
(1936) 01 MAD CK 0015
In the Madras High Court

Manakkat Tekkepeedikayil Kooleri Naduvile Purayil Abdulla
and eleven Ors.

APPELLANT

Vs

Subramanyan Pattar and Others

RESPONDENT

Date of Decision : 23-01-1936

Acts Referred:

Court Fees Act, 1870 — Section 7(IVA)

Citation : (1936) 43 LW 715 : (1936) 71 MLJ 383

Hon'ble Judges : Cornish, J

Bench : Division Bench

Judgement

Cornish, J.—This Revision Petition raises the question whether court-fee on a plaint is governed by Article 17-A of Schedule II or by

Section 7 (IV-A) of the Court Fees Act. The plaintiffs paid court-fee in accordance with Article 17-A. The lower Court has held that the fee must

be paid in accordance with Section 7 (IV-A) which means an additional sum of Rs. 300 odd. Now the principle to be followed in determining the

question of proper court-fee is that the substance of the relief claimed and not the form and language of the plaint, must be looked at : The

Secretary of State for India in Council v. Lakhanna (1932) 64 M.L.J. 24. In the case before me the relief asked for is that a razinama decree

passed against members of a tarwad, of which the present plaintiffs and defendants were members - the plaintiffs then being minors represented by

defendants--may be declared null and void. The word "declaration" in Article 17-A has a different meaning from "cancellation" in Section 7(IV-A)

as has been pointed out by Anantakrishna Aiyar, J., in Paluri Venkatasiva Rao Vs. Bodapati Venkatanarasimha Satyanarayanamurthy and Others,

. That learned Judge there said:

A decree will have full force and binding effect between the parties to the same until it is set aside by the persons who were parties to the same; but

persons who were not parties to the decree can only sue for a declaration in respect of their rights in relation to the decree.

Therefore if a party to a decree sues to set aside or cancel a decree Section 7(IV-A) governs the court-fee but if the party suing was not a party to

the decree which he seeks to have declared not binding on him, the appropriate provision of the Court Fees Act is Article 17-A. The whole

question in the present case is whether the plaintiffs were properly represented by the defendants - guardians in a suit which terminated in the

razinamah decree; that is to say whether the interests of the guardians were adverse to the interests of the minors, whom they represented, so that

the minors could not be deemed to be parties to that decree. For, it has been held that a minor represented in a suit by a guardian whose interest is

adverse to that of the minor is not legally represented at all. *Sellappa Goundan Vs. Masa Naicken and Others*, . Now I think that prima facie the

prayer in the plaint for a declaration is based on allegations which directly put this question of adverseness of interest in issue. But that is a

question of fact which must be determined on evidence given in the suit. It cannot be decided at this stage. And this leads me to the conclusion that

the declaration is asked for on the footing that the plaintiffs were not parties to the razinamah decree which they pray to be declared a nullity so far

as they are concerned. In my opinion therefore they were entitled to pay court-fee under Article 17-A. The Revision Petition is allowed, but costs

will abide the result of the suit.