

(1929) 01 MAD CK 0010
In the Madras High Court

Kattiya Pillai alias Sernthaya Pillai and Another	APPELLANT
Vs	
Ramaswamia Pillai (insane) by wife and next friend and Others	RESPONDENT

Date of Decision : 10-01-1929

Acts Referred:

Suits Valuation Act, 1887 — Section 11

Citation : AIR 1929 Mad 396 : (1929) 29 LW 584 : (1929) 56 MLJ 394

Hon'ble Judges : Venkatasubba Rao, J;Reilly, J

Bench : Full Bench

Judgement

Venkatasubba Rao, J.—The question to be decided is, has the suit been properly valued for the purposes of jurisdiction? The suit has been

filed in the Court of the District Munsif and the defendants object that it is not the proper Court and the Court having jurisdiction is the Sub-Court.

The facts of the case are that the plaintiff, the 1st, the 2nd and the 3rd defendants are sons of one Perumal Pillai. The 1st and 2nd defendants, it is

said, have put forward a will which is alleged to be that of their father. The plaintiff says that this will is a forgery and that there are previous wills

which confer upon him a larger benefit. He prays in his plaint, first, that the will may be declared to be a forgery; secondly, that the will may be

cancelled; and thirdly, that the order of the Sub-Registrar registering the will may also be cancelled. I may mention that it is alleged by the plaintiff

that he and the 3rd defendant are in possession of the property. The District Munsif has held that he had no jurisdiction and directed the plaint to

be presented to the proper Court. The learned Subordinate Judge set aside this order and holding that the Munsif's Court had jurisdiction

remanded the suit to that Court for being disposed of according to law. ,

2. A preliminary objection has been taken that no revision petition lies. Where the order complained against relates only to a question of Court-fee,

it has been held that the High Court can interfere in revision if the Lower Court's order is unfavourable to the plaintiff. Venkataramani Aiyar v.

Narayanaswami Aiyar (1924) 48 M.L.J. 688 and Karuppanna Tevar Vs. Angammal and Others, and Kulandaivelu Nachiar v. Ramaswami

Pandia Thalavan I.L.R.(1927) M. 664 : 55 M.L.J. 345. It has also been held that, if the order is favourable to the plaintiff, the High Court does not

interfere ""with that order in the exercise of its powers of revision. (Muhammad Elliyar v. Rahim Bee, C.R.P. No. 1172 of 1927). In this case,

dealing first with the question of Court-fee, the defendants say that a larger Court-fee is payable than what the Subordinate Judge has held is the

proper fee. If the question is therefore one relating to Court-fee alone, I should refuse following C.R.P. No. 1172 of 1927, to set aside the order in

the exercise of our revisional powers. In this case, the question is not only one of Court-fee but also of jurisdiction. The learned Advocate for the

respondents argues that our revisional jurisdiction is excluded by Section 11 of the Suits Valuation Act. I cannot agree with this contention. That

section has the effect of curing the defect after a mistake in regard to jurisdiction is committed; it certainly does not say that a superior Court has no

power to prevent beforehand a mistake from being committed. The learned Advocate relies upon Raman Vs. The Secretary of State for India in

Council, which has no bearing on the powers of revision. u/s 115 of the CPC there can be no doubt that we can interfere in a case of this kind; it is

certainly our duty to prevent a wrong assumption of jurisdiction by Courts subordinate to us. The question is now settled by authority. Atchayya v.

Sri Seetharamachandra Rao I.L.R.(1912) M 195 : 24 M.L.J. 112 (F.B.) is a case on all fours and the preliminary objection is overruled.

3. In regard to the Court-fee payable, what is the proper provision applicable? It is first suggested that Section 7 (iv) (a) of the Court Fees Act

applies, It is obvious that it does not, as the suit is not for a relief coming within that section. The will sought to be cancelled is clearly not a

document securing money or property having money value.

4. Next, it is suggested that Section 7 (iv) (c) is the section applicable. It applies if the relief asked for is declaratory decree plus consequential

relief. In this case can it be said that the plaintiff prays for any consequential relief? Section 39 of the Specific Relief Act enacts that any person against whom a written instrument is void or voidable may sue to have it adjudged accordingly. The present suit is a suit of this description. The plaintiff asks that the will may be declared void. That section further enacts that in such a suit the Court may, in its discretion, adjudge the instrument void or voidable and order it to be delivered up and cancelled. In a suit rightly framed under that section, it is the Court's function to order the instrument to be cancelled; it is not a part of the prayer in the plaint. Then again, the section goes on to say that if the instrument is one that has been registered under the Registration Act, the Court shall send a copy of its decree to the Registration Officer, who shall note in his book that the instrument has been so cancelled. This again, is not a relief which it is the duty of the plaintiff to sue for, but is the duty of the Court to grant. Now, looking at the present plaint, it is thus clear that the prayer relating to (1) the cancellation of the will, and (2) the cancellation of the registration is unnecessary and superfluous.

