

In Re: D. Rajamannar and ors.

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Court : Chennai

Decided On : Mar-12-1953

Reported in : AIR1953Mad746; (1953)IMLJ676

Judge : Rajamannar, C.J., ;Rajagopalan and ;Venkatarama Aiyar, JJ.

Acts : [Suits Valuation Act, 1887](#) - Sections 9; Suits Valuation Rules - Rule 2; Court-fees Act, 1870 - Sections 7(iv-A) - Schedule - Article 1

Appeal No. : S.R. No. 9132 of 1952 and Appeal No. Nil of 1952 sought to be preferred to the High Court

Appellant : In Re: D. Rajamannar and ors.

Advocate for Def. : Government Pleader

Advocate for Pet/Ap. : W. Kothandaramayya, Adv.

Judgement :

1. This was referred by one of us to a Bench pf two Judges in view of the importance of the question raised. The facts are fully stated In the order of reference and it is not necessary to restate them in detail.
2. O S. No. 45 of 1949 on the file of the Subordinate Judge's Court of Chittoor was instituted by two of the daughter's sons of one Chen-chiah as presumptive reversioners to his estate for a declaration that the compromise decree In O. S. No. 10 of 1944 is not binding on the reversioners and for the appointment of a

receiver to the estate of late Chenchiah to manage his properties and to prevent waste. The suit was dismissed and the plaintiffs preferred an appeal. The Master held that Rule 2 of the Rules framed under the Suits Valuation Act and Article 1 of Sen I, Court-fees Act applied to the first relief and' that court-fee should be paid 'ad valorem' on the value of the property i.e., the subject-matter of the decree. A Bench of this Court consisting of Rajamannar C.J. and Viswanatha Sastri J. held in -- 'Narasamma v. Satyanarayana', (A), that Rule 2 of the Rules framed under the Suits Valuation Act would apply to such a case. The learned Judges observed at page 795:

"Even if the plaintiff in the subsequent suit be considered not to have been a party to the prior suit, still if he sues to set aside the decree in that suit, Rule 2 of the Court-fees Rules would govern the case and 'ad valorem' court-fee would be payable."

3. The learned counsel for the appellants contended that the said Rule 2 is invalid on the ground that the High Court has no legal competence in making the rule so as to substitute the fixed court-fee payable under Article 17-A of Schedule II for one payable on 'ad valorem' basis. The relevant provisions of the Court-fees Act, the Suits Valuation Act and the Rules framed under the Suits Valuation Act by the High Court may now be read:

4. Article 17-A of Schedule II, Court-fees Act:

Plaint or Memorandum of Appeal in a suit

(i)

to obtain a declaratory decree where no consequential relief is prayed

when the plaint is presented to or the memorandum of appua! is against the decree of a District Munsif's Court or the City Civil Court Fifteen rupees

A District Court or a Sub.Court

Hundred rupees if the value for purposes of jurisdiction is less than ten thousand rupees; five hundred rupees if such value is ten thousand rupees or upwards.

5. Section 9, Suits Valuation Act:

"When the subject-matter of suits of any class, other than suits mentioned in the Court-fees Act, 1870, Section 7, paras, v and vi, and para, x, Clause (d) is such that in the opinion of the High Court it does not admit of being satisfactorily valued, the High Court may, with the previous sanction of the State Government, direct that suits of that class shall, for the purposes of the Court-fees Act, 1870, and of this Act and any other enactment for the time being in force, be treated as if their subject-matter were of such value as the High Court thinks fit to specify in this behalf."

6. Rules for valuation of certain classes of suit:

The preamble reads:

"Whereas the subject-matter of suits of the class hereinafter mentioned is such, that in the opinion of the High Court, it does not admit of being satisfactorily valued, the High Court under and by virtue of the authority conferred on it by Section 9, Suits Valuation Act (7 of 1887), and with the previous sanction of the Provincial Government, issues the following directions with regard to the valuation of such suits for purposes of the Court-fees Act (7 of 1870) and of the Suits Valuation Act."

(ii) In suits for a declaration or for an injunction consequent on a declaration that a decree for money or any other property having a money value is not binding on the plaintiff who was not a party to the decree, the subject-matter of the suit shall for purposes of jurisdiction and court-fee be valued at the amount or value of the property for which the decree was passed."

