

(1930) 03 MAD CK 0041
In the Madras High Court

Achattil Balakrishna Nair and Others

APPELLANT

Vs

Vishnu Nambudiri and Others

RESPONDENT

Date of Decision : 21-03-1930

Acts Referred:

Citation : AIR 1931 Mad 375

Hon'ble Judges : Ramesam, J

Bench : Division Bench

Judgement

Ramesam, J.—This is a revision petition by the plaintiffs in an original suit in the Subordinate Court of Calicut against an order of the Subordinate Judge directing them to pay additional court-fee. The suit was brought by certain minor members of a Malabar tarwad for a declaration that a certain decree obtained against the karnavan and other minor members represented by the karnavan as guardian is not binding on them and for recovery of the tarwad properties sold in execution of that decree. The decree was a mortgage decree and not only the mortgaged properties, but other properties of the tarwad, were sold in execution of the decree, as it was found that the mortgaged properties were not sufficient to pay off the mortgage. The court-fee paid is Rs. 100 for a declaration and ad valorem court-fee on Rs. 414-6-0, which represents ten times the annual assessment of Rs. 41-7-0 on the properties. Then there is a note added that the value for purposes of jurisdiction is Rs. 9,485-14-3. The Subordinate Judge first refers to some decisions which have no bearing on court-fees. Then he refers to Lakshmi Ammal In Re AIR 1926 Mad 96; V.N. Alagar Aiyangar Vs. Srinivasa Aiyangar and Another, and D. Venkatanarasimharaju v. D. Chandrayya AIR 1927 Mad. 825. In the first two of these decisions there were no decrees sought to be set aside. What were sought to be set aside in those cases were sale deeds executed by the plaintiffs and they were cases in which the plaintiffs cannot recover the properties unless the sale deeds are got over, that is, set aside. But here all that is sought to be got over are decrees, and in the case of decrees the proper prayer is not to set aside the decrees, but one for a declaration that the decrees are not binding on the plaintiffs, and the suit is therefore for a

declaration and consequential relief.

2. The decision in *D. Venkatanarasimha-raju v. Chandrayya* AIR 1927 Mad. 825 is really in favour of the petitioners. The suit filed under 7 (4), Court-fees Act, is a suit for declaration with consequential relief. The plaintiff has got the right to value consequential relief in any way he chooses, subject to the proviso added by the recent amendment, that in the case of immovable properties the value should be at least half the value as arrived at by applying the rules of Clause 5. The valuation in the plaint before me satisfies this requirement of the proviso. The result is that the court-fee by the plaintiffs is correct and the order of the Subordinate Judge has got to be set aside.

3. But it must be pointed out that as a result of this the plaintiffs cannot have the benefit of going on with this suit before the Subordinate Judge. Section 4, Suits Valuation Act, says that the value for purposes of jurisdiction cannot exceed the value as arrived at by applying the rules under the Court-fees Act. If the plaintiffs want to proceed with the suit with a lower court-fee, they cannot have the benefit of having the suit before the Subordinate Judge. While setting aside the order of the Subordinate Judge, I merely point out that the plaint will have to be returned to the proper Court as he is not the Court of the lowest jurisdiction before which it ought to be presented. With these remarks, I set aside the Subordinate Judge's order. Each party will bear his own costs in this petition.