the rule that on the death of the defendant the action abated and the Court lost jurisdiction over it, was abolished, in England, by the Common law Procedure Act, it is still retained in a modified form in the Code of Civil Procedure which provides in section 368 that unless the plaintiff applies within the prescribed time to substitute the representatives of the deceased defendant the suit shall abate. Not only then is there nothing in the Code to authorize the institution of a suit against a dead man as distinct from a suit against his legal representatives, but the death of the defendant puts an end to the suit within a prescribed period unless steps are taken within that period for bringing in the legal representatives. Under these circumstances we agree with the decision of the Calcutta High Court, and are of opinion that, the question referred to us must be answered in the negative.

APPELLATE CIVIL—FULL BENCH.

Before Sir Arnold White, Chief Justice, Mr. Justice Subrahmania Ayyar and Mr. Justice Miller.

RAMU AIYAR (PLAINTIFF), PETITIONER,

v.

SANKARA AIYAR, MINOR BY GUARDIAN LATCHUMI AMMAL (DEFENDANT), RESPONDENT.*

1907. August 2, 13, October 23.

Court Fees Act, Act VII of 1870, s. 7, cl. (4) c, and art. 17 (6), sched. II—Registration Act, s 77 - Suits Valuation Act, s. 8—Suit for registration of document under s 77 of Registration Act does not fall for purposes of Court fees within s. 7, cl. (4) c of the Court Fees Act, but under art. 17 (6) of sched. II of the Act—Such suit to be valued for purposes of jurisdiction on the value of the property.

A suit for registration of a document under section 77 of the Registration Act is not, for the purposes of payment of Court fees, a suit for a declaratory decree with consequential relief within section 7, clause (4) c of the Court Fees Act, but is a suit in which it is not possible to estimate at a money value the subject matter in dispute, within article 17 (6) of

* Civil Revision Petition No. 513 of 1904, presented under section 622 of the Code of Civil Procedure, praying the High Court to revise the order of L. G. Moore, Esq., District Judge of Trichinopoly, in Civil Miscellaneous Appeal No. 10 of 1903, presented against the order of M. R. Ry S. Doraiswami Ayyar, District Munsif of Trichinopoly, in original Suit No. 133 of 1903.

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schedule II of the Act. The Court fee payable in such cases is a fixed fee of 10 rupees.

Jantoo v. *Radha Canto Doss* (I.L.R., 8 Calc., 515), followed.

Savarimuthu Pillai v. *Alagiam Pillai* (12 M.L.J., 88), followed.

The question of valuation for purposes of jurisdiction is not in such cases to be decided under section 8 of the Suits Valuation Act. The value in such cases will be the value of the interest created by such document.

Ramakrishnamma v. *Bhagamma* (I.L.R., 13 Mad., 56), followed.

THE facts necessary for this report are sufficiently set out by (Sir S. Subrahmania Ayyar, Officiating Chief Justice, and Miller, J.) in the order of reference to the Full Bench which was as follows:—

"The alleged will, the registration of which it was sought to enforce, makes disposition in respect of property of a value of more than Rs. 2,500. In *Pydal Nambiar* v. *Kannan Nambiar*(1) it was held that a suit instituted to enforce the registration of an instrument was a suit to which section 7, clause 4 (*c*) of the Court Fees Act is applicable; in other words, is a suit for a declaration in which consequential relief is prayed. In *Savarimuthu Pillai* v. *Alagiam Pillai*(2), a case in the same volume at page 88, another Division Bench, dissenting from the previous case, held that a Memorandum of Appeal in such a suit was to be stamped with a stamp of Rs. 10 under article 17 (6) of schedule II of the Court Fees Act.

If the view in the former case is correct, the valuation of the suit for purposes of jurisdiction would be the valuation adopted by the plaintiff in the plaint; but if, on the other hand, the later decision is right, the question of jurisdiction will depend on the value of the property which is the subject of the transaction having regard to the decision in *Ramakrishnamma* v. *Bhagamma*(3).

In the present case the plaintiff in the plaint valued his claim at Rs. 130 and presented the plaint in the District Munsif's Court. The lower Courts held that, as the value of the property disposed of by the will exceeded Rs. 2,500, the District Munsif had no jurisdiction.

We refer for the opinion of the Full Bench the question whether the District Munsif had jurisdiction over the suit."

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(1) 12 M.L.J., 87. (2) 12 M.L.J., 88.

(3) I.L.R., 13 Mad., 56.

The case came on for hearing in due course before the Full Bench constituted as above.

T. R. Ramchandra Ayyar and *T. R. Krisnaswami Ayyar* for petitioner.

The Hon. Sir *V. C. Desikachariar* for respondent.

