(1934) 12 MAD CK 0018

In the Madras High Court

C.M. Maroof Sahib and Others APPELLANT

Vs

Ayyakannu Naicker and Others RESPONDENT

Date of Decision : 14-12-1934

Acts Referred:
Court Fees Act, 1870 — Section 7(iv)(c), 7(v)

Citation : AIR 1935 Mad 569 : (1936) ILR (Mad) 1051 : 157 Ind. Cas. 94 : (1935) 41 LW 562 : (1935) 68 MLJ 755

Hon'ble Judges : Venkatasubba Rao, J

Bench : Division Bench

Judgement

Venkatasubba Rao, J.—The question raised is whether a proper Court-fee has been paid on the plaints in each of these fourteen suits. They

were filed by an inamdar for the recovery of holdings comprised in the inam, each suit being against a particular tenant in respect of his holding. It is

alleged that so far as the plaintiff''s right to the melvaram is concerned, there is no dispute and that the only quarrel between the plaintiff and the

defendants is as regards the former''s right to the kudivaram. The plaintiff brings these suits for a declaration that he is the owner of the kudivaram

and for the recovery in each suit of the specific holding to which it relates. These cases were originally filed in the District Munsif''s Court in 1929

and a plea of res judicata having been raised and upheld, the suits were dismissed. Appeals were taken to the District Court and the finding of the

learned Munsif on the question of res judicata having been reversed the suits were remanded on the 22nd April, 1932 to the trial Court for fresh

disposal. When the cases came back to the District Munsif''s Court, the Court-fee Examiner found on scrutiny that the reliefs were inadequately

valued and that the proper provision applicable is not Section 7 (iv)(c) but

Section 7(v) of the Court-Fees Act. The District Munsif upheld this

view and the first question that arises is, whether the suits are governed by Section 7(iv)(c) or by Section 7(v).

2. On behalf of the plaintiff, it is contended that as what is prayed for, is a declaration with consequential relief, the provision applicable is Section

7(iv)(c). A similar contention was raised before me in Ramakrishnayya v. Seshamma (1934) 68 M.L.J. 369 and I held that in suits to obtain

recovery of possession, the relief ought to be valued u/s 7(v), although the possession is asked for as being consequential on the declaration.

There, I quoted a passage from the judgment of Boddam and Bashyanl Aiyangar, JJ. in Chinnammal v. Madarsa Rowther ILR (1903) Mad. 480 :

14 M.L.J. 343 to the, effect that where the relief prayed for, though consequential upon the declaration, falls within any of the paragraphs, namely,

1 to 3 and 5 to 11 of Section 7, the mode of valuing the relief is as provided in the relevant paragraph out of the said paragraphs and not in Section

7(iv)(c). A little reflection will show that if the opposite view should prevail, most anomalous consequences would follow. Supposing before action,

a person''s right to a sum of money claimed by him is denied. In such a case the plaintiff, contending that the declaration is not an idle relief, may so

frame his plaint as to contain prayers both for declaration and recovery of money. In effect, whenever there is a previous denial of the plaintiff''s

right to the money, he may contrive to file his suit in that form; it seems unreasonable that because there is a prayer for declaration the suit is not to

be valued as for money but u/s 7(iv)(c). Similarly, in every suit for possession of land, on the ground that the plaintiff''s title had been previously

denied, he may frame his plaint as one for declaration and recovery of possession; to hold likewise that such a suit is to be valued not as one for

possession but u/s 7(iv)(c), seems opposed to the scheme of the Act. These examples will serve to show, that it is both good practice and good

sense, that as observed by Boddam and Bashyam Aiyangar, JJ. in the passage quoted above, the relief claimed consequent on the declaration

should be valued under the paragraph dealing with the particular relief and not u/s 7(iv)(c). This view has also been taken in the Full Bench

Judgment in Arunachalam Chetty v. Rangaswami Pillai ILR (1914)Mad. 922 : M.L.J. 118 and again in Rajagopala v. Vijiaragha-valu ILR (1914)

Mad. 1184. In accordance with these decisions I held in the case referred to above, that a suit for declaration and possession is governed by

Section 7(v) and not Section 7(iv)(c). To that view I still adhere notwithstanding the decision in In re Sobhanadri Rao ILR (1932) Mad. 314 : 3

M.L.J. 759 cited for the petitioners. In that case, as in this, the inamdars right to the melvaram was not in contraversy and the only dispute was in

respect of his kudivaram right. Jackson, J. held that Section 7(iv)(c) applied on the ground that:

It can hardly have beeti contemplated that a plaintiff should pay the same court-fee when he sues for possession of an inam against a rival claimant

and when as undisputed inamdar he asserts his title to the kudivaram.

3. I should have regarded it as a binding decision, were it not opposed to the Full Bench ruling and the other cases to which I have referred; in fact,

the view of Jackson, J. seems to be based more upon some principle of natural justice than upon any provision of the Court Fees Act. Suits for

possession of land are in terms governed by Section 7(v) and the fact that the melvaram right is not in dispute, seems to make no difference. I

therefore agree with the lower Court that the provision applicable is Section 7(v) and not Section 7. (iv)(c).

4. In holding that Section 7(v) governs the case, the learned Munsif has applied Sub-clause (d) and the correctness of that view has not been

questioned. Under that sub-clause, it is upon the market-value of the land that the court-fee has to be levied; but in assessing the market-value, the

lower Court has made no deduction in respect of the melvaram right, regarding which there is no dispute. The kudivaram right alone (which in the

present actions constitutes "" the land "" under this section) being the subject-matter of the suits, it is on the market-value of that right, that the Court-

fee has to be levied. I therefore direct that the lower Court, while making a computation on this basis, shall make the necessary deduction.

5. There is no substance in the last contention of the petitioners, that the District Munsif was wrong in revising the valuation, when the cases came

back to him for fresh disposal on an order of remand. The Court''s power to correct the valuation is not limited under Order 7, Rule 11 of the

CPC to any particular stage of the suit. It has been held that the power under that provision to reject a plaint is not exhausted when it has been admitted and registered. That being so, the Court must be held to retain the power till the point is raised and it decides it, whatever the stage may

be in the course of the trial. Moreover, the analogy of Section 12 of the Court Fees Act which says that even a Court of appeal, if it finds that a

question was wrongly decided to the detriment of the revenue, may exact the proper Court-fee, also shows the trial Court''s power may be

exercised at any stage of the suit.

6. I direct that the parties shall bear their own costs and the Government Pleader''s fee in all the fourteen petitions is fixed at a consolidated sum of

Rs. 200.

