

**(1950) 09 MAD CK 0030**

**In the Madras High Court**

**Case No :** Civil Revision Petition No. 426 of 1949

Devineni Narasamma

APPELLANT

Vs

Devineni Satyanarayana, minor by guardian Gondi  
Chandramma and Others

RESPONDENT

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**Date of Decision :** 22-09-1950

**Acts Referred:**

Court Fees Act, 1870 — Article 17A, 7(IV), 7(IVA)  
Court Fees Rules — Rule 2  
Suits Valuation Act, 1887 — Section 9

**Citation :** AIR 1951 Mad 793 : (1951) ILR (Mad) 751 : (1951) 64 LW 249 :  
(1951) 1 MLJ 436

**Hon'ble Judges :** Rajamannar, C.J.; Viswanatha Sastri, J

**Bench :** Division Bench

**Advocate :** P.M. Srinivasa Iyengar, for the Appellant; Govt. Pleader and C.  
Kondiah, for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

Viswanatha Sastri, J.—This civil revn. petn. raises a question as to the amount of court-fee payable by the petnr. on a memorandum of

appeal filed by her in the Ct. of the Dist. J., Ananta-pur against the decree of dismissal of her suit, O. S. No. 199 of 1947, by the Dist. Munsif's

Ct. of Gooty. In para. 13 of the plaint she prayed for a decree

cancelling the decree in O. S. No. 29 of 1942 on the file of this Ct. & all the proceedings in the appeal therefrom & the decree passed in the

appeal A S. No. 91 of 1944; or declaring the same to be void, invalid, & not binding on the pltf.; & directing the defts, or such of them as may be

found liable to pay the pltf. the costs of this suit.

O. S. No. 29 of 1942 was a suit filed by the present deft. 1 for possession of the

lands described in Schedules A & B of the plaint, claiming title under a will executed by the pltf.'s deceased husband. The pltf. was impleaded as deft. 3 & as a major in that suit, which ended in a decree in favour of deft. 1, then pltf. The decree was affirmed on appeal in A. S. No. 91 of 1944. In her plaint the pltf. alleged that though she was impleaded as a major, she was in fact a minor when O. S. No. 29 of 1942 was decided & that she was not represented by any guardian. She also alleged that she had all along been in possession of the lands described in Schedules A & B to her plaint & that deft. 1 recently attempted to interfere with her possession under colour of a delivery of the properties to him in execution of the decree in O. S. No. 29 of 1942. The plaint was valued u/s 7(IV)-A) of the Court-fees Act, hereinafter referred to as the Act, & "ad valorem" court-fee was paid on the value of the lands in Schedules A & B, calculated in the manner provided by Section 7(V) of the Act. The suit having been dismissed, an appeal was filed from the decree with a court-fee of Rs. 15 treating the suit as one falling within Article 17-A of Schedule II of the Act. On 28-10-1948 the appellate Ct. passed an order fixing the market value of the lands in Schedules A & B at Rs. 2712 & calling upon the applt. to pay "ad valorem" Court-fee on that amount both on the plaint & the memorandum of appeal. The Court-fee demanded not having been paid, the memorandum of appeal was rejected by an order dated 22-11-1948. It is against this order that the civil revn. petn. has been preferred.

2. It is argued for the petnr. that the allegations in the plaint must be taken to be correct for the purpose of levying Court-fee; that her case was that though she was impleaded as a major in O. S. No. 29 of 1942, which ended in a decree against her she was in fact a minor; & that the decree was, for that reason, wholly void. Though she engaged a pleader & gave evidence in that suit to the effect that her husband had died intestate & the will relied upon by the pltf. was not genuine, it is her case now that she was a minor all along, that she was not aware of the nature of the dispute in that suit & that no guardian had been appointed to represent her. The decree in O. S. No. 29 of 1942, affirmed on appeal in A. S. No. 91 of 1944, was "ex facie" a decree against the pltf., then deft. 3, as a major, & it is this decree that is sought to be declared invalid by the pltf.

