

(1949) 03 MAD CK 0014
In the Madras High Court

Karuppayee Ammal and Others

APPELLANT

Vs

Periasami Goundan

RESPONDENT

Date of Decision : 01-03-1949

Acts Referred:

Court Fees Act, 1870 — Article 17A(1) Schedule II

Citation : (1949) 2 MLJ 117

Hon'ble Judges : P.V. Rajamannar, C.J

Bench : Division Bench

Judgement

P.V. Rajamannar, C.J.—Objection was taken to the correctness of the court-fee paid by the plaintiff on his plaint. The suit was for a

declaration that the plaintiff was entitled to the suit properties and for a permanent injunction restraining the defendants from interfering with the

plaintiff's possession. The plaintiff paid a court-fee of Rs. 100 under Article 17-A(1) of Schedule II to the Court-Fees Act for the relief of

declaration of title valuing the properties at Rs. 5,200 and an ad valorem court-fee on Rs. 50-10-0 being half, of ten times the lust for the relief of

injunction. He therefore treated the relief of injunction as separate and distinct from the relief of declaration. It is said that the suit must have been

valued as a suit falling u/s 7(iv)(c) read with the Madras proviso, that is a suit to obtain a declaratory decree or order where consequential relief is

prayed,

where the relief sought is with reference to Immovable property in which case valuation shall not be less than half the value of the Immovable

property calculated in the manner provided for by paragraph (v) of this section.

2. The question therefore is whether the injunction prayed for by the plaintiff can

be treated as a consequential relief within the meaning of Section

7(iv)(c) of the Act. It is difficult to lay down a general rule to find out when a relief can be said to be consequential on another relief. But

Venkatasubba Rao, J., in *Karuppanna Tevar Vs. Angammal and Others*, suggested a test which appears to us to be useful. The learned Judge

said:

In order to determine whether the first relief is consequential upon the second, let me see how the position stands. Supposing the first relief is not

granted, does it follow that the plaintiff cannot obtain the second relief....It is quite conceivable of course that the plaint may be so drafted that both

the reliefs may be claimed on the strength of the same set of facts. In that case the second relief may properly be said to be consequential upon the

first. In the present case, however, the facts are entirely different and as I have shown the two reliefs asked for are independent of each other.

In the present case, the allegations in the plaint and in particular, in paragraph 10, make it quite clear that so far as the declaratory relief is

concerned, the cause of action arose in November, 1943, when the defendants began to assert their title to the suit properties, whereas the cause

of action for the relief of injunction arose on and from 10th December, 1943, that is, a few days before the filing of the plaint when the defendants

attempted to trespass into the lands- vide also paragraph 9. If the defendants had not threatened trespass, the plaintiff would have been quite

content to obtain the declaratory relief alone. Likewise, if the defendants had not asserted any adverse title but had merely attempted to trespass,

the plaintiff would have been content to claim a bare injunction.

3. On the facts as alleged in the plaint which must be "assumed to be correct for the purpose of determining the court-fee, it cannot be said that the

relief of injunction is consequential on the relief of declaration because both the reliefs are not founded on the same set of facts. We therefore

overrule the objection and hold that the court-fee paid by the plaintiff is correct.

4. When a similar objection was taken in the appeal preferred by the defendants, they paid the higher court-fee as demanded. As we have now

held that the proper court-fee is that paid in the Court below, the appellants will be entitled to a certificate for refund of the court-fee paid in excess

of the proper court-fee.