

(1948) 10 MAD CK 0023
In the Madras High Court

M.K. Shanmugam Pillai and Others

APPELLANT

Vs

Sri Sankaranarayanawami

RESPONDENT

Date of Decision : 07-10-1948

Acts Referred:

Citation : (1948) 2 MLJ 637

Hon'ble Judges : Mack, J

Bench : Division Bench

Judgement

Mack, J.—This petition raises a question of Court-fee payable on a plaint filed in a suit u/s 44-B of the Hindu Religious Endowments Act for determining whether an inam comprises melwaram and the kudiwaram or only the kudiwaram. The District Collector of Tinnevely confirmed in appeal an order of the Revenue Divisional Officer, Koilpatti, directing the resumption of an inam and its re-grant in the name of Sri Sankaranarayanawami of Sankarankoil and holding further that the inam comprised both the land and the assessment. The plaintiffs who are the alienees filed the suit within the six months period prescribed by Section 44-B of the Hindu Religious Endowments Act for a declaration that the order of the District Collector was null and void, that the plaintiffs are the absolute owners of the property, and that the inam is only " a portion of" the melwaram due to Government and not of the land at all. They paid in the first instance a fixed Court-fee of Rs. 100 under Article 17-A of Schedule II on the basis of a declaration involving property less than Rs. 10,000. The Court-fee Examiner took an objection that the lands were worth more than Rs. 10,000 and that a Court-fee of Rs. 500 was therefore payable. Then the plaintiffs adopted the position that only Rs. 15 was payable on the plaint under Article 17(1) of Schedule II as a suit to set aside a summary order of a Revenue Court. The learned Subordinate Judge repelled this contention, and holding that a Collector passing an order u/s 44 of the Hindu Religious Endowments Act resuming an inam was not a revenue Court held that the correct Court-fee payable was Rs. 500 under Article 17-A of schedule II.

2. The learned Government Pleader points out that the relief claimed by the plaintiffs is curious and outside the scope of even Section 44-B, namely, a declaration that only a portion of the melwaram constitutes the inam. The learned advocate for the petitioners was prepared to amend the plaint by deleting the words " a portion of" and after arguments did, in fact, file such a petition. Had this been the only obstacle in the way of the petitioners, I should have been inclined to allow the amendment even if at this stage. But Article 17(1) of Schedule II regulates the Court-fee on a plaint to alter or set aside a summary decision or order of any of the Civil Courts not established by Letters Patent or of any Revenue Court. It requires only a Court-fee of Rs. 15 to be paid irrespective of whether it is filed in a District Court, Sub-Court, or District Munsiff's Court. The decision of the District Collector resuming an inam u/s 44-B and deciding the nature of the inam within the ambit of this statutory provision is in one sense summary in that there is no appeal from it and is final, unless in accordance with Section 44-B it is set aside in a regular suit filed within six months. The only point for determination is whether such an order resuming an inam and deciding whether the inam is a grant of both the melwaram and the kudiwaram or only the melwaram is an order of a Revenue Court. The Subordinate Judge held that the Collector did not sit as a Court, there being no statutory direction to him to examine parties or witnesses on oath with no indication further that he should conform to the provisions of the CPC or the Evidence Act, and that the orders of the Collector and the District Collector in appeal were purely executive, although they adjudicated the rights of parties.

3. The learned advocate for the petitioners relies on *Annamalai Chetti v. Lt. Col. J.G. Cloete Deputy Superintendent of Revenue Survey* (1881) 4 Mad. 204 an old decision of 1881, where it was held that a suit to contest the award of a Settlement Officer u/s 25 of Act XXVIII of 1860 fell within the scope of Article 17(1); but that Act specifically empowered the Settlement Officer to refer to disputes re : boundaries to arbitrators, take evidence and to record his decision. A relevant decision on the point I have to decide is *Athimoola Mudaliar v. Kubra Begum* (1935) 71 M.L.J. 493 : ILR 59 Mad. 882 a decision of Wadsworth, J., which decided that the Court-fee payable on a suit brought by an unsuccessful applicant to the Collector for registration as a landholder u/s 3 (5) of the Madras Estates Land Act was governed by Article 17-A of the Court-Fees Act. Wadsworth, J., was of the opinion that the proper criterion in such case must be whether a suit asking for a declaration was one of a special character specially provided for by a special statute. If it was merely a suit for a declaratory decree, the declaration asked for being a right which itself arises from a special statute, it should come under Article 17-A of the Court-Fees Act. If, however, it was a special form of suit involving special procedure and special defences such as a suit u/s 112 of the Madras Estates Land Act, it fell outside the scope of Section 17-A. Reference was made in that decision to another decision placed before me, *Rama Iyer v. Sankara Iyer* (1907) 17 M.L.J. 573 : ILR 31 Mad. 89 where a Full Bench of this Court took the view that a suit for registration of a document u/s

77 of the Registration Act was not one for a declaratory decree and fell within the residuary provision Article 17(vi) where it was not possible to estimate at a money value the subject-matter in dispute, and which was not otherwise provided for by this Act. In this case, however, the subject-matter is land in respect of which a declaration is sought and is capable of valuation. It is common ground that the value of this inam land is in excess of Rs. 10,000. In the present case the plaintiffs are really seeking, as did the plaintiffs in *Athimoola Mudaliar v. Kubra Begam* (1935) 71 M.L.J. 493 : ILR 59 Mad. 882 nothing more than a simple declaration that they were entitled as of right to possession of the whole of the land. The learned Subordinate Judge, was, I consider, correct in applying Article 17-A of Schedule II to the present suit and requiring the plaintiffs to pay on the plaint a Court-fee of Rs. 500.

4. In the result, the petition is dismissed with costs. One set of advocate's fee. Time for payment of Court-fee six weeks from this date.