5. In deciding what the proper Court-fee payable is, the Court must have regard to the substance of the thing and not to the mere form in which the relief has been prayed for. *Chingacham Vitil Sankaran Nair v. Chingacham Vitil Gopala Menon* I.L.R.(1906) M. 18 and *Venkataramani Aiyar v. Narayanaswami Aiyar* (1924) 48 M.L.J. 688. Then again, is it obligatory upon the plaintiff to have the will set aside? For instance, if a person, who feels aggrieved by a will, sues for recovery of Immovable property covered by it which happens to be in the possession of a third party, claiming the property on the strength of the will, can it be successfully contended that such a suit is governed not by the ordinary 12 years period but that the plaintiff is first bound to get the will set aside within the shorter period provided by Article 91 of the Limitation Act. Such a contention cannot prevail. I am clearly therefore of the opinion that Section 7 (iv) (c) does not apply.

6. The provision that is therefore applicable is Schedule II, 17-A (1) which applies to a suit "to obtain a declaratory decree where no consequential relief is prayed.

7. If this is the correct view on the question of Court-fee, how is the suit to be

valued for the purpose of jurisdiction? It has been held that in such a case it is not open to the plaintiff to place an arbitrary value upon the relief he claims, but that he is bound to assess it, according to the market value of his interest in the properties in question. Venkatachalam Pillai v. Srinivasa Aiyar (1923) 18 L.W. 399 Chelasani Rattayya Vs. Anne Brahmayya and Others, and Vasireddi Veeramma v. Butchayya I.L.R.(1926) M. 646 : 52 M.L.J. 381. In this what is the value of the interest that would be lost to the plaintiff if the will is left outstanding? That would be the difference between the benefit he takes under the previous will relied on by him and the will he attacks in this suit. If this be so, it is not disputed that the value of the suit would be far in excess of the pecuniary jurisdiction of the District Munsif's Court. I therefore set aside the order of the Lower Court and direct the plaint to be sent to the District Munsif's Court for being returned by that Court to the plaintiff for presentation to the proper Court.

8. Each party shall bear his costs of this revision petition.

Reilly, J.

9. I agree that the preliminary objection that this petition is barred by Section 11 of the Suits Valuation Act cannot be upheld. In this petition we are asked to revise the order of the Subordinate Judge. It cannot be said that the Subordinate Judge in this case, when he was hearing the appeal before him, exercised on account of any over-valuation or under-valuation a jurisdiction which he had not got. He was bound to hear the appeal before him. Defendants 1 and 2, who are the petitioners here, want to escape by this petition the disposal of suit by a Court which has no jurisdiction. So far as the further objection goes, that we cannot interfere in revision u/s 115 of the CPC with an order such as that made by the learned Subordinate Judge, that is concluded by the opinion of the Full Bench in Atchayya v. Seetharamachandra Rao I.L.R.(1912) M. 195 : 1912 24 M.L.J. 112 (F.B.).

10. On the main question it cannot be disputed, and I did not understand Mr. Rama Aiyar for the plaintiffs seriously to dispute, that the plaintiffs could have brought their suit solely for a declaration that the will was not genuine. What I understood Mr. Rama Aiyar to contend was that his clients were at liberty to add prayers for further relief, for cancellation of the

document and for an order to the Registration Department, and those reliefs he represented as consequential reliefs which would bring the suit within Section 7 (iv) (c) of the Court Fees Act. If the suit could have been brought legally for the declaration alone, then I think it is clear that those further reliefs, even if they could be prayed for, would not be consequential reliefs within the meaning of Section 7 (iv) (c). If they were consequential reliefs within that meaning, then it is obvious that Section 42 of the Specific Relief Act would be a bar to the suit being brought for a declaration alone, as it clearly could be. Therefore whether the plaintiffs have put in those prayers for additional reliefs or not makes no difference. The suit is essentially, as my learned brother has explained, a suit for a declaration alone. That being so, it must come under Article 17-A (1) of Schedule II of the Court Fees Act with the result that the valuation for purposes of jurisdiction must be the market value of the property to the extent that the declaration for which the plaintiffs pray, if they obtain it, would affect their interests. The result, therefore, is that, as it has been explained to us, the plaintiffs by getting the declaration that this will is not genuine, will improve their position to the extent of about a quarter of a lakh or at any rate of a sum far in excess of Rs. 3,000. There is no question that the proper Court is the Subordinate Judge's Court and not the District Munsif's Court. I agree, therefore, with the order proposed by my learned brother.