
(1935) 12 MAD CK 0048
In the Madras High Court

C. Athimoola Mudaliar

APPELLANT

Vs

Fathimathul Kubra Begam Saheba and Others

RESPONDENT

Date of Decision : 05-12-1935

Acts Referred:

Citation : (1936) ILR (Mad) 882 : (1936) 71 MLJ 493

Hon'ble Judges : Wadsworth, J

Bench : Division Bench

Judgement

Wadsworth, J.—The question for determination in this petition is the proper Court-fee payable on a suit brought by an unsuccessful applicant to the Collector for registration as a landholder u/s 3(5) of the Madras Estates Land Act. In the lower Court it was contended that the suit was one to set aside a summary Order of a Revenue Court and was taxable under Article 17(1), Schedule II of the Court-Fees Act. That view was rejected by the lower Court and it is not contended before me that it is tenable, for the decision in the case of Vannisami Thevar v. Chellasami Thevar (1920) 13 L.W. 104 upon which the petitioner relies for the main argument put forward, negatives the contention that the Order of a Revenue Divisional Officer in such a case is an Order of a Revenue Court which it is necessary for the party adversely affected to set aside.

2. It is established that in deciding questions of Court-fee the Court must have regard to the substance and not the form of the relief prayed for. It is also settled that if the relief falls under some special provision of the Court-Fees Act, it cannot be brought under any residuary or general provision. The contention for the respondents is that this is a suit to obtain a declaratory decree where no consequential relief is prayed coming under Article 17-A of the Court-Fees Act. For the petitioner it is now contended that the suit falls under the residuary Article 17-B as being a suit not otherwise provided for, the value of which cannot be estimated. The plaint in question recites that the estate of which the plaintiff claims to be the landholder was subject to an agreement whereby the then owners contracted to sell the estate to the present plaintiff (petitioner). It recites

that this agreement was approved by the High Court with reference to the interests of the minors concerned, that certain sums were paid under the agreement and that the plaintiff who had originally been in possession as lessee continued to be in possession under the agreement by way of part-performance. It goes on to recite that the vendors had refused to complete the contract and had set up the sixth defendant to claim a right to collect the rents, that the plaintiff had applied to the Revenue Divisional Officer for registration as landholder u/s 3(5) of the Madras Estates Land Act and that the latter had refused to recognise him and the Collector had refused to interfere with his order. Then the prayer is that the Order of the Revenue Divisional Officer and the revisional Order of the District Collector should be set aside and that the plaintiff should be recognised as a landholder of the suit estate u/s 3(5) of the Madras Act I of 1908.

3. It being established that the setting aside of the orders of the Revenue Officers is not a legal necessity in a suit of this kind, it seems to me to follow that the essential relief which the plaintiff is claiming, is the recognition of himself as the person entitled to hold possession and to collect the rents of the suit estate. What the plaintiff asks for is a formal statement of his right to collect the rents of this estate and to be recognised by the Government as the person so entitled to collect the rents. Such recognition must necessarily take the form of a declaration and whatever words may be used to describe the decree sought, it is in fact a declaratory decree. The petitioner contends on the strength of the case already referred to, namely, *Vannisami Thevar v. Chellasami Thevar* (1920) 13 L.W. 104 that the declaration, if it be a declaration, sought by means of this suit, is not the type of declaratory decree to which Article 17-A of the Court-Fees Act applied, but some special form of declaration which is a creature of statute and for which no express provision in the Court-Fees Act has been made. In the case just referred to the learned judges do differentiate between what they call the common law right to a declaratory decree and a right conferred by some special statute. It is, of course, arguable that there is no such thing as a common law right to a declaratory decree, but it is not necessary for me to go into that question now. I would, however, restrict the decision in *Vannisami Thevar's* case (1920) 13 L.W. 104 to what it really decides, namely, that in a case of this kind there is no necessity to ask for the cancellation of the Revenue Officer's orders, that Section 42 of the Specific Relief Act does not apply and that there is no necessity therefore to pray for any consequential relief. When so much is conceded, the petitioner would argue that this case does not fall u/s 42 of the Specific Relief Act and therefore does not come under Article 17-A of the Court-Fees Act. I doubt whether that contention is sound. It is true that there are decisions which have held that certain suits of a quasi-declaratory nature provided for by special statutory provisions are not to be treated as declaratory suits for the purposes of the Court-Fees Act. Thus it has been held that a suit u/s 112 of the Madras Estates Land Act, which is a suit to contest the right of a summary restraint for rent, is not a suit for a declaration coming under Article 17-

A of the Court-Fees Act. Vide *Vaithilinga Aiyaswami Aiyar Vs. The District Board of Tanjore*, . It has been held that a suit to direct the registration of a document u/s 77 of the Indian Registration Act is not a suit for a declaration and consequential relief but comes under the residuary provision. Vide *Ramu Aiyar v. Sankara Aiyar* (1907) 17 M.L.J. 573 : ILR 31 Mad. 89 (F.B.). The Privy Council have held that the ordinary classes of claim suits, though they do involve the declaration of a right, are essentially suits to set aside summary orders and that Article 17(1) applies. It seems to me that the proper criterion must be whether a suit asking for a declaration is one of a special character specially provided for by a special statute. If it is merely a suit for a declaratory decree, the declaration asked for being a right which itself arises from a special statute, I do not see why it should not come under Article 17-A of the Court-Fees Act. If, however, it is a special form of suit involving special procedure and special defences such as a suit u/s 112 of the Madras Estates Land Act, or if it involves a special mandatory power granted by statute as a suit u/s 77 of the Registration Act, or if it involves the setting aside of a summary Order of a Court as in the case of the ordinary claim suits, then obviously it is not a simple suit for a declaration with or without consequential relief. But in the present case the relief which the plaintiff seeks is in fact nothing more than a simple declaration that he is entitled as of right to possession of the whole of this estate and to collect the rents thereon. It is true that registration of his capacity as a land-holder is a thing provided for by a special statute and it is true that a bench of this Court has held that technically the suit does not fall u/s 42 of the Specific Relief Act so as to make it necessary to pray for a consequential relief. At the same time I can see nothing in the nature of the suit to give it any peculiar character so as to take it out of the general terms of Article 17-A of the Court-Fees Act. I therefore dismiss the Civil Revision Petition with costs.

4. Time for payment is one month.