

(1932) 03 MAD CK 0020
In the Madras High Court

Paluri Venkatasiva Rao

APPELLANT

Vs

Bodapati Venkatanarasimha Satyanarayanamurthy and
Others

RESPONDENT

Date of Decision : 21-03-1932

Acts Referred:

Court Fees Act, 1870 — Section 7(iv)(c)

Citation : AIR 1932 Mad 605 : (1933) ILR (Mad) 212 : (1932) 36 LW 225 :
(1932) 63 MLJ 764

Hon'ble Judges : Reilly, J; Anantakrishna Aiyar, J

Bench : Full Bench

Judgement

Reilly, J.—This. Civil Revision Petition comes before us on the question what is the proper court-fee to be paid on the plaint in the suit

concerned. In the plaint the prayers are for a declaration that the decree obtained by Defendant 1 in O.S. No. 302 of 1916 on the file of the

Additional District Munsif of Bhimavaram is void, for setting aside that decree, if necessary, and for recovery of the property, covered by the

decree. The Plaintiff valued the suit for court-fee as if it came under Clause (c) of Section 7(iv) of the Court Fees Act. The Defendants objected

and said that in its nature this was a suit for the cancellation of the previous decree and that therefore the Plaintiff should pay court-fee u/s 7(iv-A)

of the Act, i.e., under the new Sub-section introduced into the Act for this Presidency in 1922. The Subordinate Judge after hearing arguments on

the question came to the conclusion that the suit was really one for possession of the property and therefore that it came u/s 7(v) of the Act and

ordered court-fee to be paid accordingly. It happens that the same court-fee is due whether the suit comes u/s 7(v) as one for possession or u/s

7(iv-A) as one for cancellation of the previous decree.

2. The plaint alleges that the previous suit, O.S. No. 302 of 1916, was brought by Defendant 1, while the Plaintiff was a minor, for the recovery of

some property, which the Plaintiff had inherited through his adoptive father, and that in that suit he was not properly represented because the

guardian appointed for him, his adoptive mother, had an interest adverse to his in the suit and moreover she colluded with the present Defendant 1

in that suit and enabled him by suppression of facts fraudulently to obtain a decree. Now I do not think it can be seriously disputed, and in the end

it has not been disputed before us, that, if this suit is properly described as a suit for setting aside the previous decree, then it is a suit for

cancellation of that decree as the word "cancellation" is used in the new Section 7(iv-A.) of the Court Fees Act. That Sub-section speaks of the

cancellation of a decree or other document, which appears to mean the same thing as setting aside a decree or other document. It may be noticed

that in Article 91 of the Limitation Act "to set aside" and "to cancel" a document are used as synonymous terms. But what is contended for the

Plaintiff here is that his suit is not a suit for setting aside the previous decree, but that it is a suit for a declaration with consequential relief and

therefore he can avoid the additional charge which would fall upon him if his suit were a suit for cancellation of a previous decree for the recovery

of property u/s 7(iv-A) of the Act. Mr. Somasundaram for the Plaintiff relies upon the decision of Ramesam, J., in Balakrishna Nair v. Vishnu

Nambudri 1930 M.W.N. 509 There the learned Judge said that

in the case of decrees the proper prayer is not to set the decrees aside but for a declaration that the decrees are not binding on the plaintiffs;

and he added that therefore the suit before him was one for a declaration and consequential relief, and he allowed it to be valued for court-fee u/s

