

(1951) 08 MAD CK 0012

In the Madras High Court

Case No : Civil Revision Petition No's. 414 to 416 and 456 of 1950

Ponnuru Sambiah and Others

APPELLANT

Vs

Annapareddi Venkatareddi and Others

RESPONDENT

Date of Decision : 27-08-1951

Acts Referred:

Citation : AIR 1954 Mad 168 : (1952) 65 LW 1220 : (1952) 1 MLJ 632

Hon'ble Judges : Panchapakesa Ayyar, J

Bench : Single Bench

Advocate : K. Krishnamurthy and G. Venkatarama Sastry, for the Appellant; P. Ram Reddi, Govt. Pleader, B. Prasada Rao, M.V. Nagramayya and N.C. Raghavachari, for the Respondent

Judgement

Panchapakesa Ayyar, J.—These are four allied cases where the Subordinate Judge of Bapatla has directed a court-fee to be paid "ad

valorem", on a valuation of Rs. 15,000 in the three suits covered by the civil revision petitions Nos. 414 to 416, and of Rs. 9,000 in the suit

covered by C. R. P. No. 456 of 1950, for recovery of possession of the lands in which the "archakas" claimed occupancy rights and from which

they claimed to have been "illegally ejected" by the orders of the District Court, Guntur, in O. Ps. filed u/s 78, Hindu Religious Endowments Act by

the trustees of the temples acting under instructions from the Hindu Religious Endowments Board, Madras. In some suits there are other reliefs also

claimed like accounting, mesne profits, etc., for which separate court-fee has been paid and about which there is no dispute before me. The only

dispute is regarding the mode of valuation for "recovery of possession" of these alleged occupancy lands after the "areha-kas" had parted with

possession, under the orders of the District Court in the C. Ps. by delivering

possession to the trustees.

2. The learned counsel for the petitioners argued that in the first three suits the plaintiffs could value the relief regarding the recovery of possession

u/s 7(11)(e), Court-fees Act as in a case of "illegal ejection" of an occupancy tenant by a landlord by force, and pay only an "ad valorem" court-

fee of Rs. 112-8-0, on the amount of assumed rent of Rs. 1,000 payable for the year next before the date of presenting the plaint, and that the

plaintiffs in the fourth suit could pay court-fee for this relief on Rs. 600. All these petitioners were claiming to pay court-fee for the relief of

recovery of possession of these alleged occupancy lands, with whose possession they had parted by due process of law, under the orders of the

District Court in O. Ps., on the wholly absurd and untenable ground that they were "illegally ejected" by the landlord. Even if the District Court's

orders in the O. Ps. were wrong in law, there was no "illegal ejection" but "only legal ejection" by process of law.

The learned Subordinate Judge held that the plaintiffs in all the four suits were bound to pay "ad valorem" court-fee, u/s 7, Clause (V)(c), on an

amount of Rs. 15,000 in the first three suits, and on an amount of Rs. 9,000 in the fourth suit, being 15 times the "net profits" arising from the land

during the year next before the date of presenting of the plaints. He held that as "strangers" (subsequent lessees from the trustees) were added in

the first three suits, and as the title to the "kudiwaram" rights in the lands was sought to be got declared, Section 7(V)(c), Court-fees Act alone

would apply. He relied for this position on a ruling by a Bench of this Court, consisting of Leach C. J. and Lakshmana Rao J. in -- Kuppuswami

Pillai Vs. The Taj Fraksha Thaikkal Estate and Another, , on a reference by Rajamannar J.

3. I have perused the records and heard the learned counsel on both sides. It is clear to me that in a case like this where a plaintiff is claiming

occupancy rights in lands with whose possession he has parted legally and peacefully, and under orders of Court in judicial proceedings, and

where a declaration of the title of the "kudiwaram" was sought, and strangers were added, the section applicable for paying the court-fee for

recovery of possession is Section 7, Clause (V)(c), as held by the lower Court relying on the Bench ruling quoted above. Only, in calculating 15

times the "net profits", the lower Court, in my opinion, erred in adopting the Rs. 1,000 and 6,00 shown as "annual" profits by the petitioners as the

"net profits". The cultivation expenses for raising the crops should be deducted, as urged by the learned counsel for the petitioners, from the value

of the harvested crops (or "annual profit", which was Rs. 1000 and 600), and the rent or "melwaram" payable to the landholder should also be

deducted "afterwards" from the above figure in order to get the "net profits".