The Court expressed the following

OPINION (Sir ARNOLD WHITE, C.J.).—The question which has been referred to us is—Has a District Munsif jurisdiction to try a suit brought under section 77 of the Registration Act to direct registration of a will, where the will in question disposes of property more than Rs. 2,500 in value?

As regards the question of valuation for the purposes of payment of court-fees I am of opinion that the present suit is one of which article 17 (6) of the second schedule to the Court Fees Act applies, that it to say, it is a suit in which it is not possible to estimate at a money value the subject-matter in dispute, and which is not otherwise provided for by the Act. On this question I am prepared to follow the ruling of Garth, C.J, in *Jantoo* v. *Radha Canto Doss*(1), and of this Court in *Savarimuthu Pillai* v. *Alagium Pillai*(2). This, however, is not conclusive as regards the question of valuation for the purposes of jurisdiction. I have had the advantage of reading the judgments which have been written by my learned brothers, and on this question, although I have had considerable doubt in the matter, I am not prepared to differ from the conclusion at which they have arrived, and I would answer the question which has been referred to us in the negative.

SUBRAHMANIA AYYAR, J.—The appellant presented for registration an instrument purporting to be the last will and testament of his deceased father. The Sub-Registrar before whom the instrument was presented refused to register it on the 25th October 1902. This refusal was upheld by the District Registrar on the 31st January 1903. The present suit for a decree directing the document to be registered was instituted in the Court of the District Munsif of Trichinopoly, within whose local limits the office in which the document was sought to be registered is situate. The plaint was returned for presentation to the proper Court as the Munsif was of opinion that it was not competent to him to entertain the suit, having regard to the value of the property

(1) I.L.R., 8 Calc., 515. (2) 12 M.L.J., 88.

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comprised in the will being admittedly in excess of Rs 2,500, the pecuniary limit of his jurisdiction. The order was confirmed on appeal to the District Court. The question submitted for our opinion is whether the District Munsif has jurisdiction over the suit.

It has been argued on behalf of the appellant that the suit was one for a declaratory decree with consequential relief and that, the value of the relief sought having been stated in the plaint to be within Rs. 2,500, viz., Rs. 130, the Munsif had jurisdiction with reference to the provisions of section 8 of the Suits Valuation Act. The decision of the Division Bench in *Paydal Nambiar* v. *Kannan Nambiar*(1) no doubt supports this contention. But that decision was dissented from in *Savarimuthu Pillai* v. *Alagiam Pillai*(2), where it was held that a suit for a decree directing the registration of a document brought in pursuance of section 77 of the Registration Act was one which it was not possible to estimate at a money value, and that the court-fee payable was, under article 17 (6) of the second schedule to the Court Fees Act, the fixed fee of Rs. 10. This followed the decision of Garth, C.J., in *Jantoo* v. *Radha Canto Doss*(3) which had not been brought to the notice of the learned Judges who decided the other case *Savarimuthu Pillai* v. *Alagiam Pillai*(2). The order of Garth, C.J., was, as stated by him, in accordance with the general opinion of the then Judges of that Court and for the reasons briefly put by him, I think his ruling embodies the better conclusion.

The question of jurisdiction raised cannot, therefore, be decided with reference to section 8 of the Suits Valuation Act. If the conclusion that a suit such as the present is one which cannot be estimated at a money value for purposes of court-fees would involve the view that the suit is incapable of valuation for purposes of jurisdiction also, it would follow, according to the reasoning on which the decision in *Aklamannessa Bibi* v. *Mahomed Hatem*(4) proceeded, that the Munsif had no jurisdiction, inasmuch as it could not consistently be affirmed that the value of the suit was under Rs. 2,500. This reasoning of the learned Judges, however, has not met with approval

(1) 12 M.L.J., 87.
(2) 12 M.L.J., 88.
(3) I.L.R., 8 Calc., 515.
(4) I.L.R., 31 Calc., 849.

