

(1935) 11 MAD CK 0044
In the Madras High Court

Kondi Rena Athmaram Chettiar

APPELLANT

Vs

Kondi Mana Saraswathi Ammal and Others

RESPONDENT

Date of Decision : 18-11-1935

Acts Referred:

Court Fees Act, 1870 — Section 7(ivA)

Citation : 163 Ind. Cas. 837 : (1936) 43 LW 696 : (1936) 70 MLJ 542

Hon'ble Judges : Horace Owen Compton Beasley, J

Bench : Division Bench

Judgement

Horace Owen Compton Beasley, Kt., C.J.—This Civil Revision Petition raises a question of Court-fees. The plaintiff claimed that one Mannarsami Chettiar the son of his senior paternal uncle, and he were members of a joint Hindu family. The first defendant is Mannarsami Chettiar's wife; the second defendant is his daughter; and the third defendant is the brother of the first defendant. The plaintiff claimed that as undivided family members they carried on the ancestral family business, that the properties mentioned in the B and C Schedules to the plaint belonged to the joint family and that he was entitled to the properties by survivorship. In the plaint he alleged that a will which Mannarsami Chettiar had left bequeathing his properties to his widow and daughter was a forgery. The learned Subordinate Judge says:

Reading the plaint as a whole we find that the plaintiff himself realises that this will is an obstacle in the way of his getting at the properties mentioned in B and C schedules. So it is clear that the will has to be cancelled and set aside before the plaintiff can obtain the decree he wants. The plaintiff has not separately prayed for a cancellation of the will and has not paid court-fee therefor separately.

2. He accordingly, although this is not by any means clear, applied Section 7(iv-A) of the Court-Fees Act on the ground that it was imperative of the plaintiff to pray for a cancellation of the will. The petitioner however, argues that he has asked for consequential relief in that he has in prayer 3 of the plaint prayed for possession of the B and C schedule properties and claims therefore that Section

7(iv)(c) is the right one. In my view neither paragraph (iv)(c) nor paragraph (iv-A) of Section 7 is the right one but Article 17-A of Schedule II is the correct one, because the claim here, when it is correctly viewed, is to obtain a declaratory decree where no consequential relief is prayed. It is not right to say, as the petitioner argues that Section 7 (iv)(c) applies because there is a claim for possession. True there is a claim for possession; but that relief cannot be held to be consequential upon the declaration that the will is a forgery and invalid. The plaintiff's claim to possession of the properties, based as it is on the claim that the properties are joint family properties, is unaffected by the will. If the properties are joint family properties, then the will cannot deprive the plaintiff of his share in them. His right to possession is entirely unaffected by the existence of any will. The relief by way of possession was not consequential at all and the claim with regard to the properties must be held to be for a declaration only and must be valued under Article 17-A of Schedule II of the Act.

3. There is another claim however, and that is for possession of a promissory note executed by the plaintiff in favour of Mannarsami Chettiar. After the death of the latter his widow-obtained a succession certificate and for the recovery of the amount due under the promissory note she filed a suit and that suit is still pending. The plaintiff, however, says that as security for the promissory note he handed over documents 2 to 6 mentioned in the plaint D schedule and requested Mannarsami Chettiar to collect the amounts and adjust them towards the promissory note and that further another arrangement was come to just before Mannarsami's death to the effect that the plaintiff should perform Mannarsami's funerals and get his daughter married and that Mannarsami promised to remit the balance of the amount due by the plaintiff. He claims that the promissory note has become unenforceable having been discharged by reason of this arrangement and that the items of security belong to him absolutely, the promissory note in respect of which they were pledged having been extinguished, and that the promissory note and the documents must be returned to him. It is contended that a sum of Rs. 2,000 must be given credit to the plaintiff; and therefore the promissory note prima facie represents a debt now of Rs. 5,000 and interest. What is it that the plaintiff is really attempting to do in the suit with regard to the promissory note? In substance he really wants an adjudication with regard to his liability on the promissory note. He wants the discharge of it to be recognised and all rights under it extinguished. In substance, it is a claim for its cancellation and, in my view, the correct section of the Court-Fees Act to be applied is Section 7(iv-A) and the learned Subordinate Judge was right in applying that section. The plaint will be sent back to the Subordinate Judge's court in order that it may be valued in the light of this judgment.

4. The Civil Revision Petition is dismissed with costs.