Indeed "'annual profit'", in the usual sense of the word, means the "gross income" or the price of the produce got from the lands. It is obvious that

unless the cultivation expenses are deducted, it will not be correct to call that "net profits" at all. Usually we understand by "net profits", from a

land, what a man gets over and above his cultivation expenses. From the amount thus arrived at after deducting the cultivation expenses, a further

amount must be deducted, in these cases, towards the rent or "melwaram" admittedly payable to the landholder, under the ruling in Kuppuswami

Pillai Vs. The Taj Fraksha Thaikkal Estate and Another, ", as these are only suits for establishing title to "kudiwaram" alone.

4. After hearing the learned counsel on both sides, I am satisfied that the amount got by sale of the produce from the lands in the first three suits

every year will be Rs. 1000. Out Of this, about one-fourth, or Rs. 250, will have, admittedly, to be deducted for "cultivation expenses". Out of the

balance of Rs. 750, which alone will be the net profits from the land, "kudiwaram" and "melwaram" combined, about one-third, in the absence of

any other data for valuing the services rendered by the tenant "in lieu of cash or grain rent", will have to be deducted before finding out the net

profits realisable from the "kudiwaram" interest, for it is admitted on both sides that the service was only rendered in lieu of rent, and was not

intended to be "free", even though it was in the nature of "Nitya Naivedyam" and "Deepam, Dhupam" etc.

So, we get Rs. 500 as the "net profits" for the year in each of these three suits, for the purpose of multiplying by 15 times, u/s 7, Clause (V) (c),

and finding out the valuation for "the relief of recovery of possession". In other words, in each of the suits covered by C. R. Ps. Nos. 414 to 416

of 1950, the valuation for the relief of recovery of possession should have been given as Rs. 7500, and "ad valorem" court-fee should have been

paid on that amount, and not merely on Rs. 1,000 (or Rs. 113-7-0). I direct payment of such court-fee accordingly in each of these three suits for

this relief. Of course, this court-fee will be in addition to the court-fees paid for other reliefs in each suit about which there is no dispute. The deficit

court-fee should be paid in the lower Court within three months from today.

5. In C. R. P. No. 456 of 1950, "ad valorem" court-fee should have been paid on Rs. 4,500 instead of on Rs. 600 or Rs. 67-7-0. This figure is

arrived at as follows. The value of the crops annually is Rs. 600. The cultivation expenses of Rs. 150 (at one-fourth) must be deducted from this.

From the remaining Rs. 450 must be deducted one-third (a rule of thumb method applied by Courts in the absence, of more reliable data) for

service in lieu of rent". That leaves us an amount of Rs. 300 as the "net profits" from the "kudiwaram" interest to be multiplied by 15 times u/s 7(v)

(c).

Of course, in this case also, there is absolutely no question of any "illegal ejection", and I hold that the delivery of possession was peaceful and "ad

valorem" court-fee must be paid u/s 7(v)(c), for that reason as also because the title for "kudiwaram" had to be established, though the subsequent

lessees were not added in this suit as in the other three suits. The deficit court-fee, that is, the difference between the "ad valorem" court-fee on Rs.

4,500, for this relief, and the court-fee of Rs. 67-7-0 already paid, must be paid into the lower Court within three months from today, I may add

that the counsel on both sides agreed that the "service in lieu of rent" must be valued and allowed for, as held in the ruling quoted above, and that,

in the absence of correct and definite data, a rule of thumb method of deducting one-third of the total net profits for "mel-waram" dues may be

adopted as more or less correct and reasonable.

6. Mr. Krishnamurthi and Mr. Venkatarama Sastri, for the petitioners, urged that in several appeals decided in this Court, by Benches and single

Judges, "archakas," like these petitioners have been allowed to enjoy under the temples, a suitable portion of the land (fixed in each case) to

provide them with the wherewithal for doing service to the temples, and have been directed to surrender only the remaining lands to the temples.

They prayed that such orders might be made in these cases also by me now, in order to save the "archakas" from wasting money in court-fees and

litigation. But, surely, these revision petitions, concerned only with the court-fees due for recovery of possession, are not the proper forum for

agitating this matter. When the suits come on for hearing, the trial Court will doubtless consider the various rulings of this Court regarding that

matter and pass appropriate orders suitable to each case after hearing both sides.

No doubt, temples depend on "archakas", and "archakas" depend on temples, and a give and take policy is conducive to the welfare of both. The

petitioners are at liberty, even before the deficit court-fee is paid within the time fixed, to negotiate with the trustees of the temples and with the

Hindu Religious Endowments Board on the basis of the judgments of this Court directing such equitable division, and arrive at just and equitable

settlements appropriate to each case. I am sure the Hindu Religious Endowments Board will be as anxious to avoid wasteful, acrimonious and

unnecessary litigation as the "archakas" but the "archakas" must be reasonable in their demands.

7. In all these civil revision petitions, all the parties will bear their own costs, as I am ordering only "ad valorem" court-fee for this relief on roughly

half the amount fixed by the lower Court Order accordingly.