decree or document is sought

to be cancelled, the suit should be valued only for that part for Court fee and jurisdiction. However, in cases where it cannot be split up the entire value of the decree or document has to be taken for Court fee and jurisdiction. See also 1939 Mad.462 (FB) = (1) M.L.J. -702 = ILR 1940 Mad.278 (FB); 1952 Mad.799- See also 1975 ALT -97.

In 1972 (2) AnW.R. 425- it was held that in a suit to set-aside the preliminary decree for partition, Court fee is payable under Section 37(1) and not under Section.34(2).

In 1972 (1) APLJ -45 - it was held that in a suit for cancellation of maintenance decree and for injunction against its' enforcement or execution, the suit has to be valued on the amount due under the decree till date of suit.

In 1973 SC-2384 - it was held that a suit by a Hindu son against his father and mortgage decree holder (on the mortgage created by his father) for declaration that the mortgage executed by his father in respect of joint family property was null and void for no legal necessity and for consequential injunction restraining the decree holder from executing the decree, advalorem Court fee is payable. In fact it is essential to ask for setting aside the decree under Section 37 Court Fee Act. (Overruled 1925 Mad.713)

In view of the wording of Section 37, the entire value of immovable property but not 3/4th of it under Section 21, that to be taken into consideration for computation of Court fee and for jurisdiction.

***The value for purposes of Court fee determines the jurisdiction as per Section 50(1)***

### **38. Suits to set aside attachment, etc.**

(1) In a suit to set-aside an attachment by a Civil or Revenue Court of any movable or immovable property or of any interest therein or of any interest in revenue, or to set-aside an order passed on an application made to set-aside the attachment, fee shall

be computed on the amount for which the property was attached or on one-fourth of the market value of the property attached, whichever is less.

(2) In a suit to set-aside any other summary decision or order of Civil or Revenue Court, if the subject-matter of the suit has a market value, fee shall be computed on one-fourth of such value, and in other cases, fee shall be payable at the rates specified in Section 47.

*Explanation:* For the purpose of this section, the Registrar of Co-operative Societies shall be deemed to be a Civil Court.

***The value for purposes of jurisdiction is the same value for purposes of Court fee.***

**39. Suits for specific performance:** In a suit for specific performance, with or without possession, fee shall be payable—

- (a) In the case of a contract of sale, computed on the amount of the consideration;
- (b) in case of a contract of mortgage, computed on amount agreed to be secured by the mortgage;
- (c) in the case of a contract of lease, computed on the aggregate amount of the consideration, or as the case may be, on the market value of the movable property or three-fourths of the market value of the immovable property sought to be taken in exchange;
- (d) in other cases, where the consideration for the promise sought to be enforced has a market value, computed on the market value of the movable property or three-fourths of the market value of the immovable property or where such consideration has no market value, at the rates specified in Section 47.

In 1963(1)An.WR-118 - *Appalaswamy's* case, held that valuation refers to consideration of

the contract for sale in respect of which performance prayed for and CF payable is on the basis of the relief. See also 1996(1)-ALT-838, 1980(1)-ALT-422, 1964(2) - AnWR-457 and 1966-AP-110.

In *Kanakala Venkata Rao v. Konda Krishnam Raju*-1996(1) ALD 1217 = 1996 (1) ALT 838 - it was held that based on agreement of sale in favour of plaintiff and three others for certain extent of land - Suit for specific performance when filed by plaintiff only in respect of his one fourth share in the land - Court fee has to be paid only on the value of share of the plaintiff, but not on the entire extent of land, which is the subject-matter of the agreement of sale.

In *N.Vithal Rao v. N.Raja Rao*-1997 (6) ALD-482-it was held that in the Suit for specific performance of an agreement of partition - Under the agreement the property was divided and the plaintiff's share also since determined, the only dispute is as to the method and manner in which the partition has to be affected. Hence the relief since incapable of valuation, Section 39 has no application, fixed Court fee under Section 47 is only payable.

In 1980 (1) ALT-41 (NRC) = (1)AnWR-422 - *A.B.M. Meera v. A. Devaji Rao*- it was held that pending suit for specific performance amendment of plaint made for possession of structures in the property, which when not changed the nature of suit and cause of action no additional Court fees is payable.

In 1966 AP110=1967(2)AnWR 117- it was held that the mere fact that subsequent vendee also was impleaded in the suit for specific performance, it will not alter the nature of suit for computation of under Section 39. (distinguished 1939-Mad-360).

In 1964 (2)AnWR-417- it was held that in suit for specific performance, tenant of vendee also was impleaded and possession sought for from tenant also will not alter the nature of suit for computation of CF under Section 39.



In 1919 MLJ-304- held that, suit by vendor for recovery of purchase price expressing his willingness to perform his part of the contract is one for specific performance under this section.

#### 40. Suits between landlord and tenant:

(1) In the following suits between landlord and tenant, namely:

- (a) for the delivery by a tenant of the counter-part of a lease or for acceptance of patta in exchange for a muchilika;
- (b) for the enhancement of rent;
- (c) for the delivery by a landlord of a lease or for obtaining a patta in exchange for a muchilika;
- (d) for the recovery of possession of immovable property from which a tenant has been illegally ejected by the landlord;
- (e) for establishing or challenging a right of occupancy fee shall be levied on the amount of rent for the immovable property to which the suit relates, payable for the year next before the date of presenting the plaint.

(2) In a suit for recovery of immovable property from a tenant including a tenant holding over, fee shall be computed on the premium, if any, and on the rent payable for the year next before the date of presenting the plaint

*Explanation*-Rent includes damages for use and occupation payable by a tenant holding over.

(3) In a appeal from a suit to contest a dstraint under sub-section (1) or sub-section (2) of Section 95 of the Madras Estate Land Act, 1908 (Madras Act 1 of 1908), or to contest the right of sale under Section 112 of that Act, fee shall be charged on the amount of the arrears for which the dstraint has been made or the sale is proposed to be held.

In 1928-PC-227- it was held that the expressions **landlord and tenant** includes ex-landlord and ex-tenant.

In 1955 Nagpur-184- it was held that where plaintiff does not recognize the defendant as his tenant, Court fees payable is as an ordinary suit for possession.

In 1932-Mad-409- it was held that to decide whether the suit is between landlord and tenant-the plaint allegations are generally decisive. See also 1929-Mad-529, 1937-Mad-91, 1953-Mad- 513 and 1958-AP-755.

In 1959 (1) AnWR-326- it was held that in a Suit for ejectment of tenant and for recovery of damages, payment of CF is on one year's rental value. Rent fixed under the rent agreement, can be taken as basis.

In 1975(2) APLJ-200-it was held that even for tenant's suit against landlord and third party set-up as new tenant, to recover back possession from landlord and the third party setup as new tenant, the value of the suit relief is under Section 40.

In 1958-AP-711-it was held that suit by new lessee against tenant-holding-over in the absence of privity of contract is governed by Section 21 suit for possession and not by Section 40CFAAct. In 1966(2) AnWR-25(SN), it was held that a suit by landlord against a tenant after determination of lease falls under Section 40(2) and not under Section 29 CF Act.

**41. Suits for mesne profits :** (1) In a suit for *mesne profits* or for immovable property and *mesne profits* therefrom, fee shall in respect of *mesne profits*, be computed on the amount claimed as *mesne profits*, if the profits ascertained to be due to the plaintiff are in excess of the profits as claimed, no decree shall be passed until the difference between the fee actually paid and the fee that would have been payable had the suit comprised the whole of the profits so ascertained is paid.

(2) Where a decree directs an enquiry as to the *mesne profits* which have accrued on the property, whether prior or subsequent to the institution of the suit, no final decree shall be passed until the difference between the fee actually paid and the fee that would have been payable had the suit comprised the whole of the profits accrued due till the date of such decree is paid.

(3) Where for a period subsequent to the date of the decree or final decree, such decree or final decree directs payment of *mesne profits* at a specific rate, such decree or final decree shall not be executed until the fee computed on the amount claimed in execution is paid.

(4) Whether or not a decree is passed under sub-section (1) or sub-section (2) or executed under sub-section (3), the fee payable under any of the said sub-sections, shall be recoverable as if it were an arrear of land revenue.

In 2002(1) ALD-151 (DB) *Savanthi Bai v. Mandodari* - it was held under Section 34 (1 & 2) that in a Suit for partition and separate possession, CF paid on value of share of plaintiff claimed, then plaintiff need not pay CF separately for consequential relief of accounting for rents derived by defendant. Separate CF payable only if relief for cancellation of decree or document asked for. In 1953 Mad-846 it was held that in a Suit for partition and accounting, since the relief of accounting or such other relief is implied in the main relief of partition, the Court fee paid on the main relief of partition would cover the other relief also.

*In 1930 Mad-833(FB) - it was held that Court fees payable for past profits need not be on separate valuation. The claim for past profits to be shown with value of primary relief to pay Court fees on the aggregate only.*

In 1975 (1) APLJ 82 - it was held that, in a suit for declaration of title and for

possession besides *mesne profits*, the Court fee payable is on the aggregate amount of value for declaration and past profits claim.

