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In Re: Annadhana Katlai Attached to Sri Thiagarajaswami Devasthanam, by Its Executive Officer

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Court : Chennai

Decided On : Sep-14-1950

Reported in : AIR1951Mad206; (1951)IMLJ466

Judge : Chandra Reddi, J.

Acts : Court-fees Act, 1870 - Sections 7

Appeal No. : Civil Revn. Petn. No. 1154 of 1946

Appellant : In Re: Annadhana Katlai Attached to Sri Thiagarajaswami Devasthanam, by Its Executive Officer

Advocate for Def. : Government Pleader

Advocate for Pet/Ap. : K.S. Nayudu and ;N. Arunachalam, Advs.

Disposition : Revision allowed

Judgement :

ORDER

CHandra Reddi, J.

1. This civil revn. petn. raises a question of court fee & jurisdiction. The suit out of which this petn. arises relates to an extent of 48 acres & 55 cents of wet & dry lands situated in Perumbugalore vattam in Tanjore district, belonging to Annadana Katlai attached to Sri Thyagarajaswami Devasthanam, Tiruvarur. The pltf., who is the executive officer of Sri Thyagarajaswami temple appointed by the Hindu Religious Endowments Board, instituted the suit in the Ct. of the Subordinate Judge of Mayuram for recovering the suit land from the deft., after ejecting him, & for arrears of rent. The basis of the suit is the tenancy created under two lease deeds, one of 11-10-1906 & the other of 16-4-1908, both for a period of 11 years. It is alleged in the plaint that the annual rent reserved under these deeds was 40 kalams of paddy for wet lands & Rs. 4 for the dry lands. The plaint recited that in reply to a notice calling upon the deft, to surrender possession of the suit property on the termination of the leases, he set up a false claim to occupancy right in the suit land which he is not entitled to as the suit land is a minor inam not situated in an estate within the meaning of the Madras Estates Land Act. The prayers in the plaint are for recovery of possession of the suit properties from the deft., for arrears of rent, etc. The relief of declaration of title to the suit property is not claimed in the suit. For purposes of court-fees, the plaint was valued under Section 7, Clause (xi) (cc), Court-fees, Act, & court-fee was paid on the annual rental of the suit lands. The Subordinate Judge, agreeing with the objection raised by the court-fee examiner that the suit was inadequately valued on the ground that the allegations in the plaint involved a prayer for a declaration of the 'pltf.'s title to the suit property, called upon the pltf. to value the suit under Section 7(v), Court-fees Act, & pay the court-fee on that basis, & returned the plaint for that purpose. That order is questioned by the pltf. in this civil revn. petn.

2. The sole point for determination, therefore, is whether it is Clause (v) or Clause (xi) (cc) of Section 7 that determines the computation of the court-fee in this matter. Section 7(xi)(cc), Court-fees Act, applies to suits for the recovery of immovable property from a tenant including a tenant holding over on the determination of the tenancy, while Section 7(v) governs suits for possession of lands, houses & gardens. If the former provision of law applies the court-fee is payable on the amount of annual rent payable in respect of that property whereas if it is the latter, court-fee is payable on the value of the subject-matter. So, the

question for consideration is, whether the allegations in the plaint bring it under Clause (xi) (cc) or Clause (v) of Section 7, Court-fees Act.

