

1957      *Present* : K. D. de Silva, J., and L. W. de Silva, A.J.

PINENCIHAMY *et al.*, Appellants, and WILSON *et al.*, Respondents

*S. C. 170—D. C. (Inty.) Tangalla, 192/L*

*Costs—Claim in reconvention—Enhancement of value of subject matter of action—Civil Procedure Code, Schedule II, Part I.*

Where there is a claim in reconvention, its value must be added to the value of the subject matter of the plaint in order to determine the Class of the action and the scale of costs as set out in the Second Schedule (Part I) of the Civil Procedure Code.

**A**PPPEAL from an order of the District Court, Tangalla.

*A. L. Jayasuriya*, for plaintiffs-appellants.

*W. D. Gunasekera*, for defendants-respondents.

*Cur. adv. vult.*

July 3, 1957. L. W. de SILVA, A.J.—

This appeal raises the question in what class the plaintiffs' proctor's costs should be taxed. The plaintiffs-appellants instituted this action for a declaration of title to certain immovable property, valuing the subject matter at Rs. 500 inclusive of damages. The 1st defendant-respondent in his answer prayed for a dismissal of the action and made a claim in reconvention in a sum of Rs. 500. The value of the subject matter of the action was thus enhanced to Rs. 1,000. In the result, there was an increase in the stamp duty payable on processes. The

stamp duty on other matters was not affected by the enhancement of the class of the case. The plaintiffs succeeded in the action and the defendant's claim in reconvention was dismissed. The decree ordered the defendants to pay "half the stamps and proctor's costs to the plaintiffs." Their proctor thereupon filed the bill of costs according to the enhanced value of the action but the defendants objected to the taxation of the proctor's costs in the enhanced Class iii, alleging that these should be in Class ii in which the action was instituted. After an inquiry, the learned District Judge made an order upholding the defendants' objection and ruled that the plaintiffs' proctor's costs should be taxed according to Class ii and not Class iii.

The matter is governed by the Second Schedule (Part I) to the Civil Procedure Code (Cap. 86) which sets out the scale of costs and charges to be paid to proctors in the District Courts as well between party and party as between proctor and client. It is quite clear from this Schedule that the Class is determined by the cause of action, title to and or property, value of estate or subject matter of the action. Since the value of the subject matter was raised from Rs. 500 to Rs. 1,000 and thus came within Class iii, it is quite impossible to reconcile the learned District Judge's order with the plain requirement of the Code. The increase in the value was an increase for all purposes and did not have the effect of confining the plaintiffs' costs to the Class in which the action was brought. In *Ramalingam v. Ramalingam et al.*<sup>1</sup> where a similar question arose, this Court held that the unsuccessful defendant must pay all the additional costs incurred by the successful parties as a result of the enhanced claim.

We make an order that the plaintiffs-appellants' proctor is entitled to his costs according to Class iii of the Second Schedule of the Civil Procedure Code (Cap. 86) and not according to Class ii in which the action was instituted. The appeal is allowed and the order of the learned District Judge is set aside with costs both here and in the Court below.

K. D. de SILVA, J.—I agree.

*Appeal allowed.*

<sup>1</sup> (1933) 35 N. L. R. 174 at 179.

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