In 1967-SC-155- it was held that in view of Order 7 CPC., and Section 7 Central CF Act, for claim of past profits plaintiff must plead cause of action and specifically claim decree for past profits, **value the claim approximately and pay Court fees. For payment of Court fees the criteria is plea regarding cause of action and its value to claim relief, if no cause of action no question of valuing any future relief even claimed.** With regard to future profits, the plaintiff has since no cause of action as on the date of institution of the suit, it is not possible to plead cause of action or value the relief and pay Court fees in respect of future profits. Further, he can obtain relief in respect of the future cause of action of future profits in the suit as per Order 20 Rule 12 or 18 CPC. The Court has discretionary power to pass a decree directing an enquiry into future profits and can grant the general relief even it is not asked for in the plaint. Relied upon 1951-Mad-938 (FB) and 1958-AP-517. Explained 1952-SC-358.

The Court fees Act becomes applicable only on the claim preferred before the Court held in AIR 1958 AP 267= (2) AnW.R 349.

In 2000 (1) ALT 221 and 225 - *Durga Pharma v. Geoffrey* it was held that in respect of claim for damages (past and future), the defendant is liable to pay CF only on past damages before date of W/S for future damages CF to be paid only after the same being duly ascertained by the Court. In AIR-1961 -SC-1299 it was held that where valuation made by plaintiff is unreasonable or if he under valued, the Court can revise and enhance at any time after presentation of plaint but not after pronouncement of judgment. See also 1998(9) SCC-157; 1994(4)-SCC-349, 1994 (1) An.W.R.- 274; AIR-1992-SC-1526, AIR-1988-SC-1150, AIR 1980-SC-691, AIR 1973 SC 2384, AIR 1971-AP-142, 1968(1)AnWR-

296,1960-ALT-53, 991, 1960(1) AnWR-106, AIR-1958-SC-245 at 251, and AIR-1955-AP-200=1955 An.W.R. 348.

In AIR-1976-AP-199 *Md. Shabbuddin v. Ahmed*: it was held that deficit Court fees payable may be ordered to be paid even at the time of pronouncing judgment.

In 1968(2) ALT 17 NRC it was held that the Court has no power to collect deficit Court fees after the suit was disposed off, unless there is a direction to pay deficit Court fees, during disposal in the judgment or before.

*The Apex Court in AIR 1988 SC 1150 and 1987 SC 2085 held that the tentative valuation stated by the plaintiff must not be arbitrary and unreasonable, since the plaintiff has no absolute right or option to place any valuation whatever on relief of accounting etc.*

In 2003 (4) ALD-66 (DB) - *State of A.P. v. Thrishul Engineering Works*- it was held that in suit for settlement of accounts and recovery of amount, where Plaintiff is quite aware at the time of filing the suit the amount actually due, he cannot be allowed to underestimate the suit and pay Court fee. It was further held that it is manifest that Trial Court also at no point of time made an endeavour to find out correctness of Court fee and valuation of suit at plaintiff's estimate. It is the duty of the plaintiff make a claim which would have been definite and it would be prudent to expect that plaintiff's claim would be very near to the real outstanding.

Relying upon 1968 (2) An.W.R - 616 (FB) - *C.C. Reddy v. K.C.Reddy*; it was held that the word *Estimate* in Section 32 C.F. Act involves an active mental element and that plaintiff is bound to state the approximate amount as near reality as possible and not give an arbitrary figure. The choice of the Forum and the liberty to pay nominal Court fee are not to be left to the caprice of plaintiff. The difficulty experienced by a plaintiff in giving a precise valuation doesn't

entitle him to arbitrarily and deliberately undervalue the relief sought by him. He is bound to make a genuine and honest effort to value the relief if he doesn't do so and if the valuation given by him bears no relation to reality, the Court can and indeed must intervene and exercise its power under Order VII Rule 10 and 11 C.P.C after due regard and proper appreciation of the difficulty of plaintiff since there is bound to be an element of speculation and uncertainty in estimating the value of the relief in suit for accounts, but there must be a genuine effort on the part of plaintiff to estimate. There should not be any deliberate underestimation or pretended estimation or indifferent estimation. It should be a real estimate acceptable to a prudent and reasonable man. The Court has the power to amend the valuation if the estimate of plaintiff is not acceptable to a prudent and reasonable man. The investigation for correcting such estimation by Court as per Section 11 C.F. Act the base not only on the plaint allegations but also on the material furnished by the plaintiff including admissions if any made in the proceedings and in the interlocutory matters of the proceedings. So also, all undisputed facts brought to the Court notice by the defendant to consider with other facts, without going into the main controversy between the parties since the investigation must not encroach upon the principal issues to be decided at trial of the suit. In 1995 SC -1945 para-9 it was further held that there shall be *bona fides* on the part of the party estimating the relief, even for the Court to take the aid of Section 149 to permit to pay additional Court fee by extending the benefit, otherwise it would create unhealthy practice and would become a game of chess and a matter of chance which could not be conducive and proper for orderly conduct of litigation. See also 1957-AP-6 = 1956 AnWR-902.

In 1979 S.C.-989 at page-993 it was also held that the plaintiff could not arbitrarily and deliberately undervalue the relief. In 1987 S.C. 2085 at 2086 it was held that the

plaintiff has not been given an absolute right or option to place any valuation whatever and where plaintiff manifestly and deliberately underestimate the relief tentatively, the Court is entitled to examine the correctness of plaintiff's valuation and can revise the same if it is patently, arbitrarily or unreasonable.

*In AIR 2001 Delhi 338 G.C. Kumar v. Ashok Kumar; it was held following 1941 Madras 929 (FB), 1937 PC 163 and 1924 PC 196 with reference to Section 11 Central Court fees Act, Section 33 and Order 20 Rule 6 CPC that even if there is direction to pay additional Court fees in judgment, for non-payment the suit cannot be dismissed since there is no legal hurdle for preparing decree as per judgment wherein the direction to pay additional Court fees made. The drawing of decree is the obligation of the Court in terms of judgment, the only bar is for non-payment of deficit Court fees the decree drawn up become unexecutable until DCF paid. The non-payment of balance Court fees only postpones the date on which decree to be executed; however it will not save from running of limitation for execution from date of decree. The Court has no power to stay drafting of decree once judgment is pronounced, merely because balance Court fees ordered to be paid in the judgment. Therefore the proper procedure is that the decree shall bear an endorsement that the same shall not be executed until difference Court fees is paid.*

*In AIR 1962 AP-372 = ILR-1963-AP-560- under Section 11 Court fees Act it was held that decree has to be drawn up, however the decree (whether for profits or other relief) cannot to be allowed to be executed till deficit Court fees is paid. See also 1961(2) AnWR-409 and 1954-Mad-170.*

**42. Suits under the Madras Survey and Boundaries Act, 1923:** In a suit under Section 14 of the Madras Survey

and Boundaries Act, 1923 (Madras Act VIII of 1923), fee shall be computed on one-half of the market value of the property affected by the determination of the boundary or on rupees three hundred whichever is higher.

For survey and fixation of boundaries, CF is payable under Section 42-held in AIR-1940- Mad - 273.

If the plaintiff is out of possession the suit should be valued as one for possession - held in 1939 Madras Weekly Notes -841.

**43. Suits to alter or cancel entry in a register:** - In a suit to alter or cancel any entry in a register of the names of proprietors of revenue paying estates, the fee payable shall be Rs.15/-.

Suit to alter or cancel entries in record of rights etc., falls under Section 43-1927-Mad 568 and 1919- Pat-468.

**44. Suits relating to public matter:** In a suit for relief under Section 14 of the Religious Endowments Act, 1863 (Central Act XX of 1863) or under Section 91 or Section 92 of the Code of Civil Procedure, 1908 (Central Act V of 1908), the fee payable shall be fifty rupees. **Suits of this nature involve public interest rather than individual rights which are governed by Sections 91 and 92 C.P.C.**

*The value for purpose of jurisdiction under Section 50(2) is the same value for purposes of Court fee.*

Obstruction to the Village Pathway is a suit relating to public matter and the villagers can maintain the suit. See 1957-AP-975, 1983 (1) ALT-11

In 1958 A.P. -586 = ALT 801 - it was held that for preventing such obstruction to public road or pathway, to maintain a suit no need to prove special damage.

In 1983 (1) ALT -11 = (1) An.W.R. 151 - it was held that where such suit filed in



representative capacity after sanction from Advocate General, even one of the plaintiffs died suit won't abate and no need to bring legal representatives of the deceased to record.

What are the types of suits that come within the purview - see 1924 Mad.-19; 1925 Mad.722; 1954(2) MLJ 552; 1947 Bom.451; 1943 Oudh.-186; 1941 Lah.97 (FB); 1954 T.C. 51 and 178 (FB);

**45. Interpleader suits :** (1) In an interpleader suit, fee shall be payable on the plaint at rates specified in Section 47.

