

(1918) 02 MAD CK 0002
In the Madras High Court

P. Narayan Nair and Others	Vs	APPELLANT
A.P.M. Cheria Kathiri Kutty		RESPONDENT

Date of Decision : 01-02-1918

Acts Referred:

Suits Valuation Act, 1887 — Section 3(1)
Tamil Nadu Civil Courts Act, 1873 — Section 14

Citation : 45 Ind. Cas. 89 : (1918) 34 MLJ 397

Judgement

1. The plaintiff, respondent, first filed his plaint in the District Munsif's Court. When it was returned, he filed it in the Subordinate Court and it was

returned again. He appealed to the Lower Appellate Court against the order of return by the District Munsif; and the first question is whether by

electing to file his plaint in the Subordinate Court, he forfeited his right of appeal. It has been held that he could do so in Beni Madhab Das v.

Jotendra Mohan Tagore (1907) 5 C.L.J. 580. But that decision was doubted in Baikunta Naih Dey v. Nawab Salimulla Bahadur (1908) 7 C.L.J.

547 and was dissented from by one of us and another learned judge of this Court in A.A.O. No. 403 of 1914. We do not find in Order XLI or

XLIII of the CPC any recognition of the principle that any such election as may have taken place in the case before us affects the right of appeal,

We therefore hold that an appeal lay to the Lower Appellate Court.

2. On the merits the question is whether a suit to enforce a right of pre-emption should be valued for the purpose of jurisdiction with reference to

the gross value of the property or otherwise, the Lower Appellate Court having held that it should be valued with reference to the net value after

the amount of encumbrances on it has been deducted. u/s 3 (1) Suits Valuation. Act (VII of 1887) Local Governments are empowered to make

rules for determining the value of land for purposes of jurisdiction in the suits mentioned in the Court Fees Act, Section 7(vi); and suits such as that

before us are so mentioned. u/s 6, when such rules are made, Section 14 in Madras Civil Courts Act (III of 1873), is to be deemed repealed.

Section 14, no doubt refers to the subject matter of suits for land etc. But it is not in our opinion possible to accept the argument that subject-

matter includes only immediate rights to possession and not such rights relating to land as pre-emption, when the contrary is indicated clearly by the

last mentioned provision of the Suits Valuation Act. We therefore hold that the proper valuation is in accordance with Section 14 of the Madras

Civil Courts Act that fixed in the manner provided by the Court Fees Act Section 7(v). It is not disputed that so valued the suit will be within the

District Munsif's jurisdiction. We therefore agree with the District Judge's decision and dismiss the petition with costs.