7(iv)(c). On the facts of that case, as the learned Judge understood them, it appears that some minor Plaintiffs were suing for a declaration that a

decree obtained against their karnavan and against other minor members of their family was not binding on them and for recovery of property sold

in execution of that decree. If that was the nature of the suit, then I do not think it can be disputed that the learned Judge was, right in saying that

the Plaintiffs there had to pray for no more than a declaration that the previous

decree was not binding on them and the consequential relief of recovery and that it was not appropriate for them to ask that that decree, to which they had not been parties, should be set aside. But undoubtedly the learned Judge's remarks, which I have quoted, are much wider than that, and they imply that in his opinion in this country a Plaintiff who wishes to impeach a previous decree, to which he has been a party, as not binding on him should pray, not that the decree be set aside, but for a declaration that it is not binding on him. In one sense it may be that it is more appropriate for a Plaintiff, who wishes to impeach a decree obtained against him in a previous suit as having been obtained by fraud, to ask for a declaration that that decree is not binding on him than that he should ask that the decree itself should be set aside. There may even seem to be some impropriety in going to an inferior Court, as in some such cases he must, and praying that that inferior Court should set aside the decree of a superior Court. I myself have been inclined to think that, as Ramesam, J., appears to have thought, it is more appropriate in such cases to word the prayer as one for a declaration that the previous decree is not binding on the Plaintiff. But is that more than a question of mere propriety and seemliness? In such a second suit, if the Plaintiff succeeds, is not the effect and essence of what he obtains exactly the same, whether it is called setting aside the previous decree or declaring that the previous decree is not binding on him? In either case the result of the second decree is that the first decree is no longer binding on him: it is no longer of any avail against him: so far as he is concerned, it is wiped out. If that is so, is it in any way incorrect to speak of setting aside the previous decree, whether that setting aside is done by a Court superior to that which made the first decree or co-ordinate or inferior? In this country the expression "to set aside a decree" as a description of a suit has been used in the Limitation Acts since 1859. That expression is well known as the description of such suits in England. In *Flower v. Lloyd* (1877) 6 Ch. D. 297 two of the Lords Justices explicitly point out that, if a decree or a judgment is to be impeached for fraud, the proper way to do it is by an action for setting aside the decree or judgment. That I think it must be admitted is recognised as the ordinary and proper description of such a suit in England. In this country their Lordships of the Privy Council have spoken of a suit to get rid

of a previous decree obtained against the Plaintiff by fraud as a suit to set aside the previous decree in *Radha Raman Shaha v. Pran Nath Roy*

(1901) ILR 28 Cal. 475 (P.C.) and (1902) L.R. 29 I.A. 99 (Privy Council) and we find the expression ""setting, aside a decree"" obtained by fraud

as early as the judgment of Sir Barnes Peacock in 1866 in *Nilmoney v. Puddo Lochun* (1866) 5 W.R. 20. It may be noticed that, even when a suit

is brought to set aside a previous decree and is so described by the Plaintiff, if he succeeds, the relief which he obtains is not necessarily a decree

in so many words setting aside the previous decree. As *Srinivasa Aiyangar, J.*, pointed out in *Arunachellam v. Sabapathy* ILR (1917) 41 Mad.

213 : M.L.J. 499 various reliefs may ,be given in such a suit appropriate to the circumstances of the case. In *Manohar Lal v. Jadunath Singh*

(1906) L.R. 33 IndAp 128 : ILR 28 All. 585 : 16 M.L.J. 219 (P.C.) their Lordships of the Privy Council decided that in such a suit, when the

result was that the previous decree was found not good against one of the parties to it but it was not necessary or proper to disturb it as against the

other parties to it, the proper decree to make was that the previous decree was not binding on the particular Plaintiff concerned, not that the

previous decree should be set aside altogether. But, whether the prayer is that the previous decree should be set aside or that it, should be

declared not binding on the Plaintiff in the second suit, and whether the result of the second suit is that the whole decree is set aside or it is more

appropriate in the particular circumstances to make a declaration merely that the previous-decree is not binding upon the Plaintiff in the second suit,

the nature of the suit is really the same. The suit is to get rid of the effect of the first decree, so far as the Plaintiff in the second suit is concerned,

and you cannot alter the nature of the suit or its eventual effect by wording the plaint as one for a declaration that the previous decree is not binding

on the Plaintiff in the second suit or by praying that the previous decree be set aside.

