

(1916) 02 MAD CK 0054
In the Madras High Court

Godavarti Mangamma

APPELLANT

Vs

Godavarti Sundaramma

RESPONDENT

Date of Decision : 10-02-1916

Acts Referred:

Court Fees Act, 1870 — Section 7V(b)

Citation : 33 Ind. Cas. 683

Hon'ble Judges : Coutts Trotter, J

Bench : Single Bench

Judgement

Coutts Trotter, J.—This case raises the question of the construction of a section of the Court Fees Act, VII of 1870, and the way that the matter arises is this. A suit was brought for the recovery of land which was a definite plot forming part of Survey No. 304 and was in fact 3 acres 59 cents in extent. That survey number as a whole consists, of 4 acres 42 cents, out of Which 83 cents had been sold away before, leaving a residue of 3 acres 59 cents which was what the plaintiff was suing for. The point is this, that according to the construction of the Court Fees Act the question to be determined is as to what Court has jurisdiction because it is not contested that, on the method of valuation of the land, the jurisdiction of the Court to try will depend. According to the plaintiff, the proper sub-section to apply is sub-section V (b) of Section 7 of the Act, which would be to apply a system of multiplying the revenue payable in order to arrive at the calculation provided by the Act for fixing the value of the suit. According to the defendant it is sub-section V (d) of the section which really governs the matter, in Which case the market value of the land has to be ascertained. According to the plaintiff, as I say, V (b) applies and the words there are these: where the land forms an entire estate"--that is not this case---or a, definite share of an estate, paying annual revenue to Government, or forms part of such estate and is recorded as aforesaid," which by reference to Sub-clause (a) means is recorded in the Collector's register as separately assessed with such revenue." It is not disputed that what appears in the Collector's book is this, a description of the whole area covered by a particular patta, an enumeration of its extent and a

figure representing the total revenue payable in respect of that patta. Then there follow particulars which show the rate charged per acre. I am asked to say by the plaintiff that the true construction of this Act is that because you can by a mathematical calculation arrive at what fraction of the whole patta any piece of land is, therefore any and every bit of land that you take within the whole patta must be considered to be separately assessed to revenue. That seems to me to be a proposition which is utterly incapable of being supported, if for no other reason because it gives no meaning whatever to the words "separately assessed." It is all assessed, the only thing is whether it is separately assessed as distinct from something which is assessed as part of a whole, and that is what I find to be the meaning of the words. Within the meaning of these words, therefore, the land in question in this suit cannot fall.

2. Then it is said that, even if this is not a part of an estate separately assessed to revenue, nevertheless it may be regarded as "a definite share of an estate". Once more I make the same criticism on that construction as upon the other. It entirely ignores the word definite," because every share in an estate is in some sense a definite share, and I have no doubt that what is meant by the words definite share" is an undivided tangible fraction of an estate, as distinct, from a defined demarcated plot which has been taken out of an estate. Supposing, for instance, I sell Brownfield plot out of Whiteacre estate, that would be in my opinion not a definite share of an estate within the meaning of this enactment. But if I sell a quarter of my Blackacre estate and it has got to be divided up among different kinds of land, that I think is a definite share of an estate within the meaning of the section. I observe the same view was taken by a learned Judge of the Allahabad High Court in Reference under the Court Fees Act, 1870, Section 5 16 A, 493. I am conscious of the extreme inconvenience of this decision, but I see no possible escape from that construction of the Act. It leads no doubt to this absurdity in some cases. For instance, you might have a case where if you sue for the recovery of a whole plot, if it falls under sub-section V (b), taking five times the revenue would result in a lower value than if you sue for a portion of the land which according to this view has to be taken at the market value. Probably in the present case it may be that a suit for the recovery of the whole survey number will have to go to the District Munsif, whereas the suit for a portion of it may have to go to the Subordinate Judge's Court. The result is doubtless regrettable and I tried very hard to avoid it: it seems to me that the view of the person who drafted the section in fact was that whatever you can calculate with reasonable certainty the amount of revenue payable on a plot, you should take 5 or 10 times the revenue, and in default of any possibility of measuring the revenue, then you must in the last resort have recourse to the inconvenient and cumbersome method of valuation by the market value. That is a logical and intelligible method and must have been the intention of the framer of the Statute, but if so, he has fallen very short of his object; because though, as I say, the construction that I have adopted is probably not what was intended, it is the only possible construction on the wording of the Statute.

3. The result is that this petition is allowed and I declare that the subject-matter of this suit must be valued according to its market value and the case must be remanded to the lower Court to ascertain the market value and determine the question of jurisdiction in accordance with the value found. The petitioner's costs in this Court will be paid by the respondent.