

(1956) 08 MAD CK 0040

In the Madras High Court

Case No : Civil Revision Petition No. 197 of 1953

Meenakshisundaram Pillai

APPELLANT

Vs

Ponnu alias Subbiah Chettiar and Others

RESPONDENT

Date of Decision : 10-08-1956

Acts Referred:

Citation : AIR 1957 Mad 297 : (1956) 69 LW 1006

Hon'ble Judges : Panchapakesa Ayyar, J

Bench : Single Bench

Advocate : A. Srirangachari, for the Appellant; A.V. Narayanaswami Iyer, R. Venkatachalam and Govt. Pleader, for the Respondent

Judgement

Panchapakesa Ayyar, J.—This is a petition filed by one Meenakshisundaram Pillai, the plaintiff in O. S. No. 62 of 1952 on the file of the

Sub Court, Madurai, to revise and set aside the order of the learned Subordinate Judge directing him to pay court-fee on Rs. 31,000, instead of a

fixed court-fee of Rs. 100 paid by him, under Article 17-B of Schedule II of the Court-fees Act, on the ground that the subject matter of the suit

was incapable of valuation.

2. I have heard the learned counsel for the petitioner and the learned counsel for the contesting respondents, and also the learned Government

Pleader as a matter of court-fee is involved. The facts were briefly these. The suit properties originally belonged to the petitioner. They were sold

to one Alagamian Chetti, whose legal representatives are defendants 1 to 6 for a sum of Rs. 31,000, by a sale deed dated 5-4-1935. On the same

day, a contemporaneous agreement was alleged to have been entered into between the plaintiff and Alagannan Chetti, whose terms provided for

accounting of ultimate sale proceeds and were as follows: Alagannan was to convey the properties to any person nominated by the plaintiff and to

take Rs. 31000 out of the sale proceeds realised on such sale for himself and to pay the balance over to the plaintiff; and in case the sale to such

nominees was for a sum less than Rs. 31000 the plaintiff was to make good to Alagannan the deficit.

A period of four years was fixed for the plaintiff to nominate such would-be purchasers. If the plaintiff was unable to procure such purchasers

within the four years period, still the two-way agreement was not to lapse, but Alagannan himself was to sell the properties to persons of his choice

and keep Rs. 31,000 out of the sale proceeds for himself and pay over the balance to the plaintiff; and if a sum less than Rs. 31,000 was realised

by such sale, he was entitled to recoup the deficit from the plaintiff. Defendants 7 to 9 and 10 were impleaded as sub-sequent purchasers of some

of the suit properties for sums aggregating to Rs. 18,000, from Alagannan. The plaintiff alleged that the properties sold to these defendants were

really worth Rs. 31000 and that the unsold properties still with Alagannan and his legal representatives were worth Rs. 35000. So the plaintiff

valued the properties-notionally at Rs. 68000, including in such valuation, a sum of Rs. 13,000 (31000-18,000) in excess of the price for which

some of the properties were actually sold to defendants 7 to 9 and 10. But when it came to a question of valuing the suit, the plaintiff valued his

relief for the purpose of jurisdiction at Rs. 8,000 and contended for the purposes of court fee that the relief was incapable of valuation and paid a

fixed sum of Rs. 100.

3. On objection being taken in a check slip, the plaintiff's counsel admitted before the lower court, without conceding that the relief was capable of

valuation, the plaintiff's liability to pay court fee on Rs. 8000 the approximate and estimated sum due to him on the sales under the agreement but

on nothing more. The lower court considered that, in effect, what the plaintiff wanted was a reconveyance of the properties for himself or his

nominees, for the same sum of Rs. 31,000 as was paid by Alagannan or, in the alternative, that the plaintiff at least wanted the properties to be rid

of the burden of the original sale amount of Rs. 31000. So it directed the plaintiff to pay court fee on Rs. 31,000 as in a suit for reconveyance or

for redemption. It was of opinion that on his expressing hopes of getting a maximum value of Rs. 66000 he might be even liable to pay court fee on

Rs. 35000 (Rs. 66000-Rs. 31000). But he was given the benefit of the lesser of the court fees and therefore asked to pay court fee on Rs. 31000

as for reconveyance or redemption. The plaintiff is dissatisfied and has filed this petition.

