
(1953) 02 MAD CK 0013

In the Madras High Court

Case No : Civil Revision Petition No. 229 of 1951

Chellammal and Another

APPELLANT

Vs

K.T.A. Abdul Rahiman Rowther and Others

RESPONDENT

Date of Decision : 05-02-1953

Acts Referred:

Court Fees Act, 1870 — Article 17

Suits Valuation Act, 1887 — Section 8

Citation : AIR 1953 Mad 856 : (1955) ILR (Mad) 675 : (1953) 2 MLJ 827

Hon'ble Judges : Raghava Rao, J

Bench : Single Bench

Advocate : R. Kesava Ayyangar and K. Parasaran, for the Appellant; Govt. Pleader and U. Somasundaram, for the Respondent

Final Decision : Allowed

Judgement

Raghava Rao, J.—The question in this case is one of court-fee and jurisdiction. The Court of first instance returned the plaint for

presentation to the proper Court finding that it exceeded its pecuniary jurisdiction. The Court of appeal having affirmed the order of return of plaint

the plaintiff in the case comes up here in revision.

2. The petitioner is interested in a 2/13th share of "Dharmasanam" village. Items 1 to 5 are the "Dharmasanam" items and items 6 to 8 are certain

"porombokes". He sought partition and delivery of 2/13th share in respect of items 1 to 5, because they were partible in character and sought a

declaration of a joint right in respect of the impartible items 6 to 8. A Commissioner appointed in this suit valued items 6 to 8 with reference to the

trees that stood thereon as at Rs. 2700. It is on the basis of this valuation and on the basis of the supposition that the plaintiff's right in respect of

the items in suit was in respect of the whole in each one of them and not a share only that the Courts below held this suit as beyond the pecuniary jurisdiction of the trial Court.

3. It is contended by Mr. Kesava Aiyangar that the jurisdictional value must be ascertained with reference to the plaintiffs' 2/13th share in respect

of the "Dharmasanam" half of the plaint items. It is also contended that so far as items 6 to 8 are concerned, they are not capable of partition and

that therefore the value put by the plaintiffs on the relief sought in respect of them is final.

4. I am of opinion that the contentions for the petitioners are well founded and must prevail. The first contention is supported by the authority of

cases relating to partition suits in which it is the value of the share of the plaintiff that has been held to matter: vide -- Murkothkandiyil

Muyyarikkandi Kalander and Others Vs. Thattantavita Vatakkayil Muyyanikandi Kunhipakki, . The second contention is supported by the

analogy of cases relating to temple properties or such other trust properties which have been held to be not capable of valuation: vide-- Rajagopala

Naidu Vs. Ramasubramania Aiyar and Another, and -- Manikkam Pillai Vs. N.M. Nagasami Ayyar and Another, . The difficulty, however, in the

way of Mr. Kesava Aiyangar suggested by the learned advocates for the respondents is that items 6 to 8 were valued as at Rs. 2700 with

reference to the trees there on, which by themselves are capable of being valued. But if the case of the trees is to be judged as not dissociable from

the land on which they stood and if the land itself being impartible and communal property not capable of valuation it follows that the value of the

trees cannot affect the question of valuation of the suit. It follows that this revision petition must be allowed with costs, here and in the Courts

below.