

(1956) 08 MAD CK 0022
In the Madras High Court

G. Meenakshisundaram Pillai

APPELLANT

Vs

Ponnu alias Subbiah Chettiar and Others

RESPONDENT

Date of Decision : 10-08-1956

Acts Referred:

Citation : (1956) 2 MLJ 559

Hon'ble Judges : Panchapakesa Ayyar, J

Bench : Single Bench

Judgement

Panchapakesa Ayyar, J.—This is a petition filed by one Meenakshisundaram Pillai, the plaintiff in O.S. No. 62 of 1952 on the file of the

Sub-Court, Madurai, to revise and set aside the order of the learned Subordinate Judge directing him to pay Court-fee on Rs. 31,000 instead of a

fixed Court-fee of Rs. 100 paid by him, under Article 17-B of Schedule II of the old Court-Fees Act, on the ground that the subject-matter of the

suit was incapable of valuation.

2. I have heard the learned Counsel for the petitioner and the learned Counsel for the contesting respondents, and also the learned Government

Pleader as a matter of Court-fee is involved. The facts were briefly these. The suit properties originally belonged to the petitioner. They were sold

to one Alagannan Chetti, whose legal representatives are defendants 1 to 6 for a sum of Rs. 31,000 by a sale deed, dated 5th April, 1935. On the

same day, a contemporaneous agreement was alleged to have been entered into between the plaintiff and Alagannan Chetti, whose terms provided

for accounting of ultimate sale proceeds and were as follows. Alagannan was to convey the properties to any person nominated by the plaintiff and

to take Rs. 31,000 out of the sale proceeds realised on such sale for himself and

to pay the balance over to the plaintiff; and in case the sale to such nominees was for a sum less than Rs. 31,000 the plaintiff was to make good to Alagannan the deficit. A period of four years was fixed for the plaintiff to nominate such would-be purchasers. If the plaintiff was unable to procure such purchasers within the four years period, still the two-way agreement was not to lapse, but Alagannan himself was to sell the properties to persons of his choice and keep Rs. 31,000 out of the sale proceeds for himself and pay over the balance to the plaintiff; and if a sum less than Rs. 31,000 was realised by such sale, he was entitled to recoup the deficit from the plaintiff. Defendants 7 to 9 and 10 were impleaded as subsequent purchasers of some of the suit properties for sums aggregating to Rs. 18,000 from Alagannan. The plaintiff alleged that the properties sold to these defendants were really worth Rs. 31,000 and that the unsold properties still with Alagannan and his legal representatives were worth Rs. 35,000. So the plaintiff valued the properties notionally at Rs. 66,000, including in such valuation, a sum of Rs. 13,000 (31,000-18,000) in excess of the price for which some of the properties were actually sold to defendants 7 to 9 10. But when it came to a question of valuing the suit, the plaintiff valued his relief for the purchase of jurisdiction at Rs. 8,000 and contended for the purposes of Court-fee that the relief was incapable of valuation and paid a fixed sum of Rs. 100.

3. On objection being taken in a check slip, the plaintiff's counsel admitted before the lower Court without conceding that the relief was capable of valuation, the plaintiff's liability to pay Court-fee on Rs. 8,000 the approximate and estimated sum due to him on the sales under the agreement but on nothing more. The lower Court considered that, in effect what the plaintiff wanted was a reconveyance of the properties for himself or his nominees, for the same sum of Rs. 31,000 as was paid by Alagannan or in the alternative that the plaintiff at least wanted the properties to be rid of the burden of the original same amount of Rs. 31,000. So it directed the plaintiff to pay Court-fee on Rs. 31,000 as in a suit for reconveyance or for redemption. It was of opinion that on, his expressing hopes of getting a maximum value of Rs. 66,000 he might be even liable to pay Court-fee on Rs. 35,000 (Rs. 66,000-Rs. 31,000). But he was given the benefit of the lesser of the two Court-fees and therefore asked to pay on Rs.