3.Now, before the amendment of the Court Fees Act so far as this Presidency is concerned by the introduction of the new Sub-section 7(iv-A), it

cannot be denied that, even if such a suit as we are discussing had been described by the Plaintiff as one for setting aside a previous decree, for

court-fee purposes it would have had to be treated as a suit for a declaratory decree. There was nowhere else in the" Court Fees Act for such a

suit to come in. If consequential relief was prayed for, then it came u/s 7(iv)(c); if consequential relief was not prayed for, then it came under Article 17 of Schedule II. There was no separate provision in the Court Fees Act for a suit to set aside or cancel a previous decree. But now the Legislature has introduced the new Sub-section 7(iv-A). That covers certain suits for cancellation of decrees and, as I think we must interpret it, certain suits for setting aside decrees, however described. It covers suits for cancellation of decrees for money or other property having a money value. Thus suits for cancellation of, or setting aside, such previous decrees, which before would have had to come in as suits for declaratory decrees, now have their special place in the Act. The result is that for suits for cancellation of, or setting aside, decrees which have been made for the recovery of money or for the recovery of property having money value you have to pay court-fee under the new Sub-section If they come within that description, they are cut out of the general class in which they previously came - suits for declaratory decrees - and have their special place. We are only concerned in this case with the question of court-fee. Whether verbally it is more strictly appropriate to call such suits suits for declarations that the previous decrees are not binding on the Plaintiffs is purely academic so far as court-fees are concerned. The intention of the Legislature appears to be that a suit in which the Plaintiff prays for a decree that a previous decree obtained against him is of no effect against him on account of fraud in obtaining it and that, so far as he is concerned, that decree is wiped out, however he may choose to word his prayer, comes within the new Section 7(iv-A), if the previous decree was one for recovery of money or property having a money value. That appears to me to cover the present case.

4. But it has been pointed out to us by Mr. Suryanarayana for Defendant 1 and also on behalf of the Government Pleader that in this case the

Plaintiff has prayed for recovery of possession and, that being so, quite apart from all other discussion, his suit comes u/s 7(v), as the Subordinate

Judge has found. In *Chinnammal v. Madarsa Rowther* ILR (1903) 27 Mad. 480 : 14 M.L.J. 343 it was said by Boddam and Bhashyam Aiyangar,

J.J., that, if in a suit for a declaration and consequential relief the relief prayed for came within other provisions of the Court Fees Act than Section

7(iv) (c), for instance within Section 7(v), then the mode of valuing the relief was regulated by the Legislature itself in those provisions. As Mr.

Somasundaram has urged, that remark was made obiter. But in *Rajagopala v. Vijayaraghavalu* ILR (1914) 38 M. 1184 we have a case very

similar to the present one. There the Plaintiffs sued for a declaration that a certain decree had no legal effect against them and for possession of

some property which had been sold in execution of that decree. Oldfield and Tyabji, JJ., pointed out that the District Judge in that case was clearly

mistaken in his statement that Section 7(iv)(c) regulated the valuation of the whole suit, since part of the relief claimed related to possession, which

had to be dealt with in accordance with Section 7(v) notwithstanding that a declaration also was asked for, and they referred to *Chinnammal v.*

Madarsa Rowther ILR (1903) 27 Mad. 922 : 28 M.L.J. 118 as an authority for that view. Then in *Arunachalam Chetty v. Rangaswami Pillai* ILR

(1914) 38 Mad. 922 : 28 M.L.J. 118 the question of the court-fee to be paid on a declaratory suit came before a Full Bench, and the very first

sentence of the opinion of the Full Bench is

A suit in which the plaintiff in terms prays for a declaratory decree¹ and consequential relief prima facie comes within Clause (iv), Sub-clause (c) of

Section 7 of the Court Fees Act, but if at the same time it comes within any of the other classes of suits specified in the section, it must be treated

as a suit of that description and dealt with accordingly.

