

(1941) 09 MAD CK 0049
In the Madras High Court

Amara Narasimhulu Chetty

APPELLANT

Vs

Thamidalapati China Ramayya Naidu and Others

RESPONDENT

Date of Decision : 22-09-1941

Acts Referred:

Citation : AIR 1942 Mad 502 : (1942) 55 LW 173 : (1942) 1 MLJ 400

Hon'ble Judges : Horwill, J

Bench : Division Bench

Judgement

Horwill, J.—The petitioner purchased a plot of land in Court; auction for a sum of Rs. 239. He was unable to obtain possession and brought the suit out of which this petition arises for possession of the property. He valued the suit at the amount which he had paid in Court auction. The Court thought that insufficient and arbitrarily fixed the valuation at Rs. 1,000 ; and the District Munsif asked the plaintiff whether he would accept that figure or whether he would prefer to have a commission issued to determine its value. The plaintiff accepted the valuation of Rs. 1,000 and paid the additional court-fee. The defendants contended in their written statement that the value of the property was considerably over Rs. 3,000 and that the Court had no jurisdiction to try the suit. The learned Munsif, although he did not determine the actual value of the property, came to the conclusion on the data available to him that it was clear that whether the value of the property was as high as the defendants stated or not, the value certainly considerably exceeded his pecuniary jurisdiction. He therefore returned the plaint for presentation to the proper Court. The matter was taken on appeal to the District Judge, who came to the conclusion that although the District Munsif might have done well to have issued a commission to determine the value of the property, he was nevertheless right. He therefore dismissed the appeal.

2. The real question in this petition is whether, when once the District Munsif had determined the amount of court-fee payable, the District Munsif, in view of Section 12(1) of the Court-Fees Act and Section 14 of the Madras Civil Courts Act, had authority to reconsider the value of the property even for purposes of

jurisdiction. It would indeed be strange if the Court, by making an error in fixing the value of the court-fee payable, could obtain jurisdiction which it did not really possess. Mr. Umamaheswaram for the petitioner is unable to find any authority for that position. On the other hand, there is a direct authority of this Court in *Nara-simhacharyulu v. Zamindar of Bobbili* (1919) 10 L.W. 178 by Kumaraswami Sastri, J., that the determination of the court-fee does not preclude the reconsideration of the value of the property for questions of jurisdiction. He followed *Peari Sha v. Surujmal Marwari* 17 C.W.N. 503 which was decided by a Bench of the Calcutta High Court and it is conceded by Mr. Umamaheswaram that this decision is against him. The learned Judges there followed *Annamalai Chetti v. Lieut-Col. J.G. Cloete* I.L.R.(1881) Mad. 204 and *Kanaran v. Komappan* I.L.R. (1890) Mad. 169. In *Annamalai Chettiar v. Lieut-Col. J. G. Cloetes* I.L.R.(1818) Mad. 204 it was held that the finality referred to in Section 12 (1) was only with regard to arithmetic calculations of the court-fee payable and not to questions of classification. The question was thought to be of importance there because, if the opinion of the Munsif as to the nature of the suit was final, an appeal would not lie. If the Munsif had rightly understood the nature of the suit, an appeal would have lain. The learned Judges therefore held that on this question of jurisdiction it was competent for them to go behind the finding of the Munsif; and the reason they gave was that a determination u/s 12 (1) was not final with regard to the classification of suits. In *Kanaran v. Komappan* I.L.R.(1890) Mad. 169 a suit was dismissed because the additional court-fee fixed by the Court was not paid, and the question there was whether an appeal lay against the order dismissing the suit. The learned Judges followed *Annamalai Chettiar v. Lieut.Col. J.G. Cloete* I.L.R.(1881) Mad. 204 and held that Section 12 did not apply to a wrong determination of the classification of a suit. Much the same question came before a Full Bench in *Madana Mohana Naiko Vs. Krupasindhu Naiko (dead) and Others*, , and the learned Judges were inclined to disagree with the reasoning in *Annamalm Chetti v. Lieut.-Col. J.G. Cloete* I.L.R.(1881) Mad. 204 and concluded that Section 12 (1) applied to questions of classification as well as to mere questions of calculation. They did not discuss the question whether Section 12 (1) would be final as to jurisdiction as well as to court-fee; but certain remarks of Ven-katasubba Rao, J., at page 282, suggest that he did not think so. He says:

The present trend of decisions seems to be that where a plaint is rejected under Clause (6) of Order 7, Rule 11, the order rejecting the plaint is not appealable when the order is based on a question of valuation pure and simple; but if the order involves a decision as to the category to which a suit belongs the order is appealable. As we have said, this view is the result of the endeavour to reconcile the Code with the Court-Fees Act. But is it really necessary to take such a view?

The learned Judge then goes on to give reasons why it is not necessary to do so. If Mr. Umamaheswaram's reasoning were sound, then a determination of the court-fee would be final for all purposes, and even though a suit were dismissed for non-payment of additional court-fee wrongly demanded, no appeal could lie

despite the provisions of Order 7, Rule 11, from the decree. The learned Judges in that case held that an appeal would lie, despite the fact that a decision had been given which was final for purposes of court-fee u/s 12 (1). I, therefore, agree with the learned District Judge that the finding as to the value of the property for purposes of court-fee did not preclude the Court from afterwards coming to the conclusion that it had no jurisdiction to try the suit. The true value of the land determines jurisdiction and is also the basis for calculating court-fee, subject to the qualification of Section 12 (1) of the Court-Fees Act that when once the amount of court-fee has been determined it is final.

3. A minor point raised by Mr. Umamaheswaram is that the District Munsif did not have before him satisfactory material on which he could come to the conclusion that he had no jurisdiction. Both the Courts below were satisfied that the value of the property exceeded Rs. 3,000. I am not prepared to go behind that finding in revision.

4. Finally, it is said that as the respondents submitted to the jurisdiction of the Court by taking part in certain proceedings ordered on the footing that the Munsif had jurisdiction, they were precluded from questioning the jurisdiction of the Munsif later. Whether there was any personal estoppel or not, when the Court found that it was not competent to try the case, it clearly could not proceed and was bound to return the plaint to the plaintiff for re-presentation in a Court of competent jurisdiction.

5. The petition is dismissed with costs.