

In Re: L. Palaniappa Chettiar

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Court : Chennai

Decided On : Jan-10-1952

Reported in : AIR1952Mad799; (1952)IIMLJ3

Judge : Krishnaswami Nayudu, J.

Acts : Court-fees Act, 1870 - Sections 7; Madras Court-fee (Amendment) Act, 1922

Appeal No. : Civil Revn. Petn. Nos. 17 and 18 of 1952

Appellant : In Re: L. Palaniappa Chettiar

Advocate for Pet/Ap. : S. Jagadisa Iyer, Adv.

Disposition : Petitions dismissed

Judgement :

ORDER

Krishnaswami Nayudu, J.

1. These are revision petitions against, the order of the Subordinate Judge of Deva-kottai directing the petitioner to pay Court fee under Section 7-IV-A in respect of relief in the amended prayer. The amendment is in respect of cancellation of a portion of Ex. A 1 and it was contended before the learned Judge that it is not capable of valuation and Section 7-IV-A is not applicable and no court-

fee is payable. In A. S. No. 858 of 1948 at his instance the suit was remanded to enable the petitioner to apply for amendment of the plaint for setting aside the settlement evidenced by Ex. A. 1 and it was observed by the learned Judges in A. S. No. 658 of 1948 that what the plaintiff wanted was

'a sifting and fresh enquiry into the accounts reopening the entire settlement of accounts on the ground that the agreement Ex. A 1 was initiated by duress, fraud, misrepresentation etc.'

and the plaintiff was therefore given leave to apply for amendment paying of course the additional court fee due for setting aside the settlement evidenced by Ex. A 1. It is obvious that he has not now asked for setting aside the entire document but has chosen to apply for cancellation only of a portion of the document, that is in respect of clauses 3 and 4 alone. The learned Judge has rightly held that the plaintiff must pay Court fee under Section 7-IV-A in respect of the relief claimed. It is not open to the plaintiff to apply for setting aside a portion of the document so long as the document evidencing the settlement is outstanding and he will not be entitled to have the accounts reopened. As observed by Wadsworth J. in -- 'Vellayya v. Ramaswami', ILR (1940) Mad 73;

'when the plaintiff seeks to establish a title in himself and cannot establish that title without removing an insuperable obstruction such as a decree to which he has been a party or a deed to which he has been a party then quite clearly he must get that decree or deed cancelled or declared void 'in toto' and his suit is in substance a suit for the cancellation of the decree or deed even though it be framed as a suit for declaration.'

It is not therefore open to the plaintiff to ask the Court to look into the accounts unless he gets out of the agreement to which he was a party. It is therefore incumbent on him to have the entire document set aside. He is liable to pay Court fee under Section 7-IV-A for setting aside the document. I see no error in the exercise of the jurisdiction by the learned Subordinate Judge.

2. The petitions are dismissed.