(2) Where issues are framed regarding contentions of the claimants, fee shall be computed on the amount of the debt or the money or market value of the movable property, or three-fourths of the market value of the immovable property, which forms the subject matter of the suit. In levying such, fee credit shall be given for the fee paid on the plaint; and the claimants who claim the debt or the sum of money or the property adversely to each other shall pay the balance of the fee in equal shares.

(3) Value for the purpose of determining the jurisdiction of Courts shall be the amount of the debt, or the sum of money or the market value of the movable property or three-fourths of the market value of the immovable property to which the suit relates.

For valuation of inter-pleader suit for purposes of Court fee and jurisdiction see 1961(2) MLJ-33. Section 88 and Order 35 CPC deals with Interpleader suits. See AIR 1966 AP.92; 1965 S.C. 1718; and 1962 S.C. 73; regarding scope of interpleader suits.

**46. Third party proceedings:** In third party proceedings, fee shall be levied on one-half of the value of the contribution or indemnity claimed against a third party or against a co-defendant if a claim is made against him:

Provided that, if the suit against the defendant who has filed the third party

notice is dismissed, wholly or in part, he shall be entitled to refund of the whole or a proportionate part of the fee paid by him.

*Explanation:* The provisions of this section shall also apply to counter - claims made in third party proceedings.

*C.P.C. Order 8(A) of the A.P. Amendment same as that of Madras State amendment deals with third party proceedings.*

**47. Suits not otherwise provided for:**

In suits not otherwise provided for, fee shall be payable at the following rates: When the amount or value of the subject-matter in dispute.

(i) is less than Rs.3,000/- Rupees fifty

(ii) is not less than Rs.3,000/- but does not exceed Rs.5,000/-

Rupees two hundred

(iii) exceeds Rs.5,000/- but does not exceed Rs. 10,000/-

Rupees two hundred

(iv) exceed Rs. 10,000/-

Rupees three hundred

In 1971-AP-177 = 1970(1) An.W.R. 390; 1968 AP 239 = (2) AnWR-30 (FB); 1958-SC-245 and 1959-AP-118 - it was held that Section 47 applies as a residuary provision to govern all suits not otherwise provided under the C.F.Act or specifically provided in the Act that Section 47 applies. See also 1963-AP-25; 1962 (1) An.W.R. 310; 1965(1) AnW.R. 138 and 1979(1) ALT 127; In 1987 S.C. 2138 - it was held that the civil suit for fixation of boundaries without relief of declaration falls under Section.47 CF. Act under residuary provision since not otherwise provided for. In *N.Vithal Rao v. N. Raja Rao* - 1997 (6) ALD - 482 - it was held that in the Suit for specific performance of an agreement of partition - Under the agreement the property was divided and the plaintiff's share also since determined, the only dispute is as to the method and manner in which the

partition has to be affected. Hence the relief is incapable of valuation. There by fixed Court fee under Section 47 is payable since Section 39 has no application.

In 2003(4) ALD 345 = (5) ALT-51 - *State of A.P. v. V.N. Reddy* - it was held that when the suit filed is to set aside the demand notice for Rs.1,88,06,826/- and for mandatory injunction to refund the amounts of plaintiff in Deposit - When both these amounts are known to plaintiff -the suit should have been valued under Section 24 on the said amounts. The valuation made under Section 47 alleging that the relief is incapable of valuation - is not correct.

Section 15 reads that the provisions of Sections 10 to 12 shall apply to the determination and levy of Court fees in respect of petitions, applications and other proceedings in Courts in the same way as they apply to the determination and levy of fees on plaints in suits. Section 15 is to be read with Sch.2 and Section 47 - See 1995(2) ALD-194. *A.P.S.F. Corporation v. Colombia Products*. In 1981 LS-(AP)-9 under Section 24(d) - *G.Prakasham v State*-In Suit for declaration and mandatory injunction governed by Section 24 CF Act, residuary Provision Section 47 has no application.

**48. Fee on memorandum of appeal against order relating to compensation:** The fee payable under this Act on memorandum of appeal against an order relating to compensation under any Act for the time being in force **for the acquisition of property for public purposes** shall be computed on the difference between the amount awarded and the **amount claimed by the appellant**.

In 1929-Mad-233- it was held that scope of this section is confined to appeals by claimants where the claim is more than what is the compensation awarded by lower Court or Tribunal as the case may be. This section has no application to an appeal by

Government since Government is not a claimant.

In ILR-1961 AP-600-it was held that, in an appeal by rival claimants regarding entitlement to compensation amount in deposit ,control of the amount being *custodia legis*, a mere declaration under Section 24(d) CF Act is suffice.

In 1969(1) AnW.R. 114 it was held that advalorem Court fee is payable on such amount of compensation claim for entitlement between rival claimants. Which is being the advantage being derived from the general principle for computation of Court fee.

In 1991(3) ALT 408 and 1970(2) AnW.R.58 - it was held that where specific amounts awarded under a decree to different claimants as per their entitlement of compensation for respective lands or portions of lands acquired Court fee is payable in the common appeal separately for the respective sums of each claimants. Since it constitutes the subject-matter of several appeals for purpose of valuing the appeal. See also *P.A. Reddy v. L.A.O.* - 1982 APHC Notes 128; 1969(2) ALT -2 (NRC) in reference to LAO's case. See also 1969(1) APLJ 135 (SN). In 1979 Ker.40 (FB) was held that for apportionment of compensation in dispute and appeal filed against the decision of Land Acquisition Court, advalorem Court fee is payable on the amount. In 1968-AP-348 - it was held that the words *order relating to compensation* includes not only cases covered by Land Acquisition Act but also cases covered by other Acts like Requisition and Acquisition of Immovable Property Act.

In 1982(3) ALT 148(FB) - it was held that in appeals relating to claims for compensation with regard to property acquired, Court fee is payable on amount of difference between amount awarded and amount claimed. Interest need not be included in the value of appeal. Hence, no Court fee payable on interest and solatium amounts in land acquisition appeals. See also 1969-AP-25

= (1)An.WR-23, 1969 (1) An.WR-381 = (1)ALT-190, 1972-Mad-150(FB), 1973-SC-305 and 1970-AP-39(FB)-where in the decision of 1964(1) An.WR-185 was overruled. In 1972 An.WR.58-it was held that, where there are different claimant in the appeal Court fee is payable separately for each appellant.

**49. Appeals:** The fee payable in an appeal shall be the same as the fee that would be payable in the Court of first instance on the subject-matter of the appeal:

Provided that, in levying fee on a memorandum of appeal against a final decree by a person whose appeal against the preliminary decree passed by the Court of first instance or by the Court of appeal is pending, credit shall be given for the fee paid by such person in the appeal against the preliminary decree.

*Explanation (1)* whether the appeal is against the refusal of a relief or against the grant of the relief, the fee payable in the appeal shall be the same as the fee that would be payable on the relief in the Court of first instance.

*Explanation (2)* Costs shall not be deemed to form part of the subject-matter of the appeal except where such costs from themselves the subject-matter of the appeal or relief is claimed as regards costs on grounds additional to, or independent of, the relief claimed regarding the main subject-matter in the suit.

*Explanation (3)* in claims which include the award of interest subsequent to the institution of the suit, the interest accrued during the pendency of the suit till the date of decree shall be deemed to be part of the subject-matter of the appeal except where such interest is relinquished.

*Explanation (4)* Where the relief prayed for in the appeal is different from the relief prayed for or refused in the Court of first instance, the fee payable in the appeal shall be the fee that would be

payable in the Court of first instance on the relief prayed for in the appeal.

*Explanation (5)* Where the market value of the subject-matter of the appeal has to be ascertained for the purpose of computing or determining the fee payable, such market value shall be ascertained as on the date of presentation of the plaint.

In 1971-AP-177= 1970(1) An.WR-390 - it was held that under Section 49 CFAct the test for determining CF payable in an appeal is based on the subject-matter of appeal and it is the value of appeal that determines the forum for jurisdiction. The general principle is that, the principles governing valuation of suits are applicable to valuation of appeals depending upon the nature of suit, its decree under appeal and the subject-matter of appeal. It was held further that no advalorem Court Fees is payable by defendant against direction to enquire into *mesne profits* though plaintiff has given his valuation ,the relief since deemed incapable of valuation as per Section 49 read with 47 CF Act. In 1965(2) An.W.R.124 it was held that the direction to enquire into future *mesne profits* from the date of suit could not be valued as such by plaintiff, therefore the defendant in the appeal against such direction need not pay Court fees on any amount. See also 1945-Mad-194 and ILR-40-Mad-1. In 1986 (1) ALT 297 and AIR 1971 A.P. 177 - it was held that Court Fees Act empowers Appellate Courts to collect Court fee on appeals while schedules determine mode of assessment. Date of presentation of plaint determines the Court fee payable in appeal as per Civil Courts Act. The test is to determine the subject-matter of the appeal and relief claimed by appellant. In 1973 (2) AnWR-337-it was held that the form of appeal for purposes of determining pecuniary jurisdiction of a Court is being determined by Civil Courts Act and for that the value of suit under CF.Act on the date of presentation of plaint is criteria.