31,000 as for reconveyance or redemption. The plaintiff is dissatisfied, and has filed this petition.

4. This is an anomalous case and is neither a reconveyance nor a redemption nor an accounts suit proper and has to be decided on its own facts. I

cannot agree with the learned Counsel for the plaintiff that the relief is incapable of valuation and that therefore the fixed Court-fee of Rs. 100 paid

would be sufficient. Nor can I agree with Mr. A.V. Narayanaswami Iyer, learned Counsel for the contesting respondents, that Court-fee should

have been paid as if the plaintiff had claimed for a fixed sum of Rs. 35,000 and he should have been made to pay on Rs. 35,000 and that he was

given too much indulgence by being allowed to pay Court-fee on only Rs. 31,000. Nor can I agree with the learned Government Pleader that the

Court-fee ordered to be paid on Rs. 31,000 was the correct Court-fee taking it to be analogous to reconveyance or redemption. It seems to me

that in the case of an agreement of the description mentioned above, what is really asked for is accounting regarding the sale proceeds on the

resale, whether to the nominees of the petitioner-plaintiff or to the vendees from Alagannan and his legal representatives. No doubt, it is not an

account suit proper. Nor is it a suit for reconveyance in the usual sense of the term. The plaintiff was not asking for a reconveyance of the

properties to himself for Rs. 31,000. Nor was he compellable to buy back for Rs. 31,000 and denied all remedy otherwise. Positively and

negatively it is proved to be not a suit for reconveyance or for redemption but one for profits.

5. Then remains the question as to what would be the profit to which the plaintiff would be entitled on resale to either his nominees or to the

vendees from Alagannan and his legal representatives the question of loss not arising on the facts. The plaintiff valued the properties notionally at

Rs. 66,000 but they were only his highest hopes. His sober valuation of the expected profits was Rs. 8,000 and it is found at another place and is

significant. It is also significant that he has estimated the value of the properties sold to defendants 7, 9 and 10 by Alagannan and his legal

representatives actually for Rs. 18,000 at Rs. 31,000. If we reduce the notional sum of Rs. 66,000 in the same proportion of 18/31 we will see at

once that all that the plaintiff really hopes to gain on the accounting is Rs. 8,000. Of course the plaintiff was bound to value the suit at Rs. 8,000 the

profits he expected and the damages he claimed as per the agreement even taking it to be a suit on accounts or for damages. If he valued it at Rs.

8,000 for damages alone, he would, of course, not be entitled to a decree for any higher sum than Rs. 8,000 as correctly contended by Mr.

Narayanaswami Iyer. But, in my opinion, he cannot be compelled to value the suit at more than Rs. 8,000 now as this is a suit analogous to an

accounts suit, though he may be free to value at Rs. 35,000 or any other sum if he likes and pay the Court-fee thereon. Courts in modern times

have to construe the pleadings reasonably and not extravagantly and see the real substance of the relief asked for taking away all the froth and

foam, the exaggerations and contradictory claims. Learned Counsel for the plaintiff says that the plaintiff does not want to pay Court-fee on any

sum higher than Rs. 8,000 now and will pay Court-fee on Rs. 8,000 as in an accounts suit. In case a higher amount than Rs. 8,000 is ultimately

found to be payable to the plaintiff the equitable order would be to direct the plaintiff to pay Court-fee on any such excess amount as in an

accounts suit before decree is given for any excess. On payment of the Court-fee on the excess he will be entitled to get the excess. Of course, all

the contentions of the parties in the suit are left intact. In the end I modify the order of the lower Court and direct the plaintiff to pay Court-fee on

Rs. 8,000. Of course he will not be entitled to a decree for more than that amount, even if he succeeds in his contentions and the excess is more,

till he pays the additional Court-fee. Time of two months from to-day is given to the plaintiff for paying the deficit Court-fee on the present

valuation of Rs. 8,000 in the lower Court. In the circumstances, all the parties to the Civil Revision Petition will bear their own costs.