

(1936) 12 MAD CK 0043
In the Madras High Court

Vedala Vallabhacharyulu and Another	APPELLANT
Vs	
Vedala Rangacharyulu and Others	RESPONDENT

Date of Decision : 18-12-1936

Acts Referred:

Citation : AIR 1937 Mad 449 : (1937) 45 LW 380

Hon'ble Judges : Venkataramana Rao, J

Bench : Division Bench

Judgement

Venkataramana Rao, J.—The question involved in this Revision Petition is one of court-fee and for the disposal of the same it is necessary to look into the allegations in the plaint and the substance of the relief claimed. Plaintiff 1 is a divided brother of one Vedala Raghavacharyulu, the husband of defendant 2. Plaintiffs 2 and 3 are the sons of plaintiff 1. Raghavacharyulu died in or about January 1929, leaving him surviving his widow, and by his last will and testament conferred certain rights in his estate on the widow and after her lifetime on the plaintiff. The case of the plaintiffs is that she has only a life-interest and that they have a vested remainder therein, The plaintiffs allege that the testator directed that the debts left by him should be discharged by his widow in a certain manner but she failed to do so, that she in collusion with defendant 1 executed certain promissory notes in his name, some of them purporting to be renewals of debts of her husband, that on the footing of the said promissory notes defendant 1 instituted O.S. No. 230 of 1934 on the file of the District Munsif's Court, Masulipatam, against defendant 2, that the latter allowed an ex parte decree to be passed against her personally and against the assets of the husband in her hands, that the said decree was a collusive one and could not bind their vested remainder in the properties left by Raghavacharyulu and that the suit properties are being brought to sale and hence they have filed the present action for getting the following relief:

It may be declared that the decree obtained by defendant 1 against defendant 2 in O.S. No. 203 of 1934, of the District Munsif's Court, Masulipatam is a collusive

decree and that the said decree does not affect the plaintiffs or the vested remainder interest of the plaintiffs in the properties of the late Raghavacharyulu and that defendant 1 should be restrained by a permanent injunction from bringing to sale in pursuance of the said decree the vested remainder interest of the plaintiffs in the properties of the late Raghavacharyulu.

2. The learned District Munsif took the view that Section 7 (iv-A), Court-fees Act, would apply to the case and directed court-fees to be paid accordingly. The question is, is this view correct? Section 7 (iv A) so far as it is material to this case, is as follows:

In a suit for cancellation of a decree for money ... according to the value of the subject matter of the suit and such value shall be deemed to be... if the whole decree is sought to be cancelled... the amount for which the decree was passed.

3. According to the plain language of the section, the essential nature of the relief sought must be for cancellation of the decree for money, i.e., getting rid of an obligation for payment of money imposed by the decree against the party who seeks to get rid of it. The plaintiffs were not parties to the said decree and there is no obligation imposed against them personally or against any property in their hands. Prima facie Section 7 (iv-A) will not apply, but it is contended that the language of the clause is general, that the decree is against the estate and that the prayer for declaration necessarily involves the cancellation of the decree, and the clause in terms will apply. In regard to the argument based on the general language of the section, I would respectfully adopt the observations of Venkatasubba Rao, J who met a similar contention thus in *Rajagopala Naidu and Others Vs. Ramasubramania Ayyar and Others*, .

His contention is... that this section (in regard to the decree and instruments of the kind dealt with by it) forbids declaratory suits and enacts that cancellation should always be prayed for. This argument is in my opinion utterly untenable. To declare what the substantive rights of the parties are or to prescribe the modes of enforcing those rights is outside the province of a fiscal enactment like the Court-fees Act.

4. The same learned Judge had to deal with a case of a son suing to set aside an alienation made by the father or the Official Receiver exercising the right of the father. It was contended before him that the alienation being for an antecedent debt, prima facie bound the son and it was obligatory on the son to set it aside and that Section 7 (iv-A) would apply to such a case. He repelled the contention and observed thus:

It has been held by a Bench of this Court, of which I was a member, in *The Secretary of State for India in Council Vs. A.R. Lakhanna*, that in the case of an alienation by the father it is sufficient to obtain a mere declaration that it is not binding... in the present case, however the sale was made for paying off the father's antecedent debts and such a sale is binding upon the son unless he affirmatively proves that the debts are illegal or immoral. It is contended that on

that ground the sale in the case in hand is prima facie good and therefore it is the son's duty to have it set aside. I do not think it would be right to import such a distinction in deciding a question of Court-fee--a distinction based upon the onus of proof: Annamalai Mudaliar Vs. Krishtappa Mudaliar and Others, .