In 1999 (1) ALD-222(FB)-Paras 6 to 9 - it was held that *the value of subject-matter*, for purposes of jurisdiction of an appeal is solely based on Section 49 CFAAct and for purposes of jurisdiction of a suit is solely based on Section 50 CFAAct and Civil Courts Act Sections 17 and 16 are nothing to do with the valuation of appeals or suits. For administration of justice, implementation of both the Acts is necessary since they are interdependent though both are independent. *(To mean Civil Courts Act only decides the forum which is invested with jurisdiction to decide a civil matter within certain pecuniary and territorial limits but not valuation of subject-matter for purposes of computing Court fees and jurisdiction. Once computation of value for purposes of jurisdiction based on the value for purposes of Court fees determined under Court Fees Act, then Civil Courts Act comes into play to decide as to in which Court or forum the suit or appeal of the particular value (decided under Court Fees Act) that to be filed).*

In 1997(2) ALD 796 = (2) ALT -155 = (2) APLJ -4 (SN) - *C.S.P. Rao v. M.V. Rao* - it was held under Section.49 that in a Suit for specific performance - Some of the defendants who had only 1/3rd undivided share in the suit property did not contest and other defendants having 2/3rd share only contested the suit that was decreed. In the appeal filed by the said contesting defendant to set-aside the decree insofar as it is against to them - As per Section 49 Explanation-4- valuation made and Court fee paid on the 2/3rd share of appellants is correct.

In 1962-AP-397 = (2)AnWR-203 and 1957 AP-766 = (2)AnWR-3 - it was held that on appeal against suit for partition based on joint possession by payment of fixed Court fees, even costs of lower Court asked and even *mesne profits* in final decree proceedings determined, payment of fixed Court fees in appeal is suffice. No Court fees is payable for costs of lower Court claimed in that

appeal. See also 1949(2) MLJ-782 and 1950-Mad-26 = 1949(2) MLJ-402.

In 1974 (2) AnW.R-245 - it was held that when the plaintiff is in constructive possession of all suit properties merely because in appeal she was permitted to include the properties which she relinquished in Trial Court, no additional Court fee be payable.

In 1957(2) AnW.R.-3-it was held that in appeal against final decree on the profits ascertained in the partition suit, appellant not liable to pay advalorem Court fee on the said sum. In 1957 AP.6 = 1956 AnW.R-902 - it was held that where suit is for *mesne profits* recovery and when such suit decreed for ascertained sum, if defendant prefers appeal he has to pay C.F. on the amount which is the subject-matter of appeal and if plaintiff prefers appeal on correctness of amount decreed by claiming excess should have been granted, he has to pay C.F. on the said difference amount which is the subject- matter of appeal.

In 1960 A.P.319 - it was held that the plaintiff to include interest in appeal value for C.F., if pendentilite interest is also made subject-matter of the appeal, unless Plaintiff-appellant relinquished claim of interest from date of suit. See also 1965(2) An.W.R.966, 1966(1) AnWR-149 and 1982-Ker-255.

In 1966 (1) AnW.R. 149 and 1965(2) An.W.R 466- it was held that interest calculated up to the date of decree of lower Court will form part of subject-matter of appeal and Court fees is payable on pendentilite interest even by defendant appellant. The defendant no doubt can relinquish the claim only for the subsequent interest. In claims relating to pendentilite interest unless claim relinquished by plaintiff-appellant or for subsequent interest claim not made by defendant-appellant Court fee is payable

In 1990 (2) ALT 7 NRC - it was held that in a cross objection on interest subsequent to date of lower Court's decree no Court fees need be payable In 1955 AnW.R. 411 -



it was held that if awarding of costs challenged in appeal, Court fee is payable on the amount awarded as costs.

In appeal against costs no Court fee is payable unless independent relief claimed for costs. See 1957 (1) AnW.R. 257; 1963 (2) AnW.R. 118.

In 1959 Mad. 14 - it was held that an appeal against an order rejecting application for leave to sue as pauper - Court fee is payable under Section 47 read with 49.

In 1974(2) APLJ. 4 - it was held that in case of a regular appeal against a finding Court fee is payable under Section 47 read with 49. See also 1969 (2) AnW.R. 246 and 1970(1) ALT 680. In 1941(2) MLJ-774- it was held that in a mortgage suit where only simple money decree passed, the plaintiff appellant who filed appeal against the trial Courts decree for not passing mortgage decree by 1st charge on the properties- can pay Court fees under Section 49 read with 47 either on the amount claim or on the value of the mortgage -properties as on suit date- whichever is less since the appeal relief is not capable of exact valuation. See also 1971(1) An.W.R.207. In 1931 Mad 710 it was held that in appeal against a mortgage decree where decretal amount not in dispute but only liability of certain property in dispute - Appellant can pay Court fees under Section 49 read with 47 either on the amount decreed or on the value as on suit date of the mortgage -properties in dispute - whichever is less.

In 1979(1) ALT -127 it was held that in the defendant's appeal against claim amount is allowed as compensative for improvements made by defendant, he has to pay CF in appeal on the said amount as per Section 49 read with 20 CF Act.

In 1986(1) ALT-297 - it was held that in an appeal against decree granting past and future maintenance, Court fee is payable on future maintenance awarded from the date of suit to the date of decree on the entire decree amount.

In 1975(2) AnW.R. 320 - it was held that an appeal for arrears of maintenance be valued as claim for money.

Section 14 reads that in determination and levy of Court fees on plaints in suits, the provisions covered by Sections 10 to 12 shall apply *mutatis- mutandis* to appeals, cross objections, and LPAs.

A memorandum of Appeal can be rejected for non-payment of deficit Court fees as per Section 14 read with 11. Appellate Court is competent to reopen the question of payment of proper Court fees on plaint in lower Court and order for payment before disposal of the Appeal. See 1958 (2) ALT-17 (SN) and 1960(1) MLJ-527.

In 1998(3)ALD-403 = (3)ALT282 = (1)LS-636 = (2)APLJ-38(SN) - *Nandika. N. Swami's* case - It was held that Appellate Court no doubt got jurisdiction to order payment of DCF by assessing value, however, if it was done without notice to the Appellant in assessing the market value of subject-matter of appeal, even without consulting the basic value register it is not legal.

In 1972(2) APLJ 49(SN) - it was held that Sections 12 to 14 cannot be applied to a case where plaintiff or appellant omits to include the whole of the claim in the first instance in the plaint or memorandum of appeal as the case may be. In 1974(2) AnW.R. 245 it was held that the Appellate Court has power to permit the plaintiff who has relinquished his claim in respect of a portion of the suit claim to make it again part of the subject-matter of the suit, on payment of additional Court-fee.

In 1972(2)ALT-191 - it was held that Appellate Court can exercise the power under Section 16(2).

In 1982-Kerala-304(FB) - it was held that in a suit for partition based on joint possession under Section 34(2) filed by plaintiff by payment of fixed Court fees, the value of

the suit for purposes of jurisdiction is the market value of plaintiff's share. The same value determines the forum of appeal by plaintiff or defendant.

In 1968(1) AnW.R. 369 - it was held that by date of filing appeal against final decree if appeal against preliminary decree is pending, credit should be given for the fees paid by the party in appeal against the preliminary decree.

In 1967(1) AnW.R. 369 - it was held that search benefit is available even the appeal against the final decree filed in High Court during pendency of appeal against the preliminary decree in Supreme Court. See also 1953 Mad. 415.

In 1938-Mad-887 - it was held that a plaintiff appealing against decree dismissing suit for accounts must value the appeal to the same amount, where the subject-matter of suit and appeal are same.

In 1938-Mad-435(FB) - it was held that the defendant appealing against preliminary decree has to value the appeal as in the suit. See also 1974-Ker-147.

#### **50. Suits not otherwise provided for :**

(1) If no specific provision is made in this Act or any other law regarding the value of any suit for the purpose of determining the jurisdiction of Courts, value for that purpose and value for the purpose of computing the fee payable under this Act shall be the same.

(2) In a suit where fee is payable under this Act at a fixed rate, the value for the purpose of determining the jurisdiction of Courts shall be the market value of the movable property or three-fourths of the market value of the immovable property or where it is not possible to estimate it at a money value the amount stated in the plaint.