in later decisions, and a different view has been adopted in *Jan Mahomed Mandal* v. *Mashar Bibi*(1). With reference to the observations of Aikman, J., in *Zair Husain Khan* v. *Khurshed Jan*(2), where the case of *Aklem unessa Bibi* v. *Mahomed Hatem*(3) was first dissented from, it was urged, on behalf of the appellant before us, that though for Court-fee purposes the subject-matter of the suit was to be viewed as incapable of being estimated in money, yet the proper course is to hold that for purposes of jurisdiction the plaintiff's valuation should be the guide. This contention is opposed to the *ratio decidendi* of *Ramakrishnamma* v. *Bhagamma*(4), where Muthusami Ayyar and Shephard, JJ., proceeding on what appears to me the right principle, held that the Court of the District Munsif, before which the suit for a decree directing the registration of certain instruments was brought, had jurisdiction, as the value of the interest created by the instruments was below Rs. 2,500. In the absence of specific statutory provisions, the jurisdiction of Courts with reference to pecuniary value of the subject-matter ought, having regard to the general considerations underlying the constitution of the Mofnsil Courts in this country, to depend upon a basis ascertainable and determinable by the Court itself, wherever that is practicable, and not upon the mere will of one of the parties to the litigation, viz., the plaintiff, as it will be if his valuation is to be the conclusive test. Of course, there is nothing in a case such as this, which presents any peculiar difficulty in the way of the Court easily settling the question of the value of the interest affected by the document so as to bring it within the class of cases in which it is expedient to leave the plaintiff to put on his own valuation of the subject-matter.

I would therefore answer the question submitted for our opinion in the negative.

MILLER, J.—The suit is under section 77 of the Registration Act to direct registration of a will disposing of property worth, it is said more than Rs. 50,000, and at any rate worth more than Rs. 2,500.

It is to my mind clear that it is not a suit for a declaratory decree within the meaning of section 7, clause 4 (*c*) of the Court

(1) I.L.R., 34 Calc., 352.
(2) I.L.R., 28 All., 545.
(3) I.L.R., 31 Calc., 849.
(4) I.L.R., 13 Mad., 56.

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Fees Act. The plaint does not pray for any declaration, the law does not require the Court to make any declaration, and there is no necessity before making the order prayed for, to make any declaration of title or right in favour of the plaintiff.

If the argument before us were to be accepted, it is difficult to conceive of any suit which is not a suit for a declaratory decree, but it is obviously not the case that a suit is a suit for a declaratory decree merely because, before making its decree, the Court has to decide certain issues of fact. In the present case it is quite unnecessary, and would be superfluous for the Court to embody *in the decree* any declaration that the will is genuine.

In *Pydal Nambiar* v. *Kannan Nambiar* 1), the question decided was that a suit under section 77 of the Registration Act was not a suit in which no consequential relief is claimed. It seems to have been assumed that it was a suit for a declaratory decree, and it may be of course that there are cases in which a declaration in the decree may be required. But the present suit is not one of them, and I am clearly of opinion that it is not a suit for a declaratory decree within the meaning of section 7, clause 4(*c*) of the Court Fees Act. I am prepared therefore to adopt the only other view presented to us, and the view adopted by this Court in *Savarimuthu Pillai* v. *Alagiam Pillai*(2), that it is a suit in which it is not possible to estimate at a money value the subject-matter in dispute.

How then is it to be valued for purposes of jurisdiction?

Before discussing this question I will deal with an argument which suggests that the point does not really arise. The suit it is contended is a special suit, and the section of the Act which authorises the suit prescribes also the Court in which it is to be instituted.

The Act prescribes that the Court shall be the Civil Court having original jurisdiction over the locality of the office in which registration is sought, but in this Presidency that Court might be (if a village Court is not a Civil Court) any one of three Courts—a District Munsif's Court, a Subordinate Judge's Court or a District Court. The Act does not, therefore, prescribe the Court where there is more than one. In answer to this it is contended that section 15 of the Civil Procedure Code fixes the

(1) 12 M.L.J., 87.

(2) 12 M.L.J., 88.

Court, but, if that is so, there is no reason why the Civil Courts' Act, the Act by which Civil Courts are constituted and established, should not also be called in aid. If the Civil Procedure Code refers us to the Court of lowest grade competent to try the suit, the Civil Courts Act defines the competency of the Courts of different grades.

I have no doubt that the jurisdiction to try the suit is to be determined by the same rules as apply to other suits.

It has then to be decided whether the subject-matter of the suit exceeds or does not exceed in value Rs. 2,500.

Now, if it is impossible to estimate in money the value of the subject-matter in dispute, it follows that the subject-matter of the suit does not admit of being satisfactorily valued, but as no rules have been framed under section 9 of the Suits Valuation Act to meet this case, and as the suit must be valued for jurisdiction, we have to find and apply some method of valuation, the least unsatisfactory that can be devised.

