

(1935) 12 MAD CK 0017
In the Madras High Court

G. Athimoola Mudaliar

APPELLANT

Vs

Fathimathul Kubra Begum Saheba and Others

RESPONDENT

Date of Decision : 05-12-1935

Acts Referred:

Citation : AIR 1936 Mad 383

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 land-holder u/s 3(5) 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(i), Schedule 2, 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 Vanniswami Thevar v. Chellaswami

Thevar 1921 MWN 193, 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. It is established

that in deciding the 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, 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 estates of which the plaintiff claims to be the land holder was

subject to an agreement whereby the then owners contracted to sell the estate to the present plaintiff (petitioner).

2. 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 defendant 6 to claim a right

to collect the rents, that the plaintiff had applied to the revenue divisional officer for registration, as a land-holder u/s 3(5), 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

land-holder of the suit estate u/s 3(5), Madras Act 1 of 1908. 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 Vanniswami Thevar v. Chellaswami Thevar 1921 MWN 193, 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, 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.

3. 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 *Vanniswami Thevar v. Chellaswami Thevar* 1921 MWN

193 to what it really decided, 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, 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, Specific Relief Act, and therefore does not come under Article 17-A,

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, Madras, Estates Land Act, which is a suit to contest the right of summary distraint for rent, is not a suit for

declaration coming under Article 17-A, Court Fees Act: vide *Vaithilinga Ayyasami Iyer v. District Board of Tanjore* 1930 52 Mad 972, It has

been held that a suit to direct the registration of a document u/s 77, Registration Act, is not a suit for a declaration and consequential relief, but

comes under the residuary provision: vide *Ramu Ayyar v. Sankara Ayyar* (1908) 31 Mad 89. 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(i)

applies.

4. 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, 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, Madras Estates Land Act, or if it involves a special mandatory power granted by statute as a suit u/s 77,

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, 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, Court-fees Act, and I therefore dismiss the Civil Revision Petition with costs. Time for payment is one month.