The question is, what is the provision of the Court-fees Act that is applicable to

the case & on what basis should Court-fee be paid.

3. It is contended for the petnr. that though she has prayed only for cancellation of the decree in O. S. No. 29 of 1942, yet the Ct. must have

regard to the substance of the plaint & treat the suit as one merely for a declaratory relief. Reliance is placed on a decision of Krishnaswami

Nayudu J. in Azima Bi Vs. Zohara Bi and Others, , where the facts were somewhat similar to those of the present case, except that the pltf. in that

case had also prayed for recovery of possession paying Court-fee u/s 7(V) besides a fixed Court-fee of Rs. 15 for a declaratory relief under

Schedule II, Article 17-A of the Act. The learned Judge observed :

It is well established that when a person is a party to the decree he should necessarily ask for relief to have the decree set aside before he could

claim a share in the property & the question in this case is whether the pltf. was a party to the decree in O. S. No. 328 of 1943. On the allegations

in the plaint she was a minor & there was no guardian "ad litem" appointed for her. Reference is made to the decision reported in "Abdulla v.

Sabramania Pattar", 71 MLJ 383 : AIR 1936 Mad 470, where it was held that the minors could not be deemed to be parties to a prior decree

since they alleged that the decree was obtained fraudulently & collusively & that the guardian had acted "mala fide" & negligently. In this case there

was no guardian at all that represented the minors & a decree passed against a minor without representation by a proper guardian would be a

nullity. This view is supported by the decision of Ramesam J. in (Gunnam) Gangaraju Vs. (Arimilli) Satyanarayana and Others, . Since the decree

is a nullity the petnr. is not bound to have the decree set aside & so the Court-fee u/s 7, Clause (IV-A) is not payable.

4. The learned Judge distinguished "Ramasami v. Rangachariar<sup>1</sup>, ILR (1940) Mad 259 : AIR 1940 Mad 113 on the ground that in that case the

pltf. who, as a minor, was a party to the previous decree had been duly represented in the suit by a guardian appointed, by the Ct. & therefore it

was incumbent upon him to sue for a cancellation of that decree.

5. Assuming the correctness of the petnr.'s contention that the suit in substance was for a mere declaration that the decree in O. S. No. 29 of

1942 was not binding on her, & that to the decree purporting to have been passed against her as a major she could not legally be considered to

have been a party by reason of her minority & non-representation by a guardian, we are of the opinion that when the pltf. came to Ct. with a

prayer that the decree in O. S. No. 29 of 1942 should be declared to be invalid, she had to pay Court-fee on the plaint under Rule 2 of the Court-

fee Rules framed u/s 9, Suits Valuation Act. The rule, which came into force on 1-11-1943, runs thus :

In suits for a declaration or for an injunction consequent on a declaration that a decree for money or any other property having a money value is

not binding on the pltf. who was not a party to the decree, the subject matter of the suit shall, for purposes of jurisdiction & Court-fee, be valued at

the amount or value of the property for which the decree was passed; Provided that if the value of the property or the interest which the pltf. seeks

to be declared not liable for the decree is less than the value of the decree the plaint should be valued as if it were one for the possession of such

property or interest.

This rule was not brought to our notice by the learned counsel in this case, nor does the attention of the learned Judge who decided Azima Bi Vs.

Zohara Bi and Others, , appear to have been drawn to it. Under this rule "ad valorem" Court-fee would be payable on the value of the subject-

matter of the suit, that is, the land described in the Schedule A & B to the plaint & decreed in the previous suit. The manner in which that value has

to be calculated will be dealt with later.

