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(1949) 03 MAD CK 0008

In the Madras High Court

Case No : Appeal No. 525 of 1945

Karuppayee Ammal and Others — APPELLANT

Vs

Periasami Goundan — RESPONDENT

Date of Decision : 01-03-1949

Acts Referred:
Court Fees Act, 1870 — Article 17A(1), 7

Citation : AIR 1951 Mad 604 : (1950) ILR (Mad) 242 : (1949) 62 LW 460

Hon'ble Judges : Rajamannar, C.J;Balakrishna Ayyar, J

Bench : Division Bench

Advocate : T.V. Muthukrishna Aiyar, for S. Ramachandra Ayyar, for the Appellant; R. Viswanatha Aiyar, for R. Desikan, Government Pleader, for the Respondent

Judgement

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 17A (1) of Schedule 2 to the Court-fees Act, for the relief of declaration of title

valuing the properties at Rs. 5200 and an ad valorem court-fee on Rs. 50-10-0 being half of ten times the kist 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 cot be less than half the value of the immovable

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property calculated in the manner provided for by para. (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 moaning 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 v. Angammal, 51 M. L. J. 67 : AIR 1926 Mad. 678 suggested a test which appears to us to be useful.

The learned Judge said:

In order to determine whether the first relief in 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 case before us, the allegations in the plaint and in particular, in para. 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 10-12-1943, that is, a few days before the filing of the plaint when the defendants attempted to trespass

into the lands: vide also para. 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

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be entitled to a certificate for refund of the court- fee paid in excess of the proper court-fee.

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