In 1999-(1) ALT-211 or (1) ALD-222(FB) *Kalla Yadagiri v. Kotha Balreddy* at Paras 6 to

9- it was held that *the value of subject-matter*, for purposes of jurisdiction of an appeal is solely based on Section 49 CF.Act and for purposes of jurisdiction of a suit is solely based on Section 50 CF.Act and Civil Courts Act Sections 17 and 16 are nothing to do with the valuation of appeals or suits. For administration of justice, implementation of both the Acts is necessary since they are interdependent though both are independent. *(To mean Civil Courts Act only decides the forum which is invested with jurisdiction to decide a civil matter within certain pecuniary and territorial limits but not valuation of subject-matter for purposes of computing Court fees and jurisdiction. Once computation of value for purposes of jurisdiction based on the value for purposes of Court fees determined under Court Fees Act, then Civil Courts Act comes into play to decide as to in which Court or forum the suit or appeal of the particular value (decided under Court Fees Act) that to be filed).*

It was further held that, it is the value of the relief (*i.e.*, Subject-matter and not property) sought by plaintiff that determines the jurisdiction of the Court. Proper method is to value the Court Fees first (*i.e.*, on value of movable properties and  $\frac{3}{4}$  market value of immovable properties) and adopt that value for purposes of jurisdiction. See also 1968(2) AnWR 301(FB). 2001 (4) ALT-481-Overruled 1991 (1) APLJ -485, the decision 1988 (1) ALT 649 is with the same view. Approved 1966 A.P.-66. In this 1966-AP-66 *Siddramappa v. Sangappa*- it was held that the value for purposes of Court fees computed on  $\frac{3}{4}$  the market value of the land as enjoined in Section 29 - is the same value of the  $\frac{3}{4}$  the market value of the land that shall be taken for purposes of jurisdictions. This procedure from the provision is - no way in conflict to Section 6 CPC. It was further held that Section 50(1) does not refer to market value at all as Section 50(2) refers market value. It could not therefore be said that pecuniary jurisdiction should here been

determined only on full market value. Approved 1959(2) AnW.R. 238- ILR 1959 AP 1181.

In 1965 (1) AnW.R -366 and 1959 (2) AnW.R. 238, it was held that since Section 50(1) doesn't contemplate that pecuniary jurisdiction should be determined only on the full market value of the property, 3/4th of the market value of the property on which Court fee is payable will have to be taken for purposes of determining jurisdiction also. See also 1999(1) ALD- 222(FB). In 2001(5)ALD-442 = (4)ALT-481 = (2)LS-446 - *Majeti Ravi v. Kameswara Rao* - it was held that for determining pecuniary jurisdiction of Court in partition suit claiming half share by plaintiff in suit properties, entire suit properties cannot be taken into consideration except plaintiff's share(on which he sought relief)as subject-matter, see 1986 (1) APJA-99- *D.S. Raju v. SBI*. In AIR 1966-AP-65 and AIR-1959-AP-118, it was held that the ***value for purpose of Jurisdiction for immovable property is same value taken for purpose of CF***

*Viraj Constructions v. P. Pandu* - 1998 (6) ALT-262 = (6) ALD-563 = (2) LS-545 = (3) APLJ-292 = 1999(1) AnW.R-140, it was held that value of suit for mere injunction for purposes of Court fee and jurisdiction is one and the same. In a suit for mere injunction the market value of the suit land as such is not criteria for valuing the relief, as the relief has to be valued on notional value. For that the basis is on advantage sought to be derived or loss which sought to be averted by the plaintiff. It is such value of the relief given by plaintiff or determined by the Court for purpose of Court fees that also determines the jurisdiction of the Court. For that, suit be valued first for purposes of Court fee and the said value be treated for purposes of jurisdiction and not *vice-versa*. Relied on *Karanam Ram Murthy v. E.O. Panchayath Raj*, 1996(2) ALD -75 = (1) ALT 924 - It was held that the value in the injunction suit as per plaintiff's estimation for Court Fee equally applies for determining jurisdiction. See also *ABC India*

2004-Journal—F-4

*Ltd. v. Government of A.P.*, 1998 (5) ALD-399 and *Yellamilli Satyanarayana v. State of A.P.*, 1996 (2) ALD 759 = (2) ALT 194 = (1) LS-204 = (1) APLJ-383 and also 1969 (1) AnWR 411, (1) APLJ 211, 1968(2)-AnWR-104, (2)ALT-54,1958-SC-245,1987-Pat-156 and 2003(4)ALD-66-Para 9.

In 1918 PC 135 - *Sunder Bhai v. Collector* under Central C.F.Act it was held that the value for purposes of Court fee estimated by plaintiff is also the value that determines jurisdiction. In 1980-SC-691-it was held that when plaintiff pleaded joint possession, however says no income given, then even under Section 34(2) full value of share of plaintiff in respect of immovable property to be taken into consideration for payment of fixed Court fees. For jurisdiction, it is 3/4th value of immovable property under Section 50(2).So the principle in Section 50(1) is not applicable.

In 1982-Kerala-304(FB)- it was held that in a suit for partition based on joint possession under Section 34(2) filed by plaintiff by payment of fixed Court fees, the value of the suit for purposes of jurisdiction is the market value of plaintiff's share. The same value determines the forum of appeal by plaintiff or defendant.

In 1959(2)AnWR-238- it was held that in a suit for partition filed by plaintiff out of possession, the value for Court fees under Section 34(1) and jurisdiction under Section 50(1) is on the value of plaintiff's share. Wherein, in case of immovable property it shall be taken as 3/4th of its market value. In case of joint possession, where suit filed on fixed Court fees under Section 34(2), the value for purposes of jurisdiction under Section 50(2) is also the value of plaintiff's share. Wherein, in case of immovable property it shall be taken at 3/4th of its market value. See also 1966 (2) AnWR-25(SN)

In 1958 SC 245 it was held that value for purposes of Court fees determines the value for purposes of jurisdiction.

In 1935 Mad.-671- it was held that if only a part of decree or document is sought to be cancelled, the suit should be valued only for that part for Court fee and jurisdiction. However, in cases where it cannot be split up the entire value of the decree or document has to be taken for Court fee and jurisdiction. See also 1939 Mad. 462 (FB) = (1) M.L.J.-702 = ILR 1940 Mad. 278 (FB); 1952 Mad.799- See also 1975 ALT-97.

For valuation of the interpleader suit for Court fee and jurisdiction see 1961(2) MLJ -33.

**51. Procedure where objection is taken on appeal or revision that a suit or appeal was not properly valued for jurisdiction purposes :** (1) Notwithstanding anything contained in Section 99 of the Code of Civil Procedure, 1908 (Central Act V of 1908), an objection that, by reason of the over-valuation or undervaluation of a suit or appeal, a Court of first instance or lower appellate Court which had no jurisdiction with respect to the suit or appeal, exercised jurisdiction with respect thereto shall not be entertained by an Appellate Court, unless (a) such objection was taken in the Court of first instance at or before the hearing at which issues were first framed or in the lower Appellate Court in the memorandum of appeal to the Court; or (b) the appellate Court is satisfied, for reasons to be recorded by it in writing that the suit or appeal was overvalued or undervalued, and that the overvaluation or undervaluation thereof has prejudicially affected the disposal of the suit or appeal on its merits.

(2) When such objection was taken in the manner mentioned in clause(a) of sub-section (1), but the Appellate Court is not satisfied as to both the matters mentioned in clause(b) of that sub-section , it shall, if it has before it the materials necessary for the determination of the other grounds of appeal to itself, dispose of the appeal

as if there had been no defect of jurisdiction in the Court of first instance or lower Appellate Court.

(3) Where such objection was taken in that manner and the Appellate Court is satisfied as to both those matters, it shall, if those materials are not before it, proceed to deal with the appeal or remand the suit or appeal for disposal in accordance with the directions of the Appellate Court.

(4) The provisions of this section with respect to an Appellate Court shall, so far as may be apply to a Court exercising revisional jurisdiction under any law for the time being in force.

It was held that all questions as regards valuation and jurisdiction ought to be taken in the written statement and in any case in the trial Court. They cannot be allowed to be raised for the first time in appeal. Where Court had jurisdiction to entertain the suit. The mere fact that proper Court fee has not been paid is not a ground for refusing to grant the relief to which the plaintiff is entitled on the facts found by the Court.

In 1960 Mad.298 (C) - it was held that when no objection taken in the Trial Court about overvaluation or undervaluation of the subject-matter or about the suit is not cognizable by that trial Court, the party who should have taken that objection in Trial Court, cannot be allowed to raise the objection in the appeal.

In 1954 SC.340 - it was held that under Sections 9 and 21 C.P.C. it is a fundamental principle that a decree passed by a Court without jurisdiction is a nullity and that its' invalidity could be set up whenever and wherever it is sought to be enforced are relied upon or even at the time of execution and even in a collateral proceedings. A defect of jurisdiction whether it is pecuniary or territorial or in respect of subject-matter of the action, strikes at the very authority of the Court to pass any decree and such a defect



cannot be cured even by consent of parties. The policy underlying Sections 9 and 21 C.P.C. and the provisions of Court fee and suits valuation act is the same namely; that when a case had been tried by a Court on merits and rendered judgment, it should not be liable to be reversed purely on technical grounds unless it has resulted in failure of justice, and the policy of Legislature has been to treat objection to jurisdiction as technical and not open to consideration by an appellate Court unless there has been a prejudice merits. The decrees passed in such cases are not liable to be interfered within an appellate Court as a matter of course, unless it had resulted in failure of justice or prejudice on merits. The prejudice on the merits must be directly attributable to over or undervaluation.

