

(1978) 08 MAD CK 0008

In the Madras High Court

Case No : Civil Revision Petition No. 1467 of 1977

Periyakaruppan

APPELLANT

Vs

Solomon

RESPONDENT

Date of Decision : 04-08-1978

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 2(2)

Court Fees Act, 1870 — Section 7

Tamil Nadu Court Fees and Suits Valuation Act, 1955 — Section 3, 40(1), 50

Citation : (1979) ILR (Mad) 484

Hon'ble Judges : Nainar Sundaram, J

Bench : Single Bench

Advocate : P. Ramachandradu, for the Appellant;

Final Decision : Allowed

Judgement

Nainar Sundaram, J.—In this revision, the Plaintiff in Original Suit No. 146 of 1976 on the file of the District Munsif of Tuticorin is the

Petitioner. The Respondent herein is the Defendant in the said suit. The Plaintiff filed the suit for a decree cancelling the order passed in Rent

Control Original Petition No. 54 of 1975 be the Rent Controller-cum-District Munsif Tuticorin. He valued the suit u/s 50 of the Tamil Nadu Court

Fees Act and paid a fixed court fee. However, the Court below pursuant to the inspection note of the District Judge, Tirunelveli, proceeded to

assess the question and held that the Plaintiff ought to value the suit u/s 40(1) of the Tamil Nadu Court Fees Act and directed him to pay court fees

on the value of the property. The present revision is directed against the said order of the Court below, dated 23rd March, 1977.

2. The question that comes up for consideration in this revision is whether in a suit of the present nature where the Plaintiff seeks to cancel an order

passed by the Rent Controller under the provisions of the Tamil Nadu Act XVIII of 1960, the provisions of Section 40(1) of the Tamil Nadu

Court Fees Act could be attracted and the Plaintiff could be called upon to compute the value of the property for which the order of the Rent

Controller was passed and directed to pay court fees on such value. Admittedly the order of the Rent Controller is not one for money. May be by

virtue of the order, possession of the property concerned can be recovered in execution. However, it is far-fetched to say that the order of the

Rent Controller is a decree. The expression decree has not been defined in any of the specific provision in the Tamil Nadu Court Fees Act.

Section 3 , Sub-clause (iv) states that expressions used and not defined in this Act or in the Madras General Clauses Act, 1891 (Madras Act I of

1891) but defined in the Code of Civil Procedure, 1908 (Central Act V of 1908) shall have the meanings respectively assigned to them in the said

code. Section 2(2) of the CPC defines decree. But the order of the Rent Controller cannot be said to be a decree as defined by Section 2(2) CPC

for the simple reason it is not a decree passed by any Court in a suit. In Kuppu Govinda Chettiar Vs. Uttukottai Co-operative Society,

Venkataramana Rao, J. was dealing with a question with reference to payment of court fee in a suit for declaration that the order of a liquidator of

a Co-operative society determining the amount of contribution payable by the Plaintiff u/s 42(2)(b) of the Co-operative Societies Act is null and

void. There the argument projected against the Plaintiff was that he must value the claim u/s 7(iv-A) of the Court Fees Act VII of 1870. The

learned Judge held that the term decree would connote a final order of Court, whether civil or revenue, in a suit, and an order passed by an officer

or a body which is not a Court but is invested with judicial powers in pursuance of which a liability is fixed on a person to pay a sum of money, will

not come within its purview. Here in the present case the order that is sought to be cancelled is one passed by the Rent Controller constituted

under the Tamil Nadu Act XVIII of 1960. So far as the authorities Tribunals functioning under the Tamil Nadu Act XVIII of 1960 are concerned,

this Court has pointed out in a number of decisions that they are not Courts. If this is the position the only conclusion that could be arrived at is, the

order of the Rent Controller cannot be stated to be a decree for property within the meaning of Section 40(1) of the Tamil Nadu Court Fees Act.

In Venkatswami Naicker v. Chinnayapuram Co-op. Stores (1951) 65 L.W. 153. Basheer Ahmed Sayeed, J., held that the award passed by the

Deputy Registrar of Co-operative Societies cannot be stated to be a decree and the Plaintiff cannot be called upon to pay court fees for its

cancellation u/s 7(IV) A of the Court Fees Act, 1870. The learned Judge followed the dictum of Venkataramana Rao, J. in Govinda Chettiar v.

Uttukottai Co-operative Society. ILR (1938) Mad. 63. Applying the above principles, I find that the Court below committed an error in calling

upon the Petitioner herein who is the Plaintiff in the suit to value the suit u/s 40(1) of the Tamil Nadu Courts Fees Act. In this view, I am obliged to

interfere in revision and accordingly this revision is allowed and the valuation as already given in the plaint will stand. But there will be no order as

to costs.