

In Re: Venkitakrishna Pattar

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Court : Chennai

Decided On : Aug-24-1926

Reported in : AIR1927Mad348

Appellant : In Re: Venkitakrishna Pattar

Judgement :

ORDER

Jackson, J.

1. Petitioner seeks to stay proceedings in O. S. No. 76 of 1926 on the file of the Court of the District Munsif of Palghat pending the revision of a question of Court-fee proper to the suit.
2. The plaintiffs sue for a declaration of rights of way and drainage over a certain paramba and for a mandatory injunction ordering defendants to remove the fences walls, etc., that have been built in defiance of the said rights.
3. The plaintiffs sought to value their suit under Section 7, Clause (4) (d) (Court-fees Act 7 of 1870) as if it were a simple suit for injunction. The District Munsif has correctly pointed out that it is a suit for declaration, and consequential relief falling under Section 7 (4) (c). He has then held applying the Madras proviso, that as the relief sought is with reference to immovable property the valuation shall not be less than half the value of the immovable property calculated in the manner provided for by para. 5 of the section. Accordingly plaintiffs have been ordered to pay half

the value of the paramba, which they have reckoned according to Section 7, Clause 5 (b) at five times the revenue. The petitioner 9th defendant, contends that the value should be calculated according to Section 7, Clause 5 (e) because the suit is really for the paramba and buildings. The District Munsif did right to reject this argument. The plaintiffs are claiming neither the right to possess the building nor the right to remove the buildings except in so far as they may affect the right of easement.

4. In *Vaiyapuri Chetty v. Ramchandra Thevar* : AIR1925 Mad1143 the plaintiff sued to restrain the defendants from putting up a fence on the plea that the property was his, and this Court held that the question of title was not incidental and therefore the Madras proviso must apply. In the present suit the question of title is not raised at all; it is only a question of easement and the difficulty is to decide how far the Madras proviso is applicable to such cases. Inasmuch as the relief sought is the declaration of a right of easement the relief may be said to be with reference to immovable property; but it refers to no immovable property that can be possessed as contemplated by Clause 5. It almost seems that the proviso should be read with the clause so as to make 'with reference to' mean 'involving the possession of land, houses or gardens'; and then the proviso would not be applicable to easements at all. And the petitioner's case supports this interpretation; for it carries the contrary argument to absurdity. He would have it that a suit for relief with reference to immovable property must be valued under Clause 5 and is therefore tantamount to a suit for the possession of that property with reference to which relief is sought. Therefore a person claiming the right to drain off water through a house is for the purposes of the Court-fees Act claiming possession of the house and must value his suit according to the market value of the house which is absurd. If Clause 5 is applicable to suits for declaration of an easement right and a mandatory injunction enforcing the same the Court must reckon how much land or building is actually affected by the path, drain, or such other relief as is sought, and value accordingly.

5. But considering that the subject-matter is neither land, nor house nor garden, but an easement over the same there seems to be no practical object in ordering Courts to apply Clause 5. When valuing suit for easements, it only imports

unnecessary difficulty into what ought to be the plain and simple mechanical process of assessing Court-fees. There is no doubt in the present case that the plaintiffs have fully paid any fee that is rightly leviable, and the petitioner 6th defendant, has no case for enhancement.

6. The petitions for stay are dismissed and the petitions for revision not admitted and dismissed.

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