7. Under Section 9, Suits Valuation Act, the High Court has power to specify the value of the subject-matter of suits of any class under the Act, except those

specifically exempted, if in its opinion the subject-matter does not admit of being satisfactorily valued. Such valuation is for the purposes of the Suits Valuation Act, the Court-fees Act and any other enactment for the time being in force. The Court-fees Act and the schedules provide for two classes of suits: (i) suits in regard to which court-fee is payable on the 'ad valorem' basis, and (ii) suits in respect whereof fixed court-fee is payable.

8. In regard to the former suits under the Court-fees Act, the subject-matter is valued on different principles -- market, notional and arbitrary values (see Section 7). In the case of suits covered by Article 17-A, Sch. II, the court-fee depends upon the forum as well as the value for purposes of jurisdiction. But, in either case, the court-fee is not on 'ad valorem' but on a fixed basis, though varying with the value of the subject-matter for purposes of Jurisdiction. Though under Section 9, the High Court is given power to fix the valuation of the subject-matter of a suit for the purposes of the Suits Valuation Act and the Court-fees Act, it does not either expressly or by necessary implication confer on it a power to change the principle adopted by the Court-fees Act for fixing the court-fee. It cannot convert the 'ad valorem' basis into fixed basis or 'vice versa'; nor does Rule 2 framed by the High Court attempt to alter the basis. The rule only says that in cases of suits for declaration that a decree for any property, having a money value, is not binding on the plaintiff, who is not a party to the decree, the subject-matter of the suit shall for purposes of jurisdiction and court-fee be valued at the value of the property for which the decree was passed. But it does not say that the court-fee should be calculated 'ad valorem' on the value of the subject-matter of the suit. The rule framed by the High Court is consistent with the scheme of the Court-fees Act. To illustrate, the fixed court-fee payable under Article 17-A of Schedule II will depend upon the value fixed by the High Court for purposes of jurisdiction under R. 2, i.e., if such a suit is filed in the District Court or a Subordinate Court, court-fee of Rs. 100 has to be paid if the value fixed by the High Court for purposes of jurisdiction is less than Rs. 10,000 and Rs. 500 if such value is Rs. 10,000 or upwards. The rule therefore is valid but it does not compel a party to pay under Article 1 of Sch. I, Court-fees Act 'ad valorem' courtfee on the value so fixed, we cannot therefore with great respect agree with the observations made by the learned Judges in -- '(A)', but as the question relates to one of court-fee, it is not advisable to have two

conflicting Bench decisions on the same question. It is necessary to have an authoritative decision of a Full Bench. We, therefore, refer the following question to the Full Bench:

"Whether, in a suit filed to obtain a declaratory decree, where no consequential relief is prayed or in an appeal filed against a decree in that suit, the plaintiff or the appellant, as the case may be, is liable to pay court-fee on the 'ad valorem' basis on the value of the subject-matter of the suit fixed under Rule 2 of the Rule? for the valuation of certain classes of suits framed by the High Court."

9. The papers will be placed before the learned Chief Justice for constituting a Full Bench.

OPINION

Rajamannar, C.J.

10. The question referred to the Full Bench is as follows:

"Whether, in a suit filed to obtain a declaratory decree, where no consequential relief is prayed or in an appeal filed against a decree in that suit, the plaintiff or the appellant, as the case may be, is liable to pay court-fee on the 'ad valorem' basis on the value of the subjectmatter of the suit fixed under Rule 2 of the Rules for the valuation of certain clauses of suits framed by the High Court."

The question has been amply discussed first by the Master, then by Subba Rao J. on a reference to him under Section 5, Court-fees Act and again by a Division Bench consisting of Subba Rao and Ramaswami JJ. It is not therefore necessary to state at great length the various arguments which . could be put forward for either point of view.

11. The proposed appeal arises out of a suit filed in the Court of the Subordinate Judge of Chittoor by two of the daughter's sons of one Chenchiah Chetti for a declaration that the compromise decree passed in O. S. No. 10 of 1944 on the file of the same Court was not binding on them and for the appointment of a receiver to manage the properties of the late Chenchiah Chetti. The plaintiffs were not

parties to the prior suit. That suit was brought by one of the daughters of Chenchiah Chetti against the other daughters and Vediah Chetty the husband of the first daughter for partition of the properties. In that suit the plaintiff therein claimed that certain properties belonged to the estate of Chenchiah Chetti and did not belong to Vediah Chetti who was claiming them as his own. It ended in a compromise decree under which Vediah Chetti and his children were given a large number of items. It is in respect of this compromise decree that the plaintiffs now seek for a declaration that it is not binding on them as reversioners to the estate of Chenchiah Chetti.

