
(1941) 08 MAD CK 0048
In the Madras High Court

Ratnavelu Pillai and Another

APPELLANT

Vs

Varadaraja Pillai and Another

RESPONDENT

Date of Decision : 22-08-1941

Acts Referred:

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

Citation : AIR 1942 Mad 585 : (1942) 55 LW 293 : (1942) 1 MLJ 569

Hon'ble Judges : Chandrasekhara Ayyar, J;Chandrasekhara Aiyar, J

Bench : Division Bench

Judgement

Chandrasekhara Ayyar, J.—A preliminary objection is taken that no revision lies against the order directing the plaintiffs to give the market value of the land and pay court-fees thereon. The plaintiffs paid court-fees on the basis of the nett profits from the land for the previous year claiming to come within Section 7, Clause (iv) (c) of the Court-Fees Act and the proviso to the Madras Act which brings in the method of court -fee calculation provided in Section 7, Clause (v). Kumaraswami Sastri and Wallace, JJ., in Rani Kulandaivelu Nachiar v. Indran Ramaswami Pandia Thalavan (1927) 55 M.L.J. 345 : ILR Mad. 664 overruled the preliminary objection and held on a consideration of the authorities that such an order can be the subject of interference u/s 115, Civil Procedure Code. My attention has been drawn to the decision by Sir Sidney Burn, J., in K. Manaithunainatha Desikar Vs. Gopala Chettiar and Others, to the contrary where Ram Kulandaivelu Nachiar v. Indran Ramaswami Pandia, Thalavcm (1927) 55 M.L.J. 345: ILR Mad. 664 was considered. Apart from the fact that the Bench decision is binding on me, it must also be pointed out that the facts in K. Manaithunainatha Desikar Vs. Gopala Chettiar and Others, , could not really be distinguished from those in Rani Kulandaivelu Nachiar v. Inarm, Ramaswami Pandia Thalavan (1927) 55 M.L.J. 345 : ILR Mad. 664 on the ground mentioned, namely, the Judge refusing to proceed with the suit until the proper court-fee is paid. Wherever a Court calls upon a plaintiff to pay additional court-fee and adjourns the suit to a later date for that purpose, it does refuse to proceed with the suit until the proper sum is put into Court. It is only in this sense that the

Bench in *Rani Kulandaivelu Nachiar v. Indian Ramaswami Thalavan* (1927) 55 M.L.J. 345 : ILR Mad. 664 appear to have thought that there was a refusal. It does not look as though there was a specific order refusing to proceed with the suit. As a matter of fact, no such order is contemplated by the Code. If the order directing payment of additional court-fee is not complied with, it is followed by an order dismissing the suit, and once there is such a dismissal, there can be no revision because the remedy is by way of an appeal against a decree. I overrule the preliminary objection, on the strength of the Bench decision.

2. On the merits I think that the District Munsif gave a wrong meaning to the words "nett profits" occurring in Section 7, Clause (v) (c) of the Court-Fees Act. If a land pays revenue, the valuation of court-fees is either under Clause (a), if the revenue is permanently settled, or under Clause (b), if it is not so settled. If the land pays no revenue, or has been partially exempted from such payment or is charged with any fixed payment in lieu of such revenue, it is provided that the calculation is to be on 15 times the nett profits that arose from the land during the year next before the date of presenting the plaint, or on the value of the land, if no such nett profits have arisen. Having regard to the distinction made in the sub-clause between cases of land subject to payment of revenue and cases of land not subject to payment of revenue but which had yielded nett profits, it is legitimate to hold that the term has been used to mean nett income or yield from the land and not profits to the holder or the owner of the land. Profits ordinarily mean excess of returns over outlay. In Wharton's Law Lexicon, the word is stated to mean "the advantages which land yields in the shape of rent, issues, or other emoluments". In the context in which the words "nett profits" are used in the Court-Fees Act they mean the nett income from the land after deducting from the gross yield the charges of labour and cultivation.

3. It is only if we take into account the fact that melwaram was due and payable on this land that we arrive at the result reached by the District Munsif, namely, that far from there having been any profits, the position was really the other way round, the liability far exceeding the income. But if we understand nett profits in the sense in which I think they have been used in the Court-Fees Act there is no such difficulty. It is common ground that in the year preceding the filing of the plaint the nett realization from these lands was Rs. 106.

4. I allow the revision petition and set aside the order of "the lower Court. Costs here will be costs in the cause.