5. A similar view was taken by Ramesam, J. in Achattil Balakrishna Nair and Others Vs. Vishnu Nambudiri and Others, where a minor member of Malabar tarwad sought to set aside a decree against the karnavan to which he was not a party eo nomine. The learned Judge held that a declaration was enough and no cancellation was necessary. This decision was referred to with approval by Reilly and Ananthakrishna Iyer, JJ., in Paluri Venkatasiva Rao Vs. Bodapati Venkatanarasimha Satyanarayanamurthy and Others, and Venkatasubba Rao, J. in Dasari Nagabhushanam Vs. Kunameeni Venkatappayya, . Referring to the view of Ramesam, J., observes Reilly, J. thus:

The learned Judge was right in saying that the plaintiffs there had to pray for no more than a declaration that the previous decree was not binding on them and the consequential relief of recovery and that it was not appropriate for them to ask that that decree, to which they had not been parties, should be set aside: Paluri Venkatasiva Rao Vs. Bodapati Venkatanarasimha Satyanarayanamurthy and Others, .

6. Ananthakrishna Ayyar J. similarly observed thus:

A decree will have full force and binding effect between the parties to the same until it is set aside by the persons who were parties to the same; but persons who were not parties to the decree can only sue for a declaration in respect of their rights in relation to the decree (p. 226).

7. The principle underlying the above view, as I understand it, is this, namely there is a distinction between an obligation imposed on a party by a decree and an obligation imposed on a party by the personal law by which he is governed in pursuance of the decree. In the one case he seeks to get rid of the obligation existing under the decree; on the other he seeks to have it declared that he or his interest in the estate, which is sought to be made liable, cannot be rendered liable under the decree by virtue of the said personal law. In the latter case he is not bound to sue for cancellation of the decree; in the former case he is bound to sue for cancellation. Even if he sues for a bare declaration, it necessarily involves cancellation and the form of the relief he prays for is immaterial, as pointed out by Reilly, J. in Paluri Venkatasiva Rao Vs. Bodapati Venkatanarasimha Satyanarayanamurthy and Others, . The plaintiffs in this case say that whatever may be the effect of the decree on the interest of the widow, it cannot affect their interest in the estate whether under the general law or under the particular provisions of the will and therefore they are not bound to sue for cancellation of the decree. Mr. Champakesa Ayyengar relied on two cases in support of his contention that persons who were parties to the decree, in seeking a declaration of its validity, are bound to value the relief u/s 7 (iv-A). The first case he relies

on is B. Nemichand Sowcar Vs. N. Namberumal Chetty, . It was a case of a transferee from a party to a decree. There can be no question that what is applicable to a party to a decree will equally apply to a person who derived interest from him in relation to the property affected by the decree, i.e., the legal representative or transferee. The second case relied on is a decision of Venkatasubba Rao, J. reported in Jonnavaram Balireddi Vs. Khatipulal Sab alias Abdul Satar and Others, . The headnote of the said case runs thus:

Where a person sued to set aside certain mortgage deeds and sale deeds executed by his father and for possession of the Immovable properties covered by them, held, that the suit was in substance one for the cancellation of documents securing money or other property having a money value, and the plaint was leviable to court-fee u/s 7(iv-A) and not Section 7(v), Court-fees Act, even though the prayer for cancellation was coupled with that for possession.

8. I tried to send for the papers in the case to ascertain the exact facts on which the decision was based, but no papers were available in the office. From the said headnote it might appear that the learned Judge was laying down exactly the opposite of what he laid down in Annamalai Mudaliar Vs. Krishtappa Mudaliar and Others, but on a close examination of the judgment, it will be seen that the learned Judge was not considering this question at all. It seems to have been assumed that it was obligatory on the son, if he was questioning the deeds executed by his father, to have them set aside either because the father executed the documents also on behalf of the son or the son was suing as heir of his father in which case Section 7(iv-A) would apply. I am therefore of the opinion that the plaintiffs are not bound to value the relief u/s 7(iv-A), Court-fees Act. The order of the lower Court is reversed and this Revision Petition is allowed, but I make no order as to costs.

C.R.P. No. 668 of 1936.

9. Following the judgment in C.R.P. No. 667 of 1936, this Revision Petition is allowed. But I make no order as to costs.