

**Amina Bibi Vs. Kadir Batcha Rowther**

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**Court :** Chennai

**Decided On :** Jan-20-1937

**Reported in :** AIR1937Mad529; (1937)1MLJ739

**Appellant :** Amina Bibi

**Respondent :** Kadir Batcha Rowther

**Judgement :**

**Horwill, J.**

1. A suit was brought for a declaration that a certain property gifted i6.ih\$ plaintiff by her husband, who subsequently became an insolvent, was her property and for possession of the property which had been taken possession of by the Official Receiver as part of the estate of her insolvent husband. The question that has been referred to us is whether the consequential relief of possession is to be valued according to Section 7(iv)(c) of the Court-Fees Act or Section 7(v). There is a long line of authority for the position that where the consequential relief is such as to fall directly under some other section of the Court-Fees Act the suit has to be valued under that special section and not under the general head of consequential relief, which would make it fall under Section 7(iv)(c). This principle was enunciated as long ago as Chinnammal v. Madarsa Rowther (1903) 14 M.L.J. 343 : I.L.R. 27 Mad. 480 by Boddam and Bashyam Aiyangar, JJ., and seems to have been accepted as axiomatic in the Full Bench case, Arunachalam Chetty v.

Rangaswamy Pillai (1914) 28 M.L.J. 118 : I.L.R. 58 Mad. 1051. At the very outset of the judgment of the Bench it is laid down:

A suit in which the plaintiff in terms prays for a declaratory decree and consequential relief prima facie comes within Clause 4, Sub-clause (c) of Section 7 of the Court-Fees Act; but if at the same time it comes within any of the other classes of suits specified in the section, it must be treated as a suit of that description and dealt with accordingly.

2. This decision of the Full Bench case has been followed consistently in this Court. It is contended that this expression of opinion by the Full Bench was obiter but I have no doubt that it was a fully considered opinion in answer to the terms of the reference made to it; and even though it be obiter, I respectfully consider it to be a correct expression of the law which had been laid down in the earlier Madras cases and has been followed in a number of cases since. Venkatasubba Rao, J., in Ramakrishnayya v. Seshamma (1934) 68 M.L.J. 369 refers to this opinion and adopts it, and it came before the same Judge again in Maroof Sahib v. Ayyakannu Naicker (1934) 68 M.L.J. 755 : I.L.R. 58 Mad. 1051 where it was argued that as it was a consequential relief it should fall under Section 7(iv)(c). That argument was repelled again by the weight of the authority just referred to. Since that decision the same principle has been upheld by Varadachariar, J., in Sellammal v. Jothimani Nadar (1935) 70 M.L.J. 398 which was followed by Beasley, C.J., in C.R.P. No. 803 of 1935, where he says, that because the plaintiff asked for possession, it must come under Section 7(v) and not under Section 7(iv)(c).

3. As against this current of authorities, four cases have been quoted. One is Ramalinga Mudali v. Ramaswami Aiyar (1928) 29 L.W. 760 to which Venkatasubba Rao, J., was a party. He refers to this case in Ramakrishnayya v. Seshamma (1934) 68 M.L.J. 369 and says that in the earlier case it was held that where there was a prayer for possession, if it was a consequential relief, it would fall under Section 7(iv)(c), but that that suit was one relating to jurisdiction and the question whether it fell for the purpose of court-fee under Section 7(iv)(c) or under Section 7(v) was neither raised nor considered. Of the other cases, the earlier is Koraga Gowda v. Somappa Gowda (1932) 36 L.W. 793 in which Pandalai, J.,