5. That is a very important statement set out at the very opening of the opinion of the Full Bench. Mr. Somasundaram very properly admits that, if

a suit is really and in essence a suit for possession, the Plaintiff cannot avoid paying court-fee as for possession merely by praying for some

unnecessary or entirely incidental declaration in his plaint. But he contends that the principle set out by the Full Bench, which I have quoted, is not

now applicable. Apart from the authority of the Full Bench in that case, which I have quoted, it seems to me clear that in such an Act as the Court

Fees Act, if there is a special provision which applies to a particular case, then that special provision must be applied by us rather than some

general classification, in which the suit may also be included, which may be more favourable to the Plaintiff. But Mr. Somasundaram has suggested

that another amendment to the Court Fees Act has been made for this

Presidency, which affects, the question, i.e., the proviso introduced in 1922 towards the end of Section 7(iv), which runs:

Provided that in suits coming under Sub-clause (c) in cases where the relief sought is with reference to any Immovable property, such valuation

shall not be less than half the value of the Immovable property calculated in the manner provided for by paragraph (v) of this section.

6. Now a suit for possession is undoubtedly a suit with reference to Immovable property; but what the new proviso says is, not that all suits with

reference to Immovable property shall be charged in the way set out in it, but that suits in which relief is sought with reference to Immovable

property shall be valued at not less than half the value of the Immovable property calculated in the way set out. That does not appear to me to lay

down that, if the relief sought properly falls within any other provision requiring a higher valuation or charge that higher charge is not to be made.

The proviso merely introduces a downward limit, below which reliefs sought in respect of Immovable property consequential on declaratory

decrees shall not be valued. In my opinion therefore, as the Plaintiff in this case sues for the recovery of the property concerned and that cannot be

regarded as a mere incident to this plaint but is the main relief, the Subordinate Judge was right in saying that the suit came within Section 7(v) of

the Court Fees Act. So far as I can see, the suit falls within both Section 7(v) and Section 7(iv-A). As the valuation and the court-fee charged are

the same under either of those Sub-sections, that has no effect upon the court-fee to be paid by the Plaintiff.

7. In my opinion the scale of valuation adopted by the learned Subordinate Judge is right, and this petition should be dismissed with costs - one set

- to be divided between Defendant 1 and the Government Pleader. For payment of the additional court-fee 5 weeks from this date may be

allowed.

Anantakrishna Aiyar, J.

8. I agree. I referred this Civil Revision Petition for the decision of a Bench having regard to the observations of Ramesam, J., in Balakrishna Nair

v. Vishnu Nambudri (1930) M.W.N. 509.

8. The Plaintiff instituted O.S. No. 11 of 1930 on the file of the Sub-Court of Narsapur for a declaration that a decree obtained against him, while

he was a minor represented by his mother as guardian, by the present 1st Defendant in O.S. No. 302 of 1916 on the file of the Additional District

Munsif of Bhimavaram, was not valid and binding upon him and for recovery of possession of the properties covered by that decree. The 1st

Defendant, who is the only contesting Defendant in the suit (the other Defendants being, it is said, tenants under the Plaintiff at the time of the prior

suit O.S. No. 302 of 1916) raised an objection as regards the amount of court-fee payable on the plaint in the present case. The Plaintiff's

contention was that the suit was one for a declaratory decree, that it came u/s 7, Clause (iv)(c) of the Court Fees Act and that he was not bound to

value the relief at anything more than one-half of the value of the properties covered by the plaint. On the side of the 1st Defendant it was

contended that the suit must be taken to be substantially a suit to set aside a former decree and that the court-fee payable on such a plaint is that

provided for by Section 7(iv-A) of the Court Fees Act. The learned Subordinate Judge held that the suit should be treated as one for possession

of the properties and should be valued u/s 7(v) of the Court Fees Act, and accordingly directed the Plaintiff to pay the deficient court-fee on that

basis. The Plaintiff has presented this Civil Revision Petition against the order passed by the Subordinate Judge.