12. Before us it is common ground that the relief of appointment of a receiver was not consequential on the declaration that the compromise decree was not binding on the plaintiffs. It was also practically admitted by the learned Government Pleader that the suit did not fall within Section 7 Clause (iv-A), Court-fees Act as amended by the Madras Legislature. We must therefore take it that the suit was rightly framed as a suit for a mere declaration that the compromise was not binding on the plaintiffs. Prima facie such a suit would fall under Article 17-A (1) of Schedule II to the Court-fees Act which runs thus:

"Plaint or Memorandum of Appeal in a suit to obtain a declaratory decree where no consequential relief is prayed."

The proper fee leviable for such a suit under that Article depends upon firstly, the Court to which the plaint is presented and secondly, when the plaint is presented to a District Court or a sub-Court according to the value for purposes of jurisdiction. If such value is less than Rs. 10,000 the fee is Rs. 100. If such value is Rs. 10,000 or upwards the fee is Rs. 500.

13. The question for consideration is, what is the effect of Rule 2 of the Rules framed by the High Court of Madras in exercise of the power conferred on it by Section 9, Suits Valuation Act. The rule runs as follows:

"In suits for a declaration or for an injunction consequent on a declaration that a decree for money or any other property having a money value is not binding on the plaintiff who was not a party to the decree, the subject-matter of the suit shall for

purposes of jurisdiction and court-fee be valued at the amount or value of the property for which the decree was passed;

Provided that if the value of the property or the interest which the plaintiff seeks to be declared not liable for the decree is less than the value of the decree the plaint shall be valued as if it were one for the possession of such property or interest."

14. This rule came into operation on and from 1-11-1943. There can be no doubt that the present suit does fall within the scope of this rule. This is a suit for a declaration that a decree in respect of property having a money value is not binding on the plaintiffs who were not parties to the decree.

15. The value of the subject-matter must therefore be computed at the value of the property for which the decree was passed. Undoubtedly, this value will determine the Court which will be competent to entertain the suit. The rule provides that the value so computed will also be the value for purposes of court-fee payable. The answer to this question depends entirely on the provisions of the Court-fees Act.

16. The actual amount or rate of court-fee leviable on a plaint is found in the Court-fees Act only in two schedules. Under Sen. I the fee is calculated on an 'ad valorem' basis. Schedule II provides for cases in which a fixed fee is leviable. In the body of the Act Section 7 embodies the rules as to the computation of the amount of fee in certain classes of suits according to the value of the claim or relief sought. When the value of the claim or relief is ascertained according to these rules, for a calculation of the proper fee one has to turn to Article 1 or Schedule I. That Article provides 'inter alia' for a plaint presented to any civil Court not otherwise provided for in the Act. The words "not otherwise provided for in this Act" should not be understood to refer to anything except a provision for the actual fee leviable. It does not refer to the provision for computation of values. If there is any other Article in either Schedule I or Schedule II which provides for a fee on any particular class of plaints, then that provision will govern and Article 1 of Schedule I will have no application. Otherwise, it will apply.

To give an example, there is no provision, otherwise in Schedule I or Schedule II for a plaint in a suit for possession of land. Therefore, for such suit Article I of

Schedule I will apply so far at the rate of court-fee is concerned. The fee will have to be calculated at the proper rate on the amount as computed under Section 7(v) of the Act. Likewise, a suit for relief under Section 92, Civil P. C. is specifically provided for in Article 17 (iii) of Schedule II. The proper fee is a fixed fee of Rs. 50. To such a plaint Article I of Schedule I will not apply. Now as I have already mentioned above there is a specific provision for a suit to obtain a declaratory decree where no consequential relief is prayed in Article 17-A (1) of Schedule II. To a suit for that class Article 1 of Schedule II will have no application. It must follow on a plain reading of the material provisions of the Court-fees Act including the schedule's that the fee cannot be calculated on an 'ad valorem' basis.

17. In my opinion, it is not correct to so construe Section 9, Suits Valuation Act as to confer a power on the High Court to provide for a separate class of suits not falling within any of the classes mentioned in the body of the Court-fees Act or in the schedules. Nor can a rule framed under Section 9 of that Act decide whether court-fee should be calculated on an 'ad valorem' basis or on a fixed fee basis. The object of the Suits Valuation Act is to prescribe the method of valuing certain suits for the purposes of determining the jurisdiction of Courts with respect thereto. The Act contemplates suits in which the court-fee value may be different from the value for purposes' of jurisdiction.