In this predicament the High Courts of Calcutta and Allahabad have decided that the plaintiff is to be allowed to put his own value on the subject-matter, but that this valuation is to be open to revision by the Court on grounds of *mala fides* or impropriety—*Zair Husan Khan* v. *Khurshed Jan* (1) and *Jan Mohamed Mandul* v. *Mashar Bibi*(2). These decisions which were arrived at in suits for restitution of conjugal rights, have no doubt the advantage that they lay down a general rule applicable to all suits of which the subject-matter cannot be satisfactorily valued in money; but have also the disadvantage that they entail or may entail if the plaintiff's valuation is questioned an expensive and unsatisfactory preliminary enquiry before the suit can be heard. In an earlier case [*Aklemannessa Bibi* v. *Mahomed Hatem* (3)], the view was taken that when the subject-matter cannot satisfactorily be valued in money, it cannot be found that its value does not exceed the pecuniary limit of the jurisdiction of the District Munsif, and it follows that all such suits must be brought in the District Court or the Subordinate Judge's Court having jurisdiction: but in the later cases this view was departed from partly on the ground that its adoption might work great hardship on poor plaintiffs, and

(1) I.L.R., 28 All., 545. (2) I.L.R., 34 Calc., 352.
(3) I.L.R., 31 Calc., 849.

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partly in the view that the assumption might as well be put the other way, *i.e.*, there is nothing to show that the value of the subject-matter exceeds the District Munsif's limits. I do not think we are reduced to the adoption of a rule which will put all the suits under section 77 of the Registration Act into the same class of Court, nor are we compelled for such suits to adopt the rule which may well be in spite of its disadvantages the best rule in suits for restitution of conjugal rights. We may permit the plaintiff to value his plaint and to require the Courts to accept his valuation, or we may value the suit according to the value of the interest created by the instrument sought to be registered.

The first alternative is, in my opinion, less satisfactory than the second; it is not, I think, desirable to extend the class of cases in which the plaintiff is allowed to select his Court.

The rule of valuation based on the value of the interest created by the instrument was adopted in the case of compulsorily registrable instruments by Sir T. Mattusami Ayyar in *Ramakrishnamma* v. *Bhagamma*(1). His reasoning in that case is, no doubt not applicable to the case of a will which does not derive any part of its validity from registration, and it is open to argument whether the same reasoning would not support a claim for an *ad valorem* Court fee proportionate to the value of the interest created; there are nevertheless reasons which I think are sufficient to warrant us in adopting the same rule in the present case.

It is desirable that there should be only one rule whether the instrument is registrable compulsorily or not: though it is not possible satisfactorily to estimate the value of registration to the plaintiff, still it is not going too far to assume that that value will ordinarily vary directly with the value of the interest created by the document; it is *ex hypothesi* impossible to fix the ratio correctly, so we must assume a ratio; we assume an equality; by so doing, we adopt a rule which can be applied without difficulty, which leaves nothing to the plaintiff, and which is in harmony with the system under which pecuniary limits are fixed to the jurisdiction of certain Courts.

Principally for these reasons I would answer the question referred to us in the negative.

(1) I.L.R., 13 Mad., 56.

The petition came on for final hearing before (Sir S. Subrahmania Ayyar, Officiating Chief Justice, and Miller, J.) when the Court delivered the following

JUDGMENT.—Following the decision of the Full Bench, we dismiss the revision petition with costs.

APPELLATE CIVIL.

Before Mr. Justice Wallis and Mr. Justice Sankaran Nair.

1907 December 11, 18.

MUNISAMI MUDALIAR (PLAINTIFF), APPELLANT,

v.

SUBBARAYAR AND OTHERS (DEFENDANTS), RESPONDENTS.*

Trust Act. Act VI of 1882, s. 84—Benami sale to defraud creditors—Where no creditor defrauded, vendee holds property for the benefit of vendor.

Where a benami sale is effected to defraud creditors but no creditor is actually defrauded thereby, the transferee, under section 84 of the Trust Act, holds the property for the benefit of the transferor. A suit for the specific performance of a contract to sell made by the transferee can be successfully resisted by the transferor.

Section 84 of the Trust Act embodies the principles recognized by English Courts at the time the Act was passed; and the fact that English Courts subsequently doubted the soundness of these principles will not justify the Courts in India in departing from the rule of law laid down by the section. Judgement of Benson, J., in *Yaramati Krishnayya* v. *Chundru Papayya*, (I.L.R., 20 Mad., 326), not followed

Lidlingappa v. *Hirasa*, (I.L.R., 31 Bom., 405), distinguished.

SUIT by plaintiff for specific performance of a contract to sell executed by first defendant.

The first defendant and the deceased husband of third defendant were the sons of second defendant. In 1890, the second defendant executed a deed of release in favour of his sons, whereby he relinquished all his rights in the family properties in favour of his sons In 1901, the first defendant entered into an agreement with the plaintiff to sell some of the properties so relinquished, and the sale not having been completed, the plaintiff now sued for specific performance of the agreement.

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*Appeal No. 72 of 1904, presented against the decree of M.R Ry. K. Ramachandra Ayyar, Subordinate Judge of Negapatam, in Original Suit No. 9 of 1902.