**52. Application for probate or letter of administration:** (1) Every application for the grant of probate or letter of administration shall be accompanied by a valuation of the estate in duplicate in the Form set forth in Part I of schedule III:

(2) On receipt of such application, the Court shall send a copy thereof and of the valuation to the Collector of the district in which the estate is situated, or if the estate is situated in more than one district, to the Collector of the district in which the portion of the estate, the aggregate value of which is the highest is situated.

In 1956 Mad. 277 it was held that in the case of granting probate on the will of deceased regarding valuation of property for computation of Court fee *i.e.*, probate duty *i.e.*, leviable under Court fee act the value of estate as on date on death of the deceased is not the criterion and that the critical date for fixing the value is the date of the application for grant of probate or letters of administration. Thus interest collected after death of testator till the date of application for probate has also to be included in the assets of the deceased and Court fee payable also thereon. See also 1955(2) MLJ-657.

**53. Levy of fee:** (1) The fee chargeable for the grant of probate or letters of administration shall be calculated at the rate or rates specified in Article 6 of Schedule-I.

- (a) Where the application is made within one year of the date of death of the deceased, on the market value of the estate on such date; or
- (b) Where the application is made after the expiry of one year from such date, on the market value of the estate on the date of application:

Provided that no fee shall be leviable under this chapter on any property held in trust not beneficially or with general power confer a beneficial interest.

*Explanation:* Any member of a Joint Hindu Family governed by the Mitakshara Law who applies for probate or letters of administration in respect of the estate of a deceased member of the joint family shall pay a fee on the value of the share in the joint property which the deceased would have received if a portion of property had been made immediately before his death.

(2) For the purpose of computation of fee (a) The value of the items mentioned in Annexure B to Part I of schedule III shall be deducted from the value of the estate:

Provided that, when an application is made for probate or letters of administration in respect of only part of an estate no debt, no expenses connected with any funeral rites or ceremonies and no mortgage encumbrance on any part of the estate other than that in respect of which the application is made shall be deducted;

Provided further that when, after the grant of a certificate under Part X of the Indian Succession Act, 1925 (Central Act XXXIX of 1925), regarding any property including in an estate, a grant of probate or letters



of administration is made in respect of the same estate, the fee payable for the latter grant shall be reduced by the amount of the fee paid for the former grant.

- (a) The power of appointment which the deceased had over any property or which was created under a will shall be taken into account, the value being taken to be the value of the property forming the subject-matter of the power.

In 1970 (2) AnWR-62 and 1968(1) AnWR-370 - it was held that for probate or letters of administration, fees is payable only after grant of probate or letters of administration and before its issue.

**54. Grant of probate:** (1) The grant of probate or Letters of Administration shall not be delayed by reason of the reference to the Collector under sub-section (2) of Section 52; but the Court shall not grant probate or Letters of Administration unless it is satisfied that the fee chargeable under this Act has been paid on the basis of the net value of the estate as furnished in the valuation accompanying the application or in the amended valuation filed under sub-section (3) of Section 56.

(2) Notwithstanding anything contained in sub-section(1), the Court may, without the payment of the proper fee, grant probate or Letters of Administration to the Administrator - general in his official capacity on his giving an undertaking to the satisfaction of the Court that the said fee will be paid within such time as may be fixed by the Court.

**55. Relief in cases of several grants:** (1) whenever a grant of probate or Letters of Administration has been made in respect of the whole of the property belonging to an estate and the full fee payable under this Act in respect of the application for such grant has been paid thereon, no fee shall be payable when a like grant is made in respect of the whole

or any part of the same property belonging to the same estate.

(2) Whenever such grant has been made in respect of any property forming part of an estate, the amount of fee actually paid under this Act for such grant shall be deducted when a like grant is made in respect of the property belonging to the same estate identical with or including the property to which the former grant relates.

**56. Inquiry by the Collector:-** (1) The Collector to whom a copy of the application and of the valuation has been sent under sub-section(2) of Section 52, shall examine the same and may make or cause to be made by any officer subordinate to him such inquiry, if any, as he thinks fit as to the correctness of the valuation or where a part only to the property is situated in his district, of the valuation of that part, and may require the Collector of any other district in which any part of the property is situated to furnish him which the correct valuation thereof.

(2) Any Collector required under sub-section (1) to furnish the correct valuation of any property shall comply with the requisition after making or causing to be made by any officer subordinate to him such inquiry, if any, as he thinks fit.

(3) If the Collector is of opinion that the applicant has underestimated the value of the property of the deceased, he may, if he thinks fit, require the attendance of the applicant, either in person or by his agent, and take evidence and inquire into the matter in such manner as he may think fit, and if he is still of opinion that the value of the property has been underestimated, may require the applicant to amend the valuation and if the application for probate or Letters of Administration is pending in Court, to file a copy of the amended valuation in such Court.

(4) If, in any such case, the Probate or Letters of Administration has or have been

granted and the applicant amends the valuation to the satisfaction of the Collector and the Collector finds that the fee payable according to the true value of the estate has not been paid in full, he shall proceed under sub-section (4) of Section 58; and if the fee paid is in excess of that payable according to the true value of the estate, the excess fee shall be refunded to the applicant.

- (5)(a) If the applicant does not amend the valuation to the satisfaction of the Collector, the Collector shall move the Court to which the application for probate or Letters of Administration was made for holding an inquiry into the true value of the property.
- (b) The Collector shall not move the Court under clause (A) after the expiry of six months from the date on which the inventory required by Section 317 of the Indian Succession Act, 1925 (Central Act XXXIX of 1925), is exhibited.

**57. Application to Court and powers of Court:** (1) The Court shall when moved by the Collector under sub-section(5) of Section 56, hold or cause to be held by any Court or Officer subordinate to it an inquiry as to the true value at which the estate of the deceased should have been estimated. The Collector shall be deemed to be a party to the inquiry.

(2) For the purpose of any such inquiry the Court or any Court or officer subordinate to it authorized by the Court to hold the inquiry, may examine the applicant on oath either in person or by Commission, and may take such further evidence as may be produced to prove the true value of the estate, and where the inquiry has been entrusted to a Subordinate Court or officer such Court or officer shall return to the Court the evidence taken and report the result of the inquiry and such report and the evidence so taken shall be evidence in proceedings.

(3) The Court on the completion of the inquiry or on receipt of the report referred to in sub-section(2), as the case may be shall record a finding as to the true value at which the estate should have been estimated and such finding shall be final.

(4) The Court may make such order as to the costs of the inquiry as it thinks fit.

**58. Provision for cases where insufficient fee has been paid:** (1)

Where insufficient fee has been paid on any probate or Letters of Administration on account of any mistake or of want of knowledge at the time that some particular part of the estate belonged to the deceased, if any executor or administrator, acting under such probate or letters, applies to the Collector in the Form set forth in part II of Schedule III and pays within six months of the discovery of the mistake or of any effects not known at the time to have belonged to the deceased, the difference between the fee which ought to have been in the first instance on such probate or letters and the fee actually paid, the Collector shall, if satisfied that insufficient fee was paid in the first instance on account of a mistake and without any intention to defraud or to delay the payment of proper fee, cause the probate or letters to be duly stamped.

(2) If, in a case falling under sub-section (1) the executor or administrator does not, within six months referred to in that sub-section pay the deficit fee, he shall forfeit a sum equal to five times the deficit fee.

(3) If, on application being made under sub-section (1), the Collector is satisfied that the application was not made within six months of the discovery of the mistake or of further effects not included in the original valuation or that the payment of insufficient fee in the first instance was not due to a *bona fide* mistake, he shall cause the probate or letters to be duly stamped on payment of the deficit fee together with a penalty not exceeding five times such fee.

(4) If, after the grant of probate or Letters of Administration of an estate, it is found by the Collector that a fee less than that payable according to the true value of the estate has been paid, he shall cause the probate or letters to be properly stamped on payment of the deficit fee, and if he is satisfied that the original undervaluation was not *bona fide*, he shall levy in addition a penalty not exceeding five times the deficit fee.

(5) The Board of Revenue may remit the whole or any part of the amount forfeited under sub-section (2) or of any penalty under sub-section (3) or sub-section (4).

**59. Administrator to give proper security before letters are stamped:**

Where insufficient fee has been paid in the first instance on Letters of Administration, the Collector shall not cause the same to be duly stamped in the manner aforesaid unless the administrator has given such security to the Court granting the Letters of Administration as ought by law to have given on the granting thereof in case the full value of the estate of the deceased had then been ascertained.

**60. Relief when fee has been paid in excess:**

(1) If, at any time after the grant of the Probate or Letters of Administration of an estate, it is discovered that fee has been paid in excess of what was payable according to the true value of the estate, the executor or administrator as the case may be, may apply for a refund to the Collector to whom copy of valuation of the estate was sent under sub-section (2) of Section 52. The application shall be accompanied by an amended valuation in the Form set forth in part II of schedule III together with the probate or Letter of Administration upon which a refund is sought.