A suit for possession of land must be valued for purposes of court-fee according to the rule laid down in Section 7 para, (v), Court-fees Act. But the value of such a suit for purposes of jurisdiction may be different if the Provincial Government makes rules for determining the value of the land for purposes of jurisdiction on a different basis (Section 3(1)). Under Section 8, as regards certain classes of suite the value as determinate for the computation of court-fees and the value for purposes of jurisdiction are the same Section 9 deals with that class of suits which does not admit of being satisfactorily valued and provides that the High Court may provide for the valuation of such suits. The section then declares that the valuation so computed shall be the valuation both for the purposes of the Court-fees Act and for the purposes of the Suits Valuation Act.

18. I do not therefore read Rule 2 framed under Section 9, Suits Valuation Act as interfering in any manner with the scheme relating to the classification of suits provided in the body of the Court-fees Act and its schedules. Take, for instance, a suit to obtain a declaration that an alleged adoption is invalid. Such a suit in terms falls within para, (iii) of Art 17-A of Schedule II and a fixed fee is leviable thereon. It will not be open, by a rule made under Section 9, Suits Valuation Act, to take such a suit out of Article 17-A (iii) or Schedule II and make it a suit for which court-fee is leviable 'ad valorem'. If the rule were to be construed to have this effect, it would be in excess of the powers conferred by Section 9, Suits Valuation Act.

19. This reference to a Full Bench really became necessary because of the observations contained in the decision of a Division Bench of this Court to which I was a party in -- (A). That was a suit in which the plaintiff prayed for the cancellation of the decree in a suit to which she was 'eo nomine' a party. What she alleged was that she was impleaded in that suit as a major while she was still a minor. Actually she had engaged a pleader for her, and she gave evidence in the suit. It was contended that the suit fell within Article 17-A (1) of Schedule II because the decree must be deemed to be void; but it was held that the suit fell within Section 7(iv-A) of the Act Viswanatha Sastri J. who delivered the judgment of the Bench observed thus:

"The distinction between a decree to which the plaintiff was a party and a decree to which he was not a party and the distinction between void and voidable decrees, may be relevant in connection with other branches of the law, as for instance, in determining the period of limitation applicable to a suit to set aside the decree and the rights of innocent third parties who have acquired for value an interest in the subject-matter of the suit. But so far as the Court-fees Act is concerned, a suit by a party to the decree, which is 'ex facie' regular and within the jurisdiction of the Court, to have it declared void as against him is taken out of Article 17-A of Schedule II and Section 7(iv)(c) and brought within Section 7(iv-A) of the Act."

20. I may point out that on behalf of the Government the only provision relied upon was Section 7(iv-A), Court-fees Act and the arguments were confined to a

discussion of that provision and Article 17 A (1) of Schedule II of the Act. But the learned Judge apparently thought that 'ad valorem' court-fee would be payable on the value of the subject-matter of the suit under Rule 2 of the Rules framed under Section 9, Suits Valuation Act above-mentioned. The learned Judge expressly mentioned the fact that the rule was not brought to the notice of the Bench by the learned counsel in the case. Strictly speaking, in view of the decision of the Bench that the suit would be governed by Section 7(iv-A) of the Act, it was not necessary to deal with Rule 2 framed under the Suits Valuation Act. As the learned Judge said:

"Whether the suit is governed by Section 7(iv-A) of the Act or Rule 2 of the Court-fees Rules, 'ad valorem' court-fees must be paid on the market value of the lands in Schedules A and B of the plaint which formed the subject-matter of the previous decree."

In my opinion the decision in -- 'AIR 1951 Mad 193 (A)' cannot be considered as an authority on the applicability of the rule now under consideration to a suit for a declaration that a decree in a suit to which the plaintiff was not a party is not binding on him. Having been a party to that decision I am free to say that the contentions now put forward before us as regards the scope of that rule were never before us in that case. . .

21. I would answer the question referred to us as follows:

"In a suit filed to obtain a declaratory decree where no consequential relief is prayed, which does not fall within the category of suits provided for by Section 7(iv-A), Court-fees Act, court-fee is not leviable on an 'ad valorem' basis on the value of the subject-matter of the suit computed in accordance with Rule 2 of the Rules framed by this Court under Section 9, Suits Valuation Act in 1943."

Rajagopalan, J.

22. I agree.

Venkatarama Aiyar, J.

23. I agree.

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