

Chellammal and anr. Vs. K.T.A. Abdul Rahiman Rowther and ors.

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Court : Chennai

Decided On : Feb-05-1953

Reported in : AIR1953Mad856; (1953)2MLJ827

Judge : Raghava Rao, J.

Acts : [Suits Valuation Act, 1887](#) - Sections 8; Court-fees Act, 1870 - Schedule - Article 17

Appeal No. : Civil Revn. Petn. No. 229 of 1951

Appellant : Chellammal and anr.

Respondent : K.T.A. Abdul Rahiman Rowther and ors.

Advocate for Def. : Govt. Pleader and ;U. Somasundaram, Adv.

Advocate for Pet/Ap. : R. Kesava Ayyangar and ;K. Parasaran, Adv.

Disposition : Revision allowed

Judgement :

ORDER

Raghava Rao, J.

1. The question in this case is one of court-fee and jurisdiction. The Court of first instance returned the plaint for presentation to the proper Court finding that it

exceeded its pecuniary jurisdiction. The Court of appeal having affirmed the order of return of plaint the plaintiff in the case comes up here in revision.

2. The petitioner is interested in a 2/13th share of 'Dharmasanam' village. Items 1 to 5 are the 'Dharmasanam' items and items 6 to 8 are certain 'porombokes'. He sought partition and delivery of 2/13th share in respect of items 1 to 5, because they were partible in character and sought a declaration of a joint right in respect of the impartible items 6 to 8. A Commissioner appointed in this suit valued items 6 to 8 with reference to the trees that stood thereon as at Rs. 2700. It is on the basis of this valuation and on the basis of the supposition that the plaintiff's right in respect of the items in suit was in respect of the whole in each one of them and not a share only that the Courts below held this suit as beyond the pecuniary jurisdiction of the trial Court.

3. It is contended by Mr. Kesava Aiyangar that the jurisdictional value must be ascertained with reference to the plaintiffs' 2/13th share in respect of the 'Dharmasanam' half of the plaint items. It is also contended that so far as items 6 to 8 are concerned, they are not capable of partition and that therefore the value put by the plaintiffs on the relief sought in respect of them is final.

4. I am of opinion that the contentions for the petitioners are well founded and must prevail. The first contention is supported by the authority of cases relating to partition suits in which it is the value of the share of the plaintiff that has been held to matter: vide -- 'Kalanderv. Kunhipaki', AIR 1947 Mad 273 (A). The second contention is supported by the analogy of cases relating to temple properties or such other trust properties which have been held to be not capable of valuation: vide -- 'Rajagopala Naidu v. Ramasubramania Aiyar', AIR 1924 Mad 19 (B) and -- 'Manikam Pillai v. Nagasami Aiyar : AIR 1934 Mad 714'. The difficulty, however, in the way of Mr. Kesava Aiyangar suggested by the learned advocates for the respondents is that items 6 to 8 were valued as at Rs. 2700 with reference to the trees thereon, which by themselves are capable of being valued. But if the case of the trees is to be judged as not dissociable from the land on which they stood and if the land itself being impartible and communal property not capable of valuation it follows that the value of the trees cannot affect the question of valuation of the suit.

It follows that this revision petition must be allowed with costs, here and in the Courts below.

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