

(1918) 02 MAD CK 0021
In the Madras High Court

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

Date of Decision : 01-02-1918

Acts Referred:

Court Fees Act, 1870 — Section 7(vi)
Tamil Nadu Civil Courts Act, 1873 — Section 14

Citation : (1918) ILR (Mad) 721

Hon'ble Judges : Sadasiva Ayyar, J;Oldfield, J

Bench : Division Bench

Judgement

Oldfield, J.—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 Bend

Madhub Das v. Jotendra Mohan Tagore (1907) Cri.L.J. 580. But that decision was doubted in Backunta Nath Dey v. Nawab Salimulla Bahadur

(1907) Cri.L.J. 547; at p, 556 and was dissented from by one of as and another learned Judge of this Court in Chidambaram Chetty v. Karuppan

Chetty Appeal against Order No. 403 of 1914. We do not find in Order XII or XIII 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. 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 u/s 6 when such rules are made Section 14 in Madras Civil Courts (Act III of 1873) is to be deemed repealed.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.