
(1924) 09 MAD CK 0056
In the Madras High Court

Venkata Ramani Aiyar and Another APPELLANT
Vs
M. Narayanaswami Aiyar and Others RESPONDENT

Date of Decision : 01-09-1924

Acts Referred:

Citation : AIR 1925 Mad 713 : 87 Ind. Cas. 660 : (1925) 21 LW 649 : (1925) 48 MLJ 688

Hon'ble Judges : Venkatasubba Rao, J

Bench : Division Bench

Judgement

This Judgment has been overruled by : Shamsheer Singh Vs. Rajinder Prashad and Others, AIR 1973 SC 2384 : (1973) 2 SCC 524 : (1974) 1 SCR 322 : (1973) 5 UJ 784

Venkatasubba Rao, J.—This Civil Revision Petition raises the question of the correctness of the order of the Subordinate Judge regarding the Court-fee payable on the plaint before him. The plaintiffs have filed this suit in respect of a mortgage executed by defendants 2 and 3, that is, their father and brother respectively, in favour of the 1st defendant. The family along with defendants 2 and 3, that the mortgage is not supported by consideration and that it is not binding upon them. The plaintiffs contend that Court-fee is payable under Schedule II, Article 17-A (1) of the Court Fees Act, that is, that the plaint is filed to obtain a declaratory decree and no consequential relief is asked. On the other hand, the defendants urge that the suit falls within Section 7, Clause 4 (c) of the Court Fees Act; in other words, that the plaintiffs seek to obtain a declaratory decree as well as consequential relief. The learned Subordinate Judge agreeing with the defendants' contention directed the plaintiffs to pay additional Court-fee.

2. A preliminary objection was raised by the defendants-respondents that the decision of the Lower Court is final u/s 12 of the Court Fees Act. This objection must be overruled as the question is concluded by the authority of Champaden Vittil Lakshmi Amma Vs. Kunnummal Pukkott Thottathil Janamajayan Nambiar and Others, where it was held that a decision as to the category to which a suit

or appeal belongs is not final.

3. The real question, therefore, to be decided is, whether the suit is governed by Section 7, Clause 4 (c) or by Schedule II, Article 17-A (1). The answer must in my opinion depend upon the relief which the plaintiff prays for because Court-fee must be determined with reference to the prayer contained in the plaint. The plaintiffs here ask "for a declaration that the mortgage is not supported by consideration and is not binding upon them. The learned Subordinate Judge thinks" that the plaintiffs have asked, or perhaps he thinks ought to have asked, for not merely a declaration but also for consequential relief, namely, the setting aside of the document. Maclean, C. J. seems, with respect, to have stated the law correctly on this point in his judgment in *Zinnat-un-nissa Khatun v. Girindranath Mukherji* ILR (1903) C 788 : "The safest course in these cases is to ascertain what the plaintiff actually asks for by his plaint, and not to speculate upon what may be the ulterior effect of his success. " If this test is applied, the suit has been properly valued, and the order of the learned Subordinate Judge cannot be supported.

4. But the same result would follow although a different line of reasoning is adopted as has been done in *Chingacham Vitol Sankaran Nair v. Chingacham Vitol Gopala Menon* ILR (1906) M 18 *Arunachalam Chetti v. Rangaswami Pillai* ILR (1914) M 922 : 28 MLJ 118 and *Chathu Kutty Nair v. Chathu Kutty Nair* (1923) 19 LW 249. The plaintiffs not being parties to the document it is settled law that they are not bound to get rid of it by having it actually cancelled. The first two of these three decisions lay down that the Courts must look at the substance of the plaint and not at the language of it, and if the plaintiff is bound to have the document set aside, the plaint must be treated as including a prayer for consequential relief; but if it is not incumbent on the plaintiff to get rid of the document, the plaint must be treated as one for a declaration only. In the present case, the plaintiffs are not parties to the document in question and, even applying this test, the suit is merely one for declaration.

5. Were the matter *res Integra*, I would base my decision on the principle accepted by the Calcutta High Court. It seems to me not logical to say that the relief is not properly valued because the plaint does not ask for an appropriate remedy. If the plaintiff is bound to ask both for a declaration and the setting aside of a document but prays merely for a declaration, in my opinion, the suit must be treated for purposes of Court-fees as one for declaration. It is not for the Court to say that the plaintiff should have framed his plaint differently, and, if he had done so, a higher Court-fee would become payable and therefore the plaint before the Court should be treated as containing a prayer which it does not in truth contain. If a plaintiff contents himself with asking for a declaration, whereas he ought to ask for a declaration and a consequential relief, the suit is liable to be dismissed not because of improper valuation of the suit, but because he infringes the provision of Section 42 of the Specific Relief Act which enacts that no Court shall give relief by way of a declaration where the plaintiff is able to

seek further relief but omits to do so. It is unnecessary to pursue this matter further. The matter is concluded by authority and so far as the present point is concerned, whichever line of argument is accepted the same result follows.

6. Lastly, an objection was taken that the order having been made in the course of a suit is not liable to be revised by this Court. In similar cases the High Court exercised its powers in revision and, in my opinion, rightly, and I overrule this objection.

7. In the result, the Civil Revision Petition is allowed and the costs will be costs in the cause.