6. As the arguments before us were confined to the applicability of Section 7(IV-A) of the Act, we shall indicate our opinion on this point. Not

only persons who are parties to a decree but persons not "eo nomine" parties but represented by those on record may, under the personal law

governing the parties, be bound by the decree. Both these sets of persons have a right to set aside the decree or to have it declared invalid by a

separated suit if there are justifying reasons recognised by law. But as pointed out by Venkataramana Rao J. in Vedala Vallabhacharyulu and

Another Vs. Vedala Rangacharyulu and Others, , there was, with reference to the Court-fee payable, a distinction between an obligation imposed

on a party by a decree against him & an obligation imposed on him in pursuance of the decree by the personal law to which he was subject. The

learned Judge said,

In the one case he seeks to get rid of the obligation existing under the decree; in the other he seeks to have it declared that he or his interest in the estate, which is sought to be made liable, cannot be rendered liable under the decree by virtue of the said personal law. In the latter case he is not bound to sue for cancellation of the decree: in the former case he is bound to sue for cancellation. Even if he sues for a bare declaration, it necessarily involves cancellation & the form of the relief he prays for is immaterial, as pointed out in *Paluri Venkatasiva Rao Vs. Bodapati*

*Venkatanarasimha Satyanarayanamurthy and Others, .*

7. The same distinction was drawn by the F. B. in "*Ramaswami v. Rangachariar*", ILR 1940 Mad 259 : AIR 1940 Mad 113 , the relevant

passage being as follows :

In respect of decrees passed against him (minor) in suits in which he had been "eo nomine" impleaded as a party, it is plain that he must pay the

fee prescribed by Section 7(IV-A). Such decrees bind him until set aside & therefore he cannot seek to obtain a decision on the footing that his

interest in the joint family property is not affected by them. It makes no difference that the pltf. is a minor or merely a junior member of the family,

as the considerations which apply to the decree of a competent Ct. once it is passed are essentially different from those applicable to the

transactions of a party. The pltf. must be held to have impliedly asked for a cancellation of the decree passed against him & must accordingly

stamp his plaint "ad valorem" on the amount of the decrees & not merely on his share fraction, as his liability is for the full amount though

necessarily limited to the extent of his share in the joint family assets.

Section 7(IV-A) of the Act was held to be applicable only to a case where a person who was "eo nomine" a party to the decree sought to set it

aside or to have it declared invalid. In such a case "ad valorem" Court-fee was payable on the amount of the decree sought to be set aside or the

value of the property forming the subject matter of such decree. In other cases Article 17-A of Schedule II was held to be applicable & a fixed

Court-fee was payable. Rule 2, Court-fee Rules has effected a change in the law as previously understood. Where a person not a party to a

decree sues for a declaration that the decree is not binding on him or his interest, he must pay "ad valorem" Court-fee on the amount of the decree

or the value of the property decreed. If however the value of the property or the interest claimed by the pltf. in the later suit is less than the value of

the decree, he need pay Court-fee as in a suit for possession of that interest or property alone. To this extent there is a difference between the

position of a person who is a party to a decree & one who is not a party, but no further. Neither Article 17-A of Schedule II of the Act nor

Section 7(IV-C) can now be invoked by a person seeking to have a decree declared invalid even where he was not a party to the decree. The

Court-fees Act does not however compel anybody to seek such a declaration if it is unnecessary under the substantive law.

8. In Achattil Balakrishna Nair and Others Vs. Vishnu Nambudiri and Others, , Ramesam J. observed that 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 pltf.

In Paluri Venkatasiva Rao Vs. Bodapati Venkatanarasimha Satyanarayanamurthy and Others, Reilly & Ananthakrishna Aiyar JJ. pointed out that

this distinction was merely verbal & that a suit to set aside a decree was a well known form of action both in England & in India." In the view of the

learned Judges, the intention of the Legislature in enacting Section 7(IV-A) of the Act was to bring within its ambit suits in which the pltf. prayed

that a previous decree obtained against him was of no effect, whether he worded his prayer as one ""to declare a decree void"" or to ""set aside a

decree"" or to ""cancel the decree"". This decision was followed by another D. B. in The Secretary of State for India in Council Vs. A.R. Lakhanna, .

