
(1936) 01 MAD CK 0026
In the Madras High Court

Nanakkat Tekkapeedikayil Kooleri Naduvile Purayil Adulla and
Others

APPELLANT

Vs

Subramanayan Pattar and Others

RESPONDENT

Date of Decision : 23-01-1936

Acts Referred:

Court Fees Act, 1870 — Section 7IVA

Citation : 163 Ind. Cas. 203

Hon'ble Judges : Cronish, J

Bench : Single Bench

Judgement

Cronish, J.—This revision petition raises the question whether court-fee on a plaint is governed by Article 17-A. of Scheduled 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: Secretary of State v. Lakhanna 61 M.L.J. 24 : 141 Ind. Cas. 80 : Ind. Rul. (1933) Mad. 67 : (1933) M.W.N. 144 : AIR 1933 Mad. 430 : 37 L.W. 806. In the case before me the relief asked for is that a razinamah 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 Ayyar, J. in Venkatasiva Rao v. Venkatanarasimha Satyanarayanamurty 56 M. 212 : 139 Ind. Cas. 317 : 36 L.W. 225 : Ind. Rul. (1932) Mad. 643 : (1932) M.W.N. 992 : AIR 1932 Mad. 605 : 63 M.L.J. 764. That learned Judge there said:

A decree will have full force and binding effect between parties to it until it is set aside by the persons who were parties to it; but persons who were not parties to

it can only sue for a declaration in respect of their rights in relation to the decree.

2. Therefore, if a party to a decree sues to set aside or cancel a decree Section 7 IV-A -governs the court-fees 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 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 v. Masa Naicken* 47 M. 79 : 76 Ind. Cas. 1018 : (1923) M.W.N. 775 : 45 M.L.J. 675 : 18 L.W. 838 : 33 M.L.T. 126 : AIR 1924 Mad. 297. 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 the 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 the costs will abide the result of the suit.