

(1941) 01 MAD CK 0039
In the Madras High Court

S. Ramasubba Aiyar and Another

APPELLANT

Vs

Ayyalu Naidu and Another

RESPONDENT

Date of Decision : 10-01-1941

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 92

Citation : (1941) ILR (Mad) 708 : (1941) 53 LW 311 : (1941) 1 MLJ 414

Hon'ble Judges : Wadsworth, J;Mockett, J

Bench : Full Bench

Judgement

Mockett, J.—This is a petition seeking to revise an order of the learned Subordinate Judge of Mayavaram and it involves a question under the Court Fees Act. The point may be shortly stated. The petitioners contend that they should pay a Court-fee under Article 17-A (1) of the Act and the learned Judge has held that the fee should be paid u/s 7, Clause 4-A. The history of this matter, so far as it is relevant, is as follows : It appears that one Ayyalu Naidu, a grocer, brought a suit against the temple of Sri Mayuranathaswami Abisheka Kattalai represented by its hereditary trustee Sri la Sri Ambalavana Pandarasannadhi and against Sri la Sri Ambalavana Pandarasannadhi himself. The suit was founded upon a promissory note, and the promissory note had been executed by the trustee in respect of goods supplied by the plaintiff. The end of the suit was that the plaintiff obtained a decree against the temple properties alone and did not press the suit against the trustee against whom the suit was dismissed. The petitioners before us are three worshippers of the temple and they have filed the suit now under consideration in which they impugn the decree passed against the temple shortly on the ground that the trustee was not looking after the temple's interests but allowed the temple to be sacrificed in return for himself being exonerated, and we have to consider exactly what it is that the plaintiffs have prayed for in this suit. After setting out the facts which I have shortly narrated and alleging collusion between Ayyalu Naidu and the trustee, they finally conclude their plaint with the following prayer:

The plaintiffs therefore pray that this Honourable Court may be pleased to pass a decree (a) declaring that the decree in O.S. No. 22 of 1937 on the file of this Court is not binding on the second defendant herein (b) directing the first defendant to pay the plaintiffs the costs of this suit and (c) granting the plaintiffs such further or other reliefs etc.

2. The Subordinate Judge has held that, however worded, this is in substance and in effect a prayer for the cancellation of the decree and that therefore Section 7, Clause 4-A. was applicable.

3. It has been argued before us that that view is wrong because this is a prayer for a decree "declaring that the decree in O.S. No. 22 of 1937 is not binding on the second defendant" and that therefore Article 17-A (1) is the appropriate article. I have felt some difficulty in approaching this case owing to the position of the petitioners, the plaintiffs in this suit. I find it difficult to understand what their position is. They do not claim any personal benefit. It is not a case of a suit by a worshipper who claims that he has been excluded from his rights as a worshipper. It is not a suit u/s 92 of the Civil Procedure Code, in which a worshipper seeks various remedies that are provided against trustees. It would appear that the position of the plaintiffs can only be regularised by leave of the Court under Order 1, Rule 8. Before us the petitioners were inclined to concede that they are three of numerous persons and the numerous persons are the worshippers having the same interest in this suit and that they are suing representing all other persons like themselves. Later this aspect may become material in the Court below, but I mention it because there is no doubt whatever and there is ample authority for the position, that in order to decide a matter of Court-fee, the Court is entitled to examine the substance of the suit, and obviously, in order to examine the substance of the suit, the position of the parties thereto, and particularly in this case of the plaintiffs, must necessarily be defined. What is it that the plaintiffs here are seeking to do? They are asking that the decree passed in the previous suit should be declared to be not binding. They have made in this suit both the temple and the trustee himself parties. In my view, the position of the plaintiffs is clear. They have come forward to represent the temple itself. If they seek to sue as individuals only it would seem that an impossible position arises, because there would be nothing to prevent other worshippers coming forward and asking for declarations in other terms. If authority is required for the proposition that the substance of the suit must be regarded, it is to be found in two cases in this High Court--*Arunachalam Chetti v. Rangasivanii Pillai* (1914) 28 M.L.J. 118 : ILR 38 Mad. 922 (F.B.) and *C.R. Ramaswami Aiyangar, represented by his mother and next friend Lakshmi Ammal Vs. C.S. Rangachariar and Others*, . The learned Counsel for the petitioners has not contended that the substance of the suit is not an extremely relevant consideration. There is another group of cases which assist him in this matter, of which *Sambanda Pandara Sannadhi Vs. T.P. Balagopalakrishna Chetty*, , is an example. The effect of this case is that a trustee, who seeks not to be bound by a decree, cannot raise that contention in execution, but must bring a suit to set

the decree aside. There is no direct authority on the position before us, but our attention has been drawn to one or two cases. I propose to confine my remarks to the decisions of this High Court, because no decision of any other High Court has rendered me any assistance. *Vallabhacharyulu v. Ranagacharyulu* (1936) 45 L.W. 380, was a suit by reversioners for a declaration that a decree obtained against the widow of the last male holder was collusive and not binding, and in that case a question arose as to whether the decree was governed by Section 7, 4 (c) of the Court-Fees Act or Section 7, 4-A as amended in Madras.