The distinction between a decree to which the pltf. was a party & a decree to which he was not a party & the distinction between void & voidable

decrees, may be relevant in connection with other branches of the law, as for instance, in determining the period of limitation applicable to a suit to

set aside the decree & the rights of innocent third parties who have acquired for value an interest in the subject matter of the suit. But so far as the

Court-fees Act is concerned, a suit by a party to the decree, which is "ex facie" regular & within the jurisdiction of the Ct., to have it declared void

as against him is taken out of Article 17-A of Schedule II & Section 7(IV-C) & brought within Section 7(IV-A) of the Act.

9. Mr. p. M. Srinivasa Aiyangar for the petnr. relied on a decision of Cornish J. in "Abdullah v. Subramania", 71 MLJ 383 : A I R 1936 Mad

470, where the learned Judge held that a suit by a minor to set aside a decree to which he was a party, on the ground that his interests had been sacrificed by his guardian "ad litem", fell within Article 17-A of Schedule II & outside Section 7(IV-A) of the Act. With great respect we are unable to accept the correctness of this decision. The decree sought to be set aside in that case was not on the face of it a nullity or one passed without jurisdiction, but was a decree capable of execution until declared inoperative by a decree in a subsequent suit. The minor could not have resisted execution of the decree on the ground put forward in the subsequent suit. In such a case a subsequent suit by the minor to have the decree set aside would clearly fall within Section 7(IV-A) of the Act.

10. It is possible to conceive of cases where a decree might be held to be void on its face without any further investigation or enquiry. Where a minor is impleaded in a suit statedly as a minor without any guardian at all being appointed to represent him, the decree on its face would bear the stamp of nullity against him. Rao Bahadur Suna Ana Ramanathan Chettiar Vs. Meyna Pana Palaniappa Chettiar and Others, is such a case. A dispute may arise as regards the identity of the person whose name appears on the face of the decree & it might be open to a person to say that he was not the person impleaded as a party to the suit but some one else. Where a person is impleaded as a major deft, in a suit & a decree is passed against him by a Ct. having jurisdiction the decree is "ex facie" regular. It is true that a Ct. cannot legally pass a decree against a person not a party to the suit at all or not properly represented on the record. It is also settled law that an executing Ct. cannot go behind the decree, but must take it at its face value. If the objection to the validity of the decree is not apparent from the decree itself, but requires a separate investigation or enquiry involving, it may be, the reception of evidence, oral or documentary, the executing Ct. cannot entertain the objection as a bar to execution. It is not as though the objector in such cases has no remedy except in the executing Ct. It is open to him to bring a suit to set aside the decree or for declaring it invalid as against him.

11. The petitioner's learned counsel relied upon the decision in "Rashidunnisa v. Mohamed Ismail", 31 All 572: 36 I A 168. But in our opinion this decision does not support his contention that a decree passed against a minor

without his being represented by a duly qualified guardian "ad litem"

is a nullity in the sense that its existence can be ignored even by the executing Ct. All that the Judicial Committee decided was that an objection to

the validity of a decree passed against a minor on the ground that the guardian appointed for him in the suit was legally disqualified from being a

guardian or had an interest adverse to that of the minor could not be the subject of enquiry u/s 244, C. P. C., 1882, but could properly be agitated

in a separate suit instituted by the minor. This decision does not affect the principle that a decree, however, erroneous In law, is good until it is set

aside or declared inoperative & can be executed according to its terms unless it appears from a perusal of the decree itself or the decree &

judgment, that It was passed without jurisdiction. Reference was also made to a decision of Mack J. in Chandana Satyanarayana and Another Vs.

Sri Venkatachalaswami Temple of Gudur, where the learned Judge had to consider the Court-fee payable in a case where the pltfs. sued for a

declaration that a prior decree to which they had been parties, was not. binding on them & for an injunction restraining execution of the decree.