9. The first question that arises for consideration in this case-is whether the suit is one for a declaration, or whether it is a suit for cancellation of a

decree. Prior to the enactment of the Madras Court Fees Act (V of 1922) a suit for setting aside or cancelling a decree was held to come u/s 7(iv)

(c) for purposes of court-fee. In 1922 the Legislature added a new Clause - Section 7(iv-A) - which enacts that ""in a suit for cancellation of a

decree for money or other property having a money value or other document securing money or other property having such value, ""the valuation

should be according"" to the value of the subject-matter of the suit, and such value shall be, if the whole decree is sought to be cancelled, the

amount or value of the property for which the decree was passed, and if a portion of the decree is sought to be cancelled, such part of the amount

or value of the property"". It should be noticed that the words used in the new clause are ""in a suit for cancellation of a decree for money or other

property."" I may clear the ground by stating that the learned advocate for the petitioner - Mr. Somasundaram - did not contend before us that

there was any difference between ""cancellation of a decree"" and ""setting aside a decree,"" and I think the learned advocate was right. But his main

contention was that in such a suit the relief in substance is a declaration that the prior decree is not binding upon the Plaintiff; and he argued that the

plaint in such a suit should be treated as one asking for a declaratory decree and coming u/s 7(iv)(c). He also relied on the observations of

Ramesam, J., in *Balakrishna Nair v. Vishnu Nam-budri* (1930) M.W.N. 509. In that case the learned Judge observed at p. 510 as follows:

Here all that is sought to be got over are decrees and in the case of decrees the proper prayer is not to set aside decrees but one for a declaration

that the decrees are not binding on the plaintiffs. The suit is therefore for a declaration and consequential relief.

10. It was argued by the learned advocate for the Petitioner that that judgment is authority for the proposition that a plaint, whose substantial

object is that the decree in the prior suit should be held to be not binding upon the Plaintiff any longer, should be taken to be only a suit for a

declaratory decree, and that there is really no such thing as a suit to cancel or set aside a decree; and the learned advocate strongly relied upon the

observations of Ramesam, J., in the case cited. The basis for that argument is that the law knows of no such thing as a suit to set aside a decree;

but such a contention is, in my opinion, entirely unsustainable. It has been held in England from very early times, and also in India, that a suit to set

aside a decree or judgment is a well-known form of action. See the question discussed with reference to the law in England in *Story's Equity*

Pleadings, paragraphs 421, 426 and 428. The question is also discussed in *Seton on Decrees*, Vol. I, p. 189, *Daniel's Chancery Practice*, Vol. II,

p. 1332 and 13 Hals., p. 352, paragraph 490. See also *Flower v. Lloyd* (1877) 6 Ch. D. 297. It is there stated that in cases where it is alleged

that a previous decree was obtained by fraud as against the present Plaintiff the suit is one to set aside the prior decree and judgment. The same

language has been used in decisions in India also. The decision in *Abdul Huq Chozvdhury v. Abdul Hafez* (1877) 6 Ch. D. 297 traces such

practice in India to 1866, *Nilmoney v. Puddo Lochun* (1910) 11 C.L.J. 636 where a judgment of Sir Barnes Peacock is reported. See also

Krishna bhupati v. Raniamurti ILR (1892) 16 Mad. 198 and *Arunachellam v. Sabapathy* ILR (1917) 41 Mad. 213 : 33 M.L.J. 499. In fact the

Privy Council decisions in *Radha Raman Shaha v. Pran Nath Roy* (1901) ILR 28 Cal. 475 (P.C.) and (1902) L.R. 29 I.A. 99 (Privy Council)

make the matter absolutely clear so far as the Indian Courts are concerned. In (1914) L.R. 41 I.A. 267 (Privy Council) the Privy Council refer to

a suit ""brought to set aside a decree"". A suit to set aside a decree being then a form of action well known to both the English law and the Indian

law, it cannot be said that the Legislature in enacting Section 7(iv-A) of the Court Fees Act in 1922 provided for court-fee payable in respect of a

class of suits not known to law.