(2) If the Collector is satisfied that the amended valuation is correct, he shall—

- (i) endorse a certificate on the stamped Probate or Letters of Administration to the effect that so much of the fee represented by the stamp or stamps used has been refunded; and
- (ii) refund the difference between the fee originally paid and that which should have been paid:

Provided that no refund shall be granted under this section unless the application for refund is made within three years of the date of the grant of the probate or Letters of Administration or within such further period as the Collector may allow;

Provided further that if, by reason of any legal proceedings, the debts due from the deceased have not been ascertained and paid or his effects have not been recovered and made available and in consequence thereof the executor or administrator is prevented from claiming the return of such difference within the period of three years, the Collector may allow such further time for making the claim as may appear to him to be reasonable under the circumstances.

(3) If the Collector refuses to grant a refund, the executor or administrator, as the case may be, may apply to the Board of Revenue for an order of refund. An application for such return shall be accompanied by an amended valuation in the Form set forth in Part II of Schedule III.

**61. Recovery of penalties, etc :** Any fee found to be payable by an applicant for probate or Letters of Administration or by an executor or administrator or any costs under sub-section (4) of Section 57 or any penalty or forfeiture payable by any such executor or administrator may, on the certificate of the Board of Revenue, be recovered from the executor or administrator as if it were and arrear of land revenue

**62. Powers if Board of Revenue:** The powers and duties of the Collector under this Chapter shall be subject to the control of the Board of Revenue.

**63. Refund in cases of rejection of plaint, etc., for delay:** (1) Where a plaint or memorandum of appeal is rejected on the ground of delay in its representation or where the fee paid on a plaint or memorandum of appeal is insufficient and the deficit fee is not paid within the time allowed by the Court, or the delay in payment of deficit fee is not condoned and the plaint or memorandum of appeal is consequently rejected, the Court may, in its discretion, direct the refund to the plaintiff or the appellant of the fee, either in whole or in part, paid on the plaint or memorandum of appeal which was rejected.

(2) Where a memorandum of appeal is rejected on the ground that it was not presented within the time allowed by the law of limitation, one-half of the fee shall be refunded.

In 1986(2) APLJ- 498 (Referring to AIR-1977-AP-367) it was held that, from rejection of Cross Objections on ground of delay, Court got discretion to order refund of CF.

In 1988(2)LS-(SRC)-20 = (2) ALT-967-*K.Obul Reddy v V. Nagaiab*-it was held that ,when plaint rejected before numbering as suit not maintainable plaintiff is not entitled to refund of CF.

In 1997 (3) ALT-432 = (4) ALD 281 = (2) LS -54 -*Poly Print Private Limited v. Canara Bank* - it was held that there is power inherent in Court to see and weigh with equity in each case as to whether CF is liable to be refunded or not - On facts since matter compromised and appeal thereby withdrawn C.F. ordered to be refunded to the appellants.

In 1955-SC-600 = (2) SCR 391 - it was held that where by amendment of plaint alternative claim even given up, the Court

fees already paid cannot be refunded. In 1957-AP-255 - it was held that no refund can be ordered when appeal after registration was withdrawn as unnecessary or infructuous.

**64. Refund in cases of remand:** (1) Where a plaint or memorandum of appeal rejected by the lower Court is ordered to be received, or where a suit is remanded in appeal for a fresh decision by the lower Court, the Court making the order or remanding the appeal may direct the refund to the appellant to the full amount of fee paid on the memorandum of appeal; and, if the remand is on Second Appeal, also on the memorandum of appeal in the first Appellate Court, and if the remand is Letters Patent Appeal, also on the memorandum of Second Appeal and memorandum of appeal in the first Appellate Court.

(2) Where an appeal is remanded in Second Appeal or Letters Patent Appeal for a fresh decision by the lower Appellate Court, the High Court remanding the appeal may direct the refund to the appellant of the full amount of fee paid on the memorandum of Second Appeal if the remand is in Second Appeal, and of the full amount of fee paid on the memorandum of second appeal and the memorandum of Letters Patent Appeal if the remand is in Letter Patent Appeal:

Provided that no refund shall be ordered if the remand was due to the fault of the party who would otherwise be entitled to a refund;

Provided further that, if the order of remand does not cover the whole of the subject-matter of the suit, the refund shall not extend to more than so much fee as would have been originally payable on the part of the subject-matter in respect whereof the suit has been remanded.

In AIR-1980-SC-591 = (1) SCC-198 = (1) SCR-1131- it was held that refund of CF

can be ordered on remand -See also 1955-SC-600, 1955-Mad-241 and 1965-AP-395

**65. Refund in cases of review :** Where an application for a review of judgment is admitted on the ground of some mistake or error apparent on the face of the record and on rehearing, the Court reverses or modifies its former decision on that ground, it shall direct refund to the applicant of so much of the fee paid on the application as exceeds the fee payable on any other application to such Court under Articles 11 (g) and (u) of Schedule II.

**66. Refund of fee paid by mistake or inadvertence:** The fee paid by mistake or inadvertence shall be ordered to be refunded.

On refund of fees paid by mistake or inadvertence-consequences. In 1987(1) ALT-604 - it was held that Section 66 envisages refund of C.F. in the event of any mistake or inadvertence it was a comprehensive term to include mistaken impression of fact or law. Any fees paid by mistake in whatever manner the Court fees is liable to be refunded. In all cases where refund of C.F. is directed, office has to issue a certificate that a refund has been directed and on the strength of which, the Collector of the Government will have to refund the amount to the party. It was held by referring to 1973 -AP-98-and 1934 -Mad-566 as not good law. In that 1973 AP-98 it was held that Court has no power to grant certificate for refund of C.F. on memorandum of cross objections on the ground that appeal has been withdrawn. The only remedy is to apply to the Government for obtaining necessary certificate.

1957-ALT-258- it was held that Court has inherent power to grant refund of excess Court fees even in cases not falling under the express provisions of Court fees Act, 1956-ALT-598 referred.

**67. Exemption of certain documents:** Nothing contained in this Act shall render the following documents chargeable with any fee:

- (i) Memorandum of appearance filed by advocates or pleaders when appearing for persons proceeded against in criminal cases;
- (ii) Application or petition to a Collector or other officer making a settlement of land revenue, or to the Board of Revenue relating to matters connected with the assessment of land, or with the ascertainment of right thereto or interest therein, if presented previous to the final confirmation of such settlement;
- (iii) Application for supply of water belonging to Government for irrigation;
- (iv) Application for leave to extend cultivation or to relinquish land, when presented to an officer of land revenue by a person holding, under a direct engagement with Government land of which revenue is settled but not permanently;
- (v) Application for service of notice of relinquishment of land or of enhancement of rent;
- (vi) Written authority to an agent to detain;
- (vii) First application (other than a petition containing a criminal charge or information) for the summons of a witness or other person to give evidence or to produce a document or for the production or filing of an exhibit not being an affidavit made for the immediate purpose of being produced in Court;
- (viii) Bail bonds in criminal cases other than bail bonds in village Courts recognizance's to prosecute or give evidence and recognizance's for personal appearance or otherwise;
- (ix) Petition, application, charge or information respecting any offence when presented, made or laid to or before a police officer, or to or before the heads of villages or the village police;



- (x) Petition by a prisoner or other person in duress or under restraint of any Court or its Officer.
- (xi) Complaint of a public servant as defined in the Indian Penal Code (Central Act XLV of 1860) or an officer of the State Railway relating to matters arising out of, or in connection with, the discharge of his official duty;
- (xii) Application for the payment of money due by the Government to the applicant, other than an application for refund of lapsed deposit made six months after the date on which the amount lapsed to the Government.
- (xiii) Petition of appeal against any Municipal Tax;
- (xiv) Application for compensation under any law for the time being in force relating to the acquisition of property for public purposes;
- (xv) Petition or appeal by a Government Servant or a servant of the Court of wards when presented to any superior officer of Government against orders of dismissal, reduction or suspension; copies of such orders filed with such appeals, and applications for obtaining such copies;
- (xvi) Complaints, memorandum of appeal, all types of petitions and applications, memorandum of appearance and vakalatnamas filed by the State Government or its lawyers before any Court, Tribunal or other Authority.

Section 67 deals with exemption from CF of certain documents.

In AIR 1978 A.P. 297 (DB) it was held that to release the accused in jail on a petition and memo of appearance no Court fee need be paid and vakalat be filed even accused appearing through advocate as per

Section 67(1) and (10) read with Article 11(s) and Article 11(u) does not apply; In 1965 (2) ALT- 223 = (2) AnW.R.-248 and AIR 1966 AP 239; it was held that on behalf of complainant for complaint and vakalat or appearance there is no exemption from payment of Court fee since Section 67, C.F. Act won't apply.

#### **68. Power to reduce or remit fees:**

The State Government may, by notification in the Andhra Gazette, reduce or remit, in the whole or in any part of the territory of this State all or any of the fees chargeable under this Act, and may, in like manner, cancel or vary such notification.