4. This is an anomalous case and is neither a reconveyance nor a redemption nor an accounts suit proper and has to be decided on its own facts. I

cannot agree with the learned counsel for the plaintiff that the relief is incapable of valuation and that therefore the fixed court fee of Rs. 100 paid

would be sufficient. Nor can I agree with Mr. A. V. Narayanaswami Iyer, learned counsel for the contesting respondents, that court fee should

have been paid as if the plaintiff had claimed for a fixed sum of Rs. 35000 and he should have been made to pay on Rs. 35000 and that he was

given too much indulgence by being allowed to pay court fee on only Rs. 31000. Nor can I agree with the learned Government Pleader that the

court fee ordered to be paid on Rs. 31000 was the correct court-fee taking it to be analogous to reconveyance or redemption. It seems to me that

in the case of an agreement of the description mentioned above, what is really asked for is accounting regarding the sale proceeds on the resale,

whether the resale is to the nominees of the petitioner-plaintiff or to the vendees Alagannan and his legal representatives. No doubt, it is not an

account suit proper. Nor is it a suit for reconveyance in the usual sense of the term. The plaintiff was not asking for a reconveyance of the

properties to himself for Rs. 31000. Nor was he compellable to buy back for Rs. 31000 and denied all remedy otherwise. Positively and

negatively, it is proved to be not a suit for reconveyance or for redemption but one for profits.

5. Then remains the question as to what would be the profit to which the plaintiff would be entitled on resale to either his nominees or to the

vendees from Alagannan and his legal representatives, the question of loss not arising on the facts. The plaintiff valued the properties notionally at

Rs. 66000 but that was only his highest hope. His sober valuation of the expected profits was Rs. 8000, and it is found at another place and is

significant. It is also significant that he has estimated the value of the properties sold to defendants 7, 9 and 10 by Alagannan and his legal

representatives actually for Rs. 18000 at Rs. 31000. If we reduce the notional sum of Rs. 66000 in the same proportion of 18/31, we shall see at

once that all that the plaintiff really hopes to gain on the accounting is Rs. 8,000. Of course, the plaintiff was bound to value the suit at Rs. 8000,

the profits he expected and the damages he claimed as per the agreement, even taking it to be a suit on accounts or for damages.

If he valued it at Rs. 8000 for damages alone, he would, of course not be entitled to a decree for any higher sum than Rs. 8000 as correctly

contended by Mr. Narayanaswami Aiyar. But, in my opinion, he cannot be compelled to value the suit at more than Rs. 8000 now, as this is a suit

analogous to an accounts suit, though he may be free to value it at Rs. 35000 or any other sum if he likes and pay the court fee thereon. Courts in

modern times have to construe the pleadings reasonably, and not extravagantly, and see the real substance of the relief asked for, taking away all

the froth and foam, the exaggerations and contradictory claims. Learned counsel for the plaintiff says that the plaintiff does not want to pay court

fee on any sum higher than Rs. 8,000 now, and will pay court fee on Rs. 8,000 as in an accounts suit. In case a higher amount than Rs. 8000 is

ultimately found to be payable to the plaintiff, the equitable order would be to direct the plaintiff to pay court fee on any such excess amount as in

accounts suit, before decree is given for any excess, on payments of the court fee on the excess he will be entitled to get the excess. Of course, all

the contention, of the parties in the suit are left intact.

In the end, I modify the order of the lower court and direct the plaintiff to pay court-fee on Rs. 8000. Of course, he will not be entitled to a decree

for more than that amount, even if he succeeds in his contentions and the excess is more, till he pays the additional court fee. Time of two months

from today is given to the plaintiff for paying the deficit court fee on the present valuation of Rs. 8000 in the lower court. In the circumstances, all

the parties to the civil revision petition will bear their own costs.