4. It may be convenient at this stage to set out the articles and sections with which we are concerned. Article 17-A (1) reads as follows:

To obtain a declaratory decree where no consequential relief is prayed.

5. Section 7, 4-A reads:

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....

6. Venkataramana Rao, J., in *Vallabhacharyulu v. Rangacharyuht* (1936) 45 L.W. 380 took the view that in cases where the decree does not cast an obligation on persons as parties, though there is a decree on the estate in which they have an interest under the general law, they do not require cancellation but only a declaration that the decree is not binding on their interests. In my view a reversionary suit such as is dealt with by the learned Judge is in a totally different category to suits such as the present; where persons come forward,, as in this case; and virtually say that, as representing the particular entity--and a temple is an example of an entity that must be represented--they claim to have a decree against it cancelled. That is a very different position from a reversioner who only asks that a decree against the widow should be declared to be invalid. In *Venkatalal v. Kosaldasu Bawaji* (1930) 61 M.L.J. 39 the plaintiff again had a beneficial interest in the surplus. No case has been cited to us in which the plaintiff who seeks to have a decree declared invalid has had no personal interest whatever in the result.

7. The learned Government Pleader has put his argument in this manner. He says that the substance of the suit has got to be considered and that this is not a case where the temple was not at all represented in the beginning. He has referred us to several cases of which *Chidambaranatha Thambiran alias Sivagnana Desika Gnana Sammanda Pandara Sannadhi and Another Vs. P.S. Nallasiva Mudaliar and Others*, , which was also cited by the appellants, is an interesting example because that shows that persons in the position of disciples of a, mutt--and it is not unlike the position of worshippers of a temple...come under the category of parties who can sue within the provisions of Order 1, Rule 8. Generally, the view I take of this case is that it does not leave much room for any very erudite argument. I think that the test pressed by the learned Government Pleader solves any difficulty. What are the facts? Here, a grocer obtained a decree against a temple and it is alleged--and I emphasise that I am only setting out the

pleading--in collusion with the trustee. Unless there is, intervention through Court it is obvious that there is nothing to stop that decree being executed. Intervention comes from worshippers and they come forward, in my opinion, not to ask that the decree shall not be binding on the temple, but, as representing the temple, that it should be cancelled, and I find it very difficult to understand how they can be before the Court in any other capacity. That is shortly the basis of the decision of the lower Court and I think that decision is correct. The position of the petitioners under Order 1, Rule 8, as I have already indicated, may require a decision later on by the lower Court, and nothing I have said is intended to affect their position except so far as it is relevant to this judgment.

8. In my view this petition should be dismissed with costs, one set to be divided between the first respondent and the Government Pleader. The original plaint will be returned to the petitioners, who will have two month's time for payment of the court-fee.

Wadsworth, J.

9. I agree. I wish to add only a very few words. It seems to me to be well settled that when A gets a decree against B and B or his representative wishes to get rid of that decree B must pay court-fee as for the cancellation of the decree, whether he drafts his prayer openly as one for cancellation or whether he disguises it in the form of a prayer for a declaration. If the decree obtained by A against B adversely affects the interests of C, C may apply for a declaration that the decree against B is not binding upon himself, and in such a suit there is no question of cancellation and the suit can be valued as for a declaration. Here we are concerned with a suit by the plaintiffs, presumably representing the general body of worshippers, for a declaration that the decree obtained by the first defendant against the second defendant, the temple, is not binding upon the temple. The plaintiffs do not ask for the protection of any interest of their own. By the simple device of putting both the temple and its present trustee into the array of defendants they hope to disguise the fact that they are in substance praying on behalf of the temple for the cancellation of a decree obtained against that temple. To my mind, as was observed in *Chidambaranatha Thambiran alias Sivagnana Desika Gnana Sammanda Pandara Sannadhi and Another Vs. P.S. Nallasiva Mudaliar and Others*, , the plaintiffs, though their position gives them an interest sufficient to justify the filing of a suit independently of the trustee, really sue only in the right of the temple and its trustee; and they should not be permitted to escape from the natural consequences of their suit by arraying the temple and its trustee amongst the defendants, instead of their being co-plaintiffs as in theory they ought to have been. I agree therefore with the decision of my learned brother.