

(1973) 02 MAD CK 0031

In the Madras High Court

Case No : Civil Revision Petition No's. 1762 of 1968, 1615 of 1969 and 2019 of 1971

T. Kuppammal

APPELLANT

Vs

T. Natarajan and Another

RESPONDENT

Date of Decision : 13-02-1973

Acts Referred:

Citation : AIR 1973 Mad 468 : (1974) ILR (Mad) 199 : (1973) 86 LW 417 : (1973) 2 MLJ 331

Hon'ble Judges : K. Veeraswami, C.J.;Raghavan, J

Bench : Division Bench

Judgement

K. Veeraswami, C.J.—This reference relates to court-fee and made on the view that there is conflict of decision on the interpretation of

Section 40(1) of the Madras Court-Fees and Suits Valuation Act. 1955. In Arunachalathammal v. Sudalaimuthu Pillai (1970) 83 MLW 789,

Kailasam J. held that court-fee should be assessed on the value for which the document was executed and not on the market value. In Sengoda

Nadar Vs. Doraiswami Gounder and Others, which was concerned with a suit for cancellation of a sale deed. Sadasivam J. considered that in

view of Kolachala Kutumba Sastri Vs. Lakkaraju Bala Tripura Sundaramma and Others, , a Full Bench decision, fee was exigible on the market

value of the property covered by the document sought to be set aside. The instant case is of a plant seeking to set aside a final decree in a partition

suit, in which the property forming the security of the mortgage in favor of the petitioner was not allotted to the mortgagor, but to another sharer.

The petitioner is set ex parte at the final decree proceedings. On the view we are inclined to take as to the scope and effect of the plaint and the

relief claimed therein, it may not be necessary to resolve the conflict between Arunachalathammal v. Sudalaimuthu Pillai, (1970) 83 MLW 789 and

Sengoda Nadar Vs. Doraiswami Gounder and Others, . But, since arguments have been heard by us, it seems that the view namely, that court-fee

should be paid on the market value of the subject-matter of the suit covered by a decree or document which prevailed in Kolachala Kutumba

Sastri Vs. Lakkaraju Bala Tripura Sundaramma and Others, , is the correct one. The language of Section 7(iv-A) of the earlier Court-Fees Act is

in pari materia with that in Section 40(1) of the 1955 Act. The first part of the sub-section presents no difficulty, because it speaks of the value of

the subject-matter of the suit which clearly means the market value. But the sub-section proceeds to say that the value of the subject-matter of the

suit should be deemed to be so and so. If what is sought to be cancelled is the whole of the decree or document, the basis for assessment of court-

fee is the amount or value of the property for which the decree was passed or such document was executed. But if a part of the decree or the

document is sought to be cancelled, court-fee is to be paid on such part of the amount or value of the property. The language so employed is

intended to meet different situations where decree and document of diverse character may be involved. Where the decree is a money decree or a

charge decree which is sought to be set aside, it presents no difficulty. Where the decree is property, equally it is easy, because in such cases the

amount for which the decree is passed is the basis for assessment of court-fee. But in the case of a document when the sub-section speaks of value

of the property for which the document was executed, prima facie it would appear that the basis for assessment of court-fee is the amount that has

been mentioned in the document. But on a closer scrutiny of the entire section its intention is quite clear, especially in the light of the language "if a

part of the decree or other document is sought to be cancelled, such part of the amount or value of the property". It will be illogical to hold that if a

part of the document is asked to be set aside, the market value should be the basis. But, if the whole of the document is to be set aside, it is the

amount which is mentioned in the document is the value. The crux of the matter lies really in the first part of the sub-section, namely the value of the

subject-matter of the suit being the basis for assessing the court-fee. The deeming contemplated by it is not to convert the value into something

different from the market value. The words "for which the decree was passed or other document was executed" will have to be understood only in

the sense of the value of the subject-matter being the basis for assessment of court-fee, which is the market value. That apparently was the view of

Venkatasubba Rao, J. in Jonnavaram Balireddi Vs. Khatipulal Sab alias Abdul Satar and Others, , which was accepted as the correct view by the

Full Bench in Kolachala Kutumba Sastri Vs. Lakkaraju Bala Tripura Sundaramma and Others, .

2. In the instant case, however, it seems to us that the subject-matter is neither the property for which the mortgage was executed nor the mortgage

itself. The petitioner, as a mortgagee, is not asking for the property. Nor does it relate to the mortgage. His grievance appears to be against the

allotment of the property mortgaged to him to a person other than the mortgagor. That being the limited relief that the petitioner is interested in the

suit, the subject-matter, namely, his grievance against the particular allotment, is not capable of market value. It follows that court-fee is not

payable u/s 40(1). The provision that will be applicable is Section 50. The court-fee paid by the petitioners in C. R. Ps. 1762 of 1968 and 1615 of

1969 appears to be correct. The petitioner in C. R. P. 2019 of 1971 will have two months" time to pay the deficit court-fee. There will be an

order accordingly. No costs in any of the petitions.

3. Ordered accordingly.