There was an allegation that the pltfs., who had been minors at the time of the passing of the prior decree, had been impleaded as majors in the

suit. The learned Judge observed :

If at the time of the decree in O. S. No. 456 of 1938 the present pltfs. were, in fact minors, though impleaded in that litigation as majors, the

decree would be a nullity so far as they were concerned, & they would be entitled to ask for a declaration without any obligation to cancel the

decree & to pay Court-fee u/s 7(IV-A). This is a case rather on the border line & midway between that on which a Court-fee of Rs. 100 is

payable under Article 17-A of Schedule II, namely, one for a pure declaration without consequential relief such as that considered in "Abdulla v.

Subramania", 71 MLJ 383 : AIR 1936 Mad 470 & a suit for cancellation of a decree which should be governed by Section 7(IV-A). A "via

media" has been adopted for Court-fee valuation, namely, Section 7(IV-C), which cannot be said in the circumstances to be incorrect or

inappropriate.

12. We are, with respect, unable to follow this reasoning. If there is an "ex facie" valid decree executable as it stands against a deft., & he seeks to

get rid of its effect by a suit, he is suing for its ""cancellation"" which expression, as we have already observed, includes ""setting aside"" or ""declaration of Invalidity"" of the decree. For the purposes of Section 7(IV-A) of the Act these reliefs are treated alike. Even if the pltf. in the subsequent Suit be considered not to have been a party to the prior suit, still if he sues to set aside the decree in that suit, Rule 2, Court-fees Rules would govern the case & "ad valorem Court-fee would be payable. In S. Ramasubba Iyer and Another Vs. Ayyalu Naidu and Another, the learned Judges held that where persons not being parties to a decree sue as representatives of a trust which was represented in a prior suit by another person, for a declaration that the decree passed in the prior suit was not binding on the trust, the suit must be regarded as one on behalf of the trust for cancellation of the decree within the meaning of Section 7(IV-A) of the Act though "eo nomine" the parties to the subsequent suit were not on the record in the previous suit. In "Sethurajan v. Gurusami", ILR 1937 Mad 834 : AIR 1937 Mad 509 a D. B. of this Ct. had to consider the case of a decree passed against a person as a major to the execution of which objection was taken on the ground that he was a minor at the time of the decree. After an examination of the previous decisions, both of this & other H. Cs., the learned Judges held that it was not open to the executing Ct. to consider the objection or to investigate matters relating to validity of the decree itself when on the face of the decree or the decree read with the judgment, it did not appear that it was void & made without jurisdiction.

13. It cannot be said that the decree in O. S. No. 29 of 1942 was "ex facie" void or one passed without jurisdiction. The executing Ct. could not have refused execution of that decree unless it went behind it & took evidence as regards the age of the pltf., a matter which has been made the subject of investigation in the present suit but which it was not open to the executing Ct. to enquire into. The present suit might be considered to be one for ""cancellation"" of the decree in O. S. No. 29 of 1942 falling within Section 7(IV-A) of the Act. Even if the petnr can be considered not to have been a party at all to the prior suit on the strength of the allegations in her plaint, still since she has chosen to sue for a declaration of the invalidity of that decree, she must pay Court-fee under the main part of Rule 2, Court-fees Rules, the proviso being inapplicable to the case.

Whether the suit is governed by Section 7(IV-A) of the Act or Rule 2, Court-fees Rules, "ad valorem" Court-fee must be paid on the market

value of the lands in Schedules A & B of the plaint which formed the subject of the previous decree. Kolachala Kutumba Sastri Vs. Lakkaraju

Bala Tripura Sundaramma and Others, The order of the learned Dist. J. is therefore correct & this civil revn. petn. must be dismissed with costs

(one set). Time for payment of the deficit Court-fee is allowed till 20-10- 1950 by consent.