3. It is argued for the petnr. that though the plaint refers to the claim put forward by the deft. in his notices, these allegations should be treated as superfluous, & the suit is one for the ejectment of the tenant, based on the tenancy created under the lease deeds. He also urges that the recovery of possession in this case does not follow a declaration of title to the suit property, as the success or failure in the suit depends entirely upon the proof of tenancy set up by him in the plaint. On the other hand, it is urged by the learned Govt. pleader that though the wording of the plaint indicates that it is a suit by a landlord to evict the tenant after the determination of the tenancy & for recovery of possession of the land, virtually, the relief sought for is one for establishing pltf.'s title to the suit property & for possession thereof. No doubt, the pltf. will not be permitted to circumvent the provisions of the Court-fees Act by the use of a language which would take away the plaint from the ambit of a provision of the Court-fees Act requiring a higher court-fee to be paid, & that it is not the apparent tenor of the plaint that determines the court-fee payable on the plaint, but the substance thereof that should be taken into consideration in assessing the court-fee payable on any plaint. It is well settled that in deciding the scope of the suit for purposes of assessing the court-fee it is the plaint allegations primarily & not the nature of the defence set up in the written statement that should be taken into consideration. Suffice it to refer to a few of the cases that laid down this principle, see Venkatarathamma v. Sreeramulu : AIR1927 Mad331 & Balasidhanthan v. Perumal Chetti, 27 M. L. J. 475 : (A. I. R. 1915 Mad. 654). This proposition is not disputed by the learned Govt. pleader. But what is urged by him is that the allegations in the plaint are such as would involve an adjudication on the kudiwaram right in the suit properties. According to him, it is not a simple suit for ejectment, but the pltf. indirectly seeks to have the kudiwaram right established in the suit, while counsel for the petnr. urges to the contrary. So the point for decision is whether the fact that it is averred in the plaint that the deft, denied his title to recover possession of the property & sets up occupancy rights in the suit property makes any difference for a decision of the question whether the provisions of the Court-fees Act applicable are Section 7(xi)(cc) or Section 7(v). In other words, do these allegations take away the suit from the purview of Section

7(xi)(cc) or are they mere superfluous allegations, the suit remaining one by the landlord to eject the tenant who was let into possession as a lessee after the expiry of the leases.

4. In a suit for ejectment under Section 7(xi)(cc) a prayer for declaration of title is outside its scope. The pltf. either succeeds or fails on his case of tenancy. He cannot fall back upon the plea based on his title when he finds that he cannot succeed in establishing the tenancy set up by him in the plaint. If he fails in his attempt to prove that the deft, got into possession of the property by virtue of the leases he runs the risk of the suit being dismissed. The question whether the pltf. has both the kudiwaram & melwaram interest in the suit lands falls outside the scope of this suit, & cannot be gone into. As I have already pointed out, there is no prayer in the plaint for a declaration that the pltf. is the owner of the kudiwaram also in the suit land, & the tenant is not entitled to occupancy rights therein. The suit is to evict the deft, from possession on the basis of his being a tenant under the pltf. whose tenancy was determined.

5. An identical case arose in C. R. P. No. 98 of 1942, etc., which is unreported before Kunhiraman J. The learned Judge, on a review of the case-law on the subject & applying the principle that the court-fee payable on a plaint is to be determined on the nature of the allegations in the plaint & not on what is set up in the written statement, laid down that in a suit for recovery of immovable property from a tenant based on the relationship of landlord & tenant, the court-fee is leviable under Section 7(xi)(cc), Court-fees Act, though the plaint contained allegations that in reply to a notice sent by the pltf., the deft, asserted that he had acquired occupancy rights, in the suit by reason of the suit land forming a part of an estate & such a claim was untenable, the deft, being only a tenant whose tenancy was properly terminated. If I may say so with respect, I am in entire agreement with the reasoning adopted by the learned Judge in that case. I must hold that the averments in the plaint that the deft, was denying the relationship of landlord & tenant between the pltf. & himself would not enlarge the scope of the suit for purposes of court-fee & would not take it away from the ambit of Section 7(xi)(cc), Court-fees Act. I have gone through the plaint carefully & I am of opinion, that the suit as framed is by the landlord against the tenant whose tenancy was

terminated & to recover possession within the meaning of Section 7(xi)(cc). The value should, therefore, be determined on this basis & not as a general suit for possession. It follows that the order of the lower Ct. directing the pltf. to value the suit as one falling under Section 7(v) & pay a higher court-fee is not correct & should be set aside. The civil revn. petn. is, therefore, accepted. The unnumbered plaint, which is filed along with the memorandum of C. R. P. will be sent to the trial Ct. There will be no order as to costs.

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