11. Then it was argued that in substance such a suit must be treated for court-fee purposes as a suit for a declaratory decree, and Ramesam, J.'s

decision above referred to was pressed upon us. Reading the judgment of the learned Judge, I understand the learned Judge to have made this

observation with reference to a suit where the relief prayed for was that a decree obtained in a prior suit was not binding upon the Plaintiffs. In the

words of the learned Judge, ""the suit was brought by certain minor members of a Malabar tarwad for a declaration that a certain decree against the

karnavan and other minor members represented by the karnavan as the guardian was not binding upon them"". Reading the judgment of the learned

Judge, I understand that the Plaintiffs in the subsequent suit were not parties to the prior decree. The use of the word ""other"" by the learned Judge

is rather significant. If the present Plaintiff was not a party to the prior suit and decree, then it could not, in my opinion, be contended that the

second suit filed by him should be one to set aside or cancel the prior decree. In the case of a document executed by a person, if he wants any

relief with reference to it on the ground of fraud he must have the document cancelled or set aside before he can claim such relief, being himself a

party to the same; but a person who is not party to any such document is not bound to have it set aside or cancelled. In fact not being a party to

the document, he cannot have it ""set aside"". All that he can pray for is a declaration that he is not affected in any way by that document. Similarly in

the case of a decree, a decree will have full force and binding effect between the parties to the same until it is set aside by the persons who were

parties to the same; but persons who were not parties to the decree can only sue for a declaration in respect of their rights in relation to the decree.

In this view, so far as the present case is concerned, the decision of the learned Judge in *Balakrishna Nair v. Vishnu Nambudri* 1930 M.W.N. 509

does not, in my opinion, support the contention of the present petitioner.

12. Prior to the enactment of Act V of 1922 a suit to set aside a decree was held to come u/s 7(iv)(c) of the Court Fees Act. The Legislature

subsequently enacted Section 7(iv-A) which specifically provides for suits for cancellation of decrees for money or property having a money value.

Prima facie, after 1922 a suit to cancel a decree (which is the same as a suit to set aside a decree) would no longer be governed by Section 7(iv)

(c). Otherwise no meaning can be attached to the new provision contained in Section 7(iv-A). The learned advocate for the Petitioner argued that

the form of relief that would be awarded to a Plaintiff in such cases would be by way of a declaration, and in support of that argument he drew our

attention to the decision of the Privy Council in *Manohar Lal v. Jadunath Singh* (1906) L.R. 33 IndAp 128 : ILR 28 All. 585 : 16 M.L.J. 291

(P.C.). In my view that is not the proper way of looking into the question. Whenever a party to a prior decree wants relief to the effect that he is no

longer bound by the prior decree he should ask for the setting aside of the prior decree. What further and other connected appropriate reliefs

would be granted by Court in such cases as the result of the setting aside of the prior decree would depend upon the circumstances of each case.

In a case where others also were parties to the prior decree and they in no way claimed rights under the present Plaintiff, then, prima facie, the

prior decree would be declared to be not binding so far as the present Plaintiff is concerned if the Court found that the prior decree was vitiated by

fraud and accordingly proposed to give the Plaintiff the appropriate relief in the circumstances. In other cases, injunction might be properly granted

to the Plaintiff as a result of setting aside the prior decree. The question relating to further reliefs to be granted in a suit which is substantially one to

set aside the decree, has been considered by K. Srinivasa Aiyangar, J., in *Arunachellam v. Sabapathy* ILR (1917) 41 Mad. 213 : 33 M.L.J. 499

and also by Mookerjee, J., in the decision in *Abdul Huq Chowdhury v. Abdul Hafes* (1910) 11 C.L.J. 636. But that does not in any way alter the

real nature of the plaint in the subsequent suit. I am not therefore inclined to agree with the learned advocate's contention that the present suit

should be treated only as a suit for a declaratory decree and as coming u/s 7(iv) (c).