expressed the opinion that if possession was a consequential relief it fell under Section 7(iv)(c); but the reason given by him for that decision was one which, with all due respect for the learned Judge's opinion, I cannot accept. He says that the suit was primarily one for possession and the declaration sought was only ancillary to the prayer for possession. This in my opinion seems to be an excellent reason for holding that the case comes under Section 7(v) and not under Section 7(iv)(c); and the learned Advocate for the petitioner concedes the position that if the main prayer is one for possession and the prayer for declaration is only ancillary to it, Section 7(v) and not Section 7(iv)(c) applies. In *Venkatalal v. Kosaldasu Bavaji* (1930) 61 M.L.J. 39 the third case relied on by the petitioner, the question whether Section 7(v) or Section 7(iv)(c) applied was not decided. The plaintiff in that case appealed and the applicability of Section 7(v) was not considered because it was clear that under Section 7(v) he would have to pay a higher court-fee than he had already paid; and the only question that arose before that Court was whether the plaintiff would be permitted to pay a lesser court-fee than that leviable under Section 7(iv)(c). The last case quoted on behalf of the petitioner is *In re Sobhanadri Rao* : AIR1933 Mad42 to which my learned brother was a party. That case was rather a peculiar one in which an inamdar sought to oust a tenant from possession not so much because he wished to obtain possession but in order to assert his right to the kudivaram. In so far however as the learned Judges who decided that case applied a principle which seems in conflict with that applied by the Full Bench in *Arunachalam Chetty v. Rangaswamy Pillai* (1914) 28 M.L.J. 118 : I.L.R. 38 Mad. 922, I am of opinion that the test applied in *In re Sobhanadri Rao* : AIR1933 Mad42 , is not correct.

4. In view of the fact that there is a very strong current of opinion in this Court and that the expressions of opinion to the contrary are not in my opinion of considerable importance, I have no doubt that the petitioner must pay court-fee under Section 7(v) upon the total value of the property involved.

5. It has been argued that the Madras Amendment to Section 7(iv) has altered the law as to the interpretation of the clauses of Section 7(iv); but it seems to me clear that it was never intended by the legislature to alter the law as to the applicability of the sections of the Court-Fees Act, but merely to settle a lower limit to the

amount of court-fee payable under certain circumstances which came within the mischief of Section 7(iv) of the Act. This petition is therefore dismissed.

6. As regards costs, this petition is one between the plaintiff and the Government. The respondent is in no way interested in the, result of the appeal. In fact, his interests, if any, are the same as the plaintiffs. I therefore dismiss the petition with the costs, of the Government Pleader only. The respondent will bear his own costs.

**Mockett, J.**

7. I agree. An argument has been addressed to us that a different view of this topic has been taken by the other High Courts in India. Cases have been cited showing that that is so. I think it is much too late in the day in view of the trend of authorities in this Presidency to ask us to depart from the view taken in Madras.

8. The law governing the matter is clearly stated in the Full Bench decision in *Arunachalam Chetty v. Rangaswamy Pillai* (1914) 28 M.L.J. 118 : I.L.R. 38 Mad. 922. As I; was a party to the decision in *In re Sobhanadri Rao* : AIR1933 Mad42 , I think I should express Something more than a bare agreement with what my learned brother has said. In that case it will be observed that there was neither the argument which has been so fully put before us now, nor even the reference to the Full; Bench decisions. In the very special circumstances of that case we took the view that as the primary object of the suit was for, a declaration, Section 7(iv)(c) was applicable. But after hearing the present, argument, it does appear to me that in view of -the undoubted claim for possession which followed the decision in that case, *In re Sobhanadri Rao* : AIR1933 Mad42 does not appear to be consistent with the view expressed in the Full Bench decision in *Arunachalam Chetty v. Rangaswamy Pillai* (1914) 28 M.L.J. 118 : I.L.R. 56 Mad. 314. The case-law has been summarised by Venkatasubba Rao, J., in *Maroof Sahib v. Ayyakannu Naicker* (1934) 68 M.L.J. 755 : I.L.R. 58 Mad. 1051 and I agree with the views expressed therein.

9. I agree that this Civil Revision Petition should be dismissed with costs of the Government Pleader.

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