

(1938) 11 MAD CK 0017
In the Madras High Court

Panangipalli Suryanarayanacharyulu

APPELLANT

Vs

Ravi Narasimhaswamy and Others

RESPONDENT

Date of Decision : 29-11-1938

Acts Referred:

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

Citation : AIR 1939 Mad 360 : (1939) ILR (Mad) 367 : (1939) 49 LW 196 :
(1939) 1 MLJ 268

Judgement

1. This matter arises out of a suit filed by the first respondent in the Court of the District Munsif of Razole for specific performance of a contract of lease entered into with the petitioner, for possession of the properties, and for the recovery of mesne profits. The property in suit had belonged to the petitioner's father who in May, 1913, granted a lease of it for twenty years to the second and third respondents and to the fathers of the fourth, fifth and sixth respondents. The lessor died sometimes before 1929 and the property devolved on the petitioner. On the 2nd November, 1929, the petitioner granted a lease of the properties to the first respondent for twenty years, the period to commence from 2nd June, 1935. A deed of lease was drawn up, duly executed and registered. The first respondent averred in his plaint that the petitioner had in collusion with the other defendants (respondents 2 to 15 and one Malay Venkataratnam, the fifteenth defendant) put the defendants into possession of the property and had refused his demand for possession. He treated the suit as being one for specific performance of the contract of lease and stamped his plaint on the amount of one year's rent under the provisions of Section 7(x)(c) of the Court-Fees Act. The petitioner contended that the suit was really one for possession and that it should be stamped in accordance with the provisions of

Section 7(v) of the Act, that is, on the value of the property leased.

The value which the first respondent had placed on the property in suit was Rs. 2,000. The District Munsif held an inquiry into the question of value

and found that the property was worth not less than Rs. 8,000. This finding has not been challenged. If the suit is to be regarded as one for

possession and not as one for specific performance, it cannot be tried in the Court of the District Munsif. The Court having jurisdiction will be that

of the Subordinate Judge. The District Munsif decided that the suit should be classified as a suit for specific performance and therefore held that it

had been properly stamped. In coming to this conclusion he relied on the decision of this Court on Sundara Ramanujam Naidu Vs. Sivalingam

Pillai and Another, . The petitioner filed an application for revision of this order. The matter came before Varadachariar, J., who considered that

observations in Sundara Ramanujam Naidu Vs. Sivalingam Pillai and Another, , did lend support for the conclusion arrived at by the District

Munsif and referred the matter to a Bench. This Bench has been constituted to decide the question.

2. In Sunday a Sundara Ramanujam Naidu Vs. Sivalingam Pillai and Another, , Krishnan and Venkatasubba Rao, JJ., held that a suit to compel

the defendant to execute a sale deed in pursuance of an agreement for sale was a suit for specific performance within the meaning of Section 7(x)

(c) of the Court-Fees Act and did not become a suit for possession by reason of the addition of a prayer for possession. In the course of his

judgment Krishnan, J., observed:

The delivery of possession is a part of the specific performance of a contract of sale unless the terms thereof show that the vendee was not under

an obligation to deliver possession. The claim for delivery of possession is as much a part of specific performance as the claim for the payment of

the price is, when the seller brings the suit for specific performance

3. He also observed that when the prayer for possession was allowed to be added the suit did not cease to be one for specific performance and

become a suit for possession or combination of both suits--under the Court-Fees Act. In that case there was only one defendant and there was no

question of the property being in the possession of a stranger to the contract. The Allahabad High Court in Muhi-ud-din Ahmad Khan v. Majlis

Rai I.L.R.(1884) 6 All. 231 and Nihal Singh v. Sewa Ram I.L.R.(1916) 38 All. 292 also held that a suit for specific performance carried with it

the right to claim possession and in Fakir Chand v. Ram Datt I.L.R.(1923) 5 Lah. 75 the Lahore High Court gave a decision to the same effect.

On the other hand, the Calcutta High Court in Madan Mohan Singh v. Gaja Prasad Singh (1911) 14 Cal. L.J. 159 came to a contrary conclusion.

In that case Mookerjee and Caspersz, JJ., held that where in a suit for specific performance a claim for possession is added the suit thereby

becomes one in substance for possession of the property and should be valued u/s 7, Clause (v) of the Court-Fees Act.

4. It is not necessary for the purposes of this case to decide whether the opinion of Krishnan, J., in Sundara Ramanujam Naidu Vs. Sivalingam

Pillai and Another, , which is shared by the Allahabad and Lahore High Courts is to be preferred to that expressed by the Calcutta High Court; nor

is it necessary for us to discuss whether the observations of Krishnan, J., went too far, because it is quite clear that in the present case the suit is in

substance one for possession and not for specific performance. The lease had been executed long before suit and according to the first respondent

he was compelled to bring the action because the petitioner had parted with possession to the other respondents. The suit is, therefore, one for

possession against strangers to the contract, who according to the plaintiff are unlawfully withholding possession from him. The District Munsif was

impressed by the fact that in his written statement the petitioner had said that the property was in his possession and that the other defendants were

not in possession. This is a question of fact which will have to be tried in the suit, but for the purposes of the court-fee what the Court has to look

at is the plaint. The plaint must be stamped according to the nature of the suit. The plaintiff formulates his claim and the court-fee must be paid

according to the category in which the suit falls.

5. In the course of his argument the learned advocate for the first respondent laid great stress on the provisions of Section 27 of the Specific Relief

Act. That section states that except as otherwise provided by Chapter II of the Act specific performance of a contract may be enforced against

other party thereto and any other person claiming under him by a title arising subsequently to the contract, except a transferee for value who has

paid his money in good faith and without notice of the original contract. In this case defendants 2 to 16 are not, according to the plaint, persons

claiming under the first respondent, but persons who have been put in possession of the property in collusion with the petitioner in order to defeat

the first respondent.

6. The petition must, therefore, be allowed and the plaint returned to the first respondent for presentation to the Court having jurisdiction after

being stamped with the proper fee. The petitioner is entitled to his costs.