**69.** Collection of all fees chargeable under this Act shall be by stamps.

#### **70. Stamps to be impressed or adhesive:**

The stamps used to denote any fee chargeable under this Act shall be impressed or adhesive or partly impressed and partly adhesive, as the State Government may, by notification in the Andhra Gazette, from time to time, direct.

**71. Amended document:** Where any document which ought to bear a stamp under this Act is amended merely for correcting a mistake and making it conform to the original intention of the parties, it shall not be necessary to impose a fresh stamp.

**72. Cancellation of stamp:** (1) No document requiring a stamp under this Act shall be filed or acted upon in any proceeding in any Court or office until the stamp has been cancelled.

(2) The Officer appointed from time to time by the Court or the head of the office shall, on receiving any such document effect forthwith such cancellation by punching out the figure head so as to leave the amount designated on the stamp untouched, and the part removed by punching shall be destroyed.

**CIRCULAR OF HIGH COURT  
—ROC No.1234/66-B-1—**

**SUBJECT:-** Stamps-Adhesive Court-fee Stamps - Instructions for prevention of fraud. Certain instances of fraudulent use of defaced adhesive Court-fee stamps have come to the notice of the High Court. The Modus Operandi appears to be to get hold of used adhesive Court-fee labels, cut out the undefaced portion thereof and attach there to the required remaining portion taken out either from a new Court-fee label of small value say 25 paise or from undefaced unpunched portions of an used label and joining them together by fastening both the pieces neatly on an impressed used or new ones, it requires careful scrutiny and observation to detect this type of fraud. It is therefore necessary that the Chief Ministerial Officers attached to the Courts or their assistants who are in charge of scrutiny of Court-fee received on proceedings *etc.*, filed into Courts, should carefully examine the adhesive Court-fee labels affixed to an impressed stamp paper or ordinary paper to avoid being cheated and to prevent loss of revenue to the State.

*The High Court is also of the view that the safeguards already prescribed, if scrupulously adhered to and adopted, would go a long way to prevent all kinds of stamp fraud, Section 72 of the Court-fees Act lays down that no document requiring a stamp under the Act shall be filed or acted upon in any proceeding in any Court until the stamp has been cancelled and that the officer appointed by the Court shall, on receiving any such document, effect forthwith such cancellation by punching out the figure head so as to leave the amount designated on the stamp untouched and the part removed by punching shall be destroyed. The civil rules of practice and circular orders contain certain detailed instructions regarding the punching of stamps. If only the adhesive stamps are cancelled immediately on receipt into Courts by affixing the date stamp thereon and punching the figure-head, it will not be possible to use them over again without fear of detection. The High Court therefore directs that the aforesaid rules should be strictly followed and*

*any violation thereof will be taken serious notice of. The presiding officers of all the sub-ordinate Courts may also impress on the respective Bar Associations the need to insist on supply of loose adhesive Court-fee labels and not accept labels that are already affixed to an impressed stamp or other paper in their own interest.*

**A copy of the circular Orders thus so far issued on the subject are herewith furnished to all the District Judges for being communicated to all the Courts in their district for strict compliance.**

**73. Deduction to be made:** Where allowance is made in this Act for damaged or spoiled stamps, or where fee already paid is directed to be refunded to any person by an order of Court, the Collector may, on the application of the person concerned, pay to him the amount of fee or where damaged or spoiled stamps are produced, he may after satisfying himself about their genuineness, or any other description, or if the applicant so desires, the same amount or value in money provided that in all cases where money is paid in cash, a deduction shall be made of ['six naye paise' for each rupee or fraction thereof]. No such deduction shall, however, be made where refund is claimed in respect of any fee paid in pursuance of an order of Court which has been varied or reversed in appeal.

**74. Penalty:** Any person appointed to sell stamps, who disobeys any rule made under this Act, and any person, not so appointed, who sells or offers for sale any stamps, shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both with fine which may extend to five hundred rupees, or with both.

**75. Powers of High Court to make rules:** (1) The High Court may make rules to provide for or regulate all or any of the following matters, namely:—

- (a) the fee chargeable for serving and executing processes issued by the High Court in its appellate jurisdiction and by the Civil and Criminal Courts subordinate thereto;
  - (b) the remuneration of persons employed by the Courts mentioned in clause(a) in the service or execution of processes;
  - (c) the fixing by District and Sessions Judges and District Magistrates of the number of process servers necessary to be employed for the service and execution of processes issued from their respective Courts and the Courts and subordinate thereto;
  - (d) The display in each Court of a table in English and in the local language or languages showing the fees payable for the service and execution of processes.
- (2) All rules made under sub-section (1) shall be subject to confirmation by the State Government with or without modification and on such confirmation they shall be published in the Andhra Gazette and shall thereupon have effect as if enacted in this Act.

**76. Power of Board of Revenue to make rules:** (1) The Board of Revenue may, with the previous sanction of the State Government, make rules consistent with this Act to provide for or regulate all or any of the following matters, namely:

- (a) the fees chargeable for serving and executing processes issued by the Board of Revenue and by the Revenue Courts;
- (b) the remuneration of persons employed for the service and execution of such processes;
- (c) the fixing by collectors of the number of persons necessary to be employed for the service and execution of such processes;

- (d) the guidance of collectors in the exercise of their powers under Chapter VI;
- (e) the supply of stamps to be used under this Act;
- (f) the number of stamps to be used for denoting any fee chargeable under this Act;
- (g) the keeping of accounts of all stamps used under this Act;
- (h) the circumstances in which stamps may be held to be damaged or spoiled;
- (i) the circumstances in which, the manner in which and the authorizing by which allowance for used, damaged or spoiled stamps may be made;
- (j) the regulation of the sale of stamps to be used under this Act, the persons by whom alone such stamps may be sold and the duties and remuneration of such persons:

Provided that in the case of stamps used in the High Court, such rules shall be made with the concurrence of the Chief Justice.

(2) All Rules made under this section shall be published in the 'Andhra Gazette' and on such publication, shall have effect as if enacted in this Act.

**77. Power of Government to make rules :** (1) The State Government may, by notification in the 'Andhra Gazette', make rules to carry out generally the purposes of this Act.

(2) All notifications and rules made under this section shall, as soon as may be, after they are made, be placed on the table of the Legislative Assembly for fifteen days, and shall be subject to such modification, whether by way of repeal or amendment, as the Legislative Assembly may make during the session in which they are so laid.

**78. Continuance in force of existing rules:** Until rules are framed under Sections 75,76 and 77 and until notifications are issued under Section 68, the rules and notifications now in force in respect of matters referred to, in those sections, shall, insofar as they are not inconsistent with this Act, continue to be in force.

**79. Repeal and Saving:** The Court Fees Act, 1870 (Central Act VII of 1870), in its application to the State of Andhra and in relation to the fees and stamps other than fees and relating to documents presented or to be presented before an officer serving under the Central Government

and the Suits Valuation Act, 1887 (Central Act VII of 1887), in its application to the State of Andhra are hereby repealed.

(2) All suits and proceedings instituted before the commencement of this Act and all proceedings by way of appeal, revision or otherwise arising therefrom, whether instituted before or after such commencement, shall, notwithstanding the repeal of the Court-fees Act, 1870 (Central Act VII of 1870), and the Suits Valuation Act, 1887 (Central Act VII of 1887), be governed by the provisions of the said Acts and the rules made thereunder.

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## UNIFORM CIVIL CODE - A NATIONAL FAMILY LAW : SOME THOUGHTS

By

—UPPULURI MANGAPATHI RAO,

B.Sc., M.A., M.L.,

Lecturer in Law, D.N.R. College of Law,  
Bhimavaram (A.P.)

*“Let us forget I am a Hindu, you are a Muslim”*

*Let us think ‘I’ and ‘mine’ in a common Indian Nationality”.*

—Mahatma Gandhi

The Constitution of India, under Article 44 has directed that “The State shall endeavour to secure for the Citizens a Uniform Civil Code throughout the territory of India”.

The Constitution of India is not to be construed as a mere law, but as the machinery by which laws are made. It is rightly observed that the laws of the land are not sealed in a book, they grow and develop and it is a perennial process. Constitution is a living and organic thing which of all instruments has the greatest claim to be construed broadly and liberally, *Good Year India v. State of Haryana*, AIR 1990 SC p.781

Part-IV of the Indian Constitution contains the Directive Principles of State Policy. The object of the Directive Principles of State Policy is to embody the concept of a Welfare State. The provisions contained in Part-IV shall not be enforceable by any Court, but the principles laid down therein are nevertheless fundamental in the governance of the Country and it shall be the duty of the State to apply these principles while making laws. In many of decisions of the Apex Court, it observed that the Directive Principles have been held to supplement Fundamental Rights in achieving a Welfare State, and the Parliament is within its right to amend the Fundamental Rights for implementing the Directive Principles, so long as the amendment does not touch the basic features of the Constitution of India, *Lakshmi Kanth v. Union of India*, AIR 1987 SC p.232 .