
(1929) 01 MAD CK 0008
In the Madras High Court

Doraiswamy Mudaliar and Others

APPELLANT

Vs

Thangavelu Mudaliar and Others

RESPONDENT

Date of Decision : 29-01-1929

Acts Referred:

Court Fees Act, 1870 — Section 7(iv) A

Citation : 119 Ind. Cas. 38

Hon'ble Judges : Venkatasubba Rao, J

Bench : Single Bench

Judgement

Venkatasubba Rao, J.—This petition raises a question relating to Court-fee as well as jurisdiction. The point in regard to Court fee having

been decided by the lower Court in favour of the plaintiffs, the reason for my interfering in revision is, that its decision is wrong on the question of

jurisdiction. See the judgment in Kalliya Pillai v. Ramaswamy Pillai 119 Ind. Cas. 35 : (1929) M.W.N. 286 : 29 L.W. 584 : AIR 1929 Mad. 396.

2. The plaintiffs allege in their plaint that their father entered into partnership with defendants Nos. 1 to 3 which was to remain in force till 1931,

that after their father's death in 1925, their mother agreed with the said defendants to release the plaintiffs' rights in the partnership and executed a

release deed, dated the 10th of April, 1926. After the 1st plaintiff attained majority in 1927, this suit was filed for obtaining a declaration that the

release deed is not binding upon the plaintiffs. They allege that the deed was brought about by fraud and undue influence and that their rights are

not affected by the release deed. The plaintiffs pray for a declaration that it is invalid and for an injunction restraining the defendants from interfering

with their participation in the business of the partnership. The lower Court has held that the suit falls within Section iv(c) of the Court Fees Act,

which relates to a suit.

To obtain a declaratory decree or order where consequential relief is prayed.

3. If this section applies, the plaintiffs would be at liberty to value the relief at any amount fixed by them. In this case they valued the relief at Rs.

2,100 and filed the suit in the Court of the District Munsif.

4. The question to be decided is, are the plaintiffs bound to get the release deed set aside? If they are, the form of the plaint may be disregarded,

for in substance, the relief claimed is one for cancellation. The transaction was entered into by the mother of the plaintiffs as their guardian. Can it

be said that such a transaction is an absolute nullity? In my opinion, Article 44 of the Limitation Act clearly applies. I am not now concerned with

cases which have held, that in the case of alienations by managing members of a Hindu co-parcenary, it is unnecessary to get the transaction set

aside. The case relied upon by the lower Court *Arumilli Veeraragavalu Vs. Arumilli Sreeramulu and Others*, is a case of this description, In the

present case, I am not called upon to consider whether this decision is correct or not. The alienation in question was made by the mother of the

plaintiffs, their guardian under the Hindu Law. In such a case the transaction is voidable and not void. Then again, the question does not arise

whether Article 44 does or does not apply to an alienation by an unauthorised person. In this case the complaint in short is that an authorised

guardian effected an unauthorised transfer. An alienation by a guardian must be regularly set aside. See *Mudugula Latchiah v. Pally Mukkalinga* 30

M. 393 : 2 M.L.T. 351 : 17 M.L.J. 220 *Muthukumara Chetty v. Anthony Udayan* 24 Ind. Cas. 120 : 38 M. 867 : 15 M.L.T. 361 : 29 M.L.J.

617, *Kandasami Naicken v. Irusappa Naicken* 40 Ind. Cas. 664 : 41 M. 102 : 33 M.L.J. 309 and *Arumugam Pillai v. Pandigam Ambalam* 62

Ind. Cas 630 : 40 M.L.J. 475 : 13 L.W. 416 : 29 M.L.T. 255 : (1921) M.W.N. 255. I am, therefore, disposed to read the plaint as if it contains a

prayer for the cancellation of the release deed.

5. In this view, the section of the Court Fees Act applicable is 7 (iv)A. It reads thus:

In a suit for cancellation of a decree for money or other property having a money value, or other document securing money or other property

having such value, according to the value of the subject-matter of the suit.

6. The words "securing money or other property" are not happy; but the question is: Is this or not a suit for cancellation of a document securing property having money value? I think it clearly is. I have no doubt that the release deed in question is a document securing property; in other words, by that document, the property covered by it is made secure to the defendants. Can there be any doubt that a sale deed comes within the terms of this section? The present instrument does not materially differ from a sale-deed. By that, the rights of the plaintiffs in the partnership and its property have been transferred for consideration to the defendants. The word "secure" may mean according to the Oxford Dictionary "to make the tenure of a property secure to a person I am, therefore, of the opinion that the proper section applicable is 7(iv) A. If that applies, what is the proper valuation of the suit? The section says:

The value of the suit shall be deemed to be--if the whole decree or other document is sought to be cancelled, the amount or the value of the property for which the decree was passed or the other document executed.

7. What then is the value of the property for which the release deed was executed? It recites that the consideration paid to the plaintiffs' mother is

Rs. 3,461-8. The plaintiffs do not suggest in their plaint that this amount was not in fact paid. Their complaint is that the deed is vitiated by fraud

and undue influence and is even otherwise not binding upon them. I am disposed to read the plaint as meaning that their rights which their mother

gave up, are worth to them much more than Rs 3,461-8. It is not to be understood that I decide that the plaintiffs are precluded from proving that

consideration did not pass either wholly or partly. At present I am concerned with the plaint as it stands and I cannot help thinking that, according

to the plaintiffs, the property which their mother gave up that is, their interest in the partnership is worth to them more than the amount mentioned in

the deed. If that be so, the suit is beyond the pecuniary jurisdiction of the District Munsif.

8. The order of the lower Court is reversed and the civil revision petition is allowed. I direct the plaint to be forwarded to the District Munsif's

Court for being returned by that Court to the plaintiffs for presentation to the proper Court.

9. The respondents shall pay the costs of this petition.