**(1964) 01 KL CK 0021**

**In the High Court Of Kerala**

**Case No :** C.R.P. No. 562 of 1962

Krishnan Namboodiri — APPELLANT

Vs

Parameswara Menon and Others — RESPONDENT

**Date of Decision :** 14-01-1964

**Acts Referred:**

Specific Relief Act, 1963 — Section 39
Travancore-Cochin Court Fees Act, 1125 — Section 3(4)(f)

**Citation :** (1964) KLJ 110

**Hon'ble Judges :** T.K. Joseph, J

**Bench :** Single Bench

**Advocate :** M.K. Narayana Menon, for the Appellant; T.N. Sundara Iyer For 1st Respondent and Government Pleader For State, for the Respondent

**Final Decision :** Dismissed

## Judgement

Joseph, J.—The question for decision relates to the court-fee payable on the plaint. The plaintiff is the revision petitioner. The prayers in the plaint were (1) for a declaration that a promissory note for Rs. 6,677/-executed by the plaintiff in favour of the first defendant and another in favour of the 2nd defendant for Rs. 4,100/- were invalid and unenforceable, for cancellation of the same and for directing the defendants to return the same to the plaintiff, and (2) to restrain the defendants by an injunction from enforcing or assigning the promissory notes. There was an alternative prayer that in case the above reliefs could not be allowed, he should be allowed to recover a sum of Rs. 7,715.33. The first relief was valued at Rs. 6000/- and the alternative relief at Rs. 7,715/-. The relief for injunction was valued at Rs. 100/-. Court-fee was paid on the sum of Rs. 7,715/-. The specific provision of the Court Fees Act under which court-fee was paid was not mentioned in the plaint. According to the plaintiff, court fee on the first relief is leviable u/s 3(4)(f) of the Travancore-Cochin Act-to obtain a declaratory decree or order where consequential relief is prayed for-for which court-fee is payable on the amount at which the relief is valued in the plaint. The court below found that the section applicable was not section 3(4)(f) but section

3(3) which provides that in suits for moveable property other than money where the subject matter has a market value, court-fee is payable according to such value.

2. Section 3(4)(f) of the Travancore-Cochin Court Fees Act corresponds to section 7(4)(c) of the Indian Court Fees Act, and section 3(3) of the Travancore-Cochin Act corresponds to section 7(3) of the Indian Act. In my opinion neither of these provisions applies to the case.

3. In Kalu Ram Vs. Babu Lal and Others, the facts were more or less similar. The plaintiffs in that case sued for adjudging a mortgage deed as void and ineffectual against them and prayed for the same being set aside. There was also a prayer for cancellation of the decree obtained on the basis of the mortgage The question of court-fee payable was referred to a Full Bench of five judges and it was held that in a suit for cancellation of an instrument the relief is not a declaratory one, that the effect of granting such a relief would be to free the plaintiff from all liability under it and that the relief does not fall u/s 7(4)(c). It was further held that the relief should be valued under Art. I of Schedule I of the Indian Court Fees Act which provides for court-fee on a

Plaint, written statement, pleading a set off or counter claim, or a memorandum of appeal not otherwise provided for in this Act.

Schedule I clause (1) of the Travancore-Cochin Act corresponds to Schedule I, Art. 1, of the Indian Act; and court-fee is payable on the amount or value of the subject matter. I may also point out that it would not be correct to describe this as a suit u/s 3(3) of the Travancore-Cochin Act for movable properly other than money where the subject matter has a market value. I do not see how these promissory notes can be said to have a market value. Further, the prayer for return of the promissory notes may even be unnecessary as the suit in respect of the first relief may be treated as one u/s 39 of the Special Relief Act which provides that the court may in its discretion adjudge the instruments as void or voidable and order it to be delivered up and cancelled. As pointed out in the Allahabad case referred to above, the plaintiff need only ask the instrument to be adjudged void or voidable and need not in express terms ask for it to be delivered up or cancelled.

4. It follows from what I have stated above that the first relief as to be valued on the basis of the principal and interest due under the two promissory notes on the date of suit. In the result, the Civil Revision Petition fails and is dismissed. The court below will see that the deficit court-fee is paid by the plaintiff as directed above. In the circumstances, I make no order as to costs.