13. Then it was argued that the Lower Court was not right in having directed the Plaintiff to pay court-fee calculated in accordance with the

provisions of Section 7(v). There are two answers to this contention. In the first place so far as the case before us is concerned, it does not really

matter whether the case comes u/s 7(iv-A) or Section 7(v). The valuation would be the same in either case and the amount of court-fee payable

also would be the same. Even where the suit was one for a declaratory decree and also for possession, it has been held by this Court that suits for

possession having been specifically provided for by Section 7(v), the suit has to be valued accordingly and court-fee paid under the provisions of

that Sub-section This question has been discussed in *Chinnam-mal v. Madarsa Rowther* ILR (1903) 27 Mad. 480 : 14 M.L.J. 343 and

Rajagopala v. Vijayaraghavalu ILR (1914) 38 Mad. 1184 and is practically concluded by the first paragraph of the opinion given by the Full

Bench in *Arunachalam Chetly v. Rangaswami Pillai* ILR (1914) 38 Mad. 922 : 28 M.L.J. 118. But the learned advocate also argued that there

was an amendment made in 1922, by which a proviso was added to Section 7(iv) to the following effect:

Provided that in suits coming under Sub-clause (e) where the relief sought is with reference to any Immovable property such valuation shall not be

less than half the value of the Immovable property calculated in the manner provided for by paragraph (v) of this section;

and he suggested that as the present is a case where relief with reference to Immovable property is asked for, the Plaintiff is entitled to value the

relief in accordance with that proviso. I have already held that this case does not come u/s 7(iv)(c). Section 7(iv-A) is quite different from Section

7(iv) either (a), (b) or (c), and the proviso has been added only to Section 7(iv). Section 7(iv-A) is a quite different provision of law, and the

proviso does not operate with reference to Section 7(iv-A). That is one answer to the contention of the learned advocate. The second answer is,

that Section 7(iv-A) enacts that a suit in such cases should be valued when the whole decree is sought to be cancelled according to the amount or

value of the property for which the decree was passed. The section does not describe the mode in which that value is to be calculated. But that

would only bring in a doubt as to whether the value should be the market value or the statutory value fixed by the Court Fees Act. In

Venkatanarasimha Raju v. Chandrayya (1926) 53 M.L.J. 267 Krishnan and Odgers, JJ., held that in such cases it is not the market value but the

statutory value that has to be adopted where statutory value has been fixed by the Act. Adopting that value so far as this case is concerned, the

Plaintiff is not in any way a gainer.

14. Lastly, it was argued that the construction that I am disposed to adopt would lead to hardship. I am not able to see exactly how. In a suit to set

aside a decree and to recover, possession of property, so far as possession of the property is concerned, the plaint has to be valued at 10 or 15

times the revenue, as provided for by Section 7(v). That would in many cases be very much less than the amount or the market value of the

property comprised in the decree, and I am not able to see how exactly the Plaintiff would ordinarily be put to greater difficulty or pecuniary loss

by reason of the view I am inclined to take. But whatever it is, the point is reasonably clear to my mind; we have got to give effect to the new

provision of law - Section 7(iv-A.) - enacted in 1922; and unless we are able to say that the law knows of no such thing as a suit to cancel or set

aside a decree, we have got to give effect to that provision of law. Suits to set aside decrees have been known to the Indian Limitation Act from

1859 to 1908. (See Article 92 of the present Limitation Act and the corresponding provisions in the earlier Acts.) For the reasons I have given, the

suit before us should be taken to be one to cancel or set aside a decree and as such would come u/s 7(iv-A) of the Court Fees Act, and the

Lower Court was right in this case in directing the Plaintiff to pay the deficient court-fee fixed by it, and that is the correct court-fee payable -

whether the present case comes u/s 7(v) or 7(iv-A) of the Court Fees Act.

15. I agree that this Civil Revision Petition should be dismissed with costs.