

APPELLATE CIVIL.

Before Mr. Justice Oldfield and Mr. Justice Tyabji.

RAJAGOPALA NAIDU (DEFENDANT), PETITIONER,

v.

M. R. VIJAYARAGHAVALU NAIDU AND ANOTHER
(PLAINTIFFS), RESPONDENTS.*

1914.
September 10,
11 and 16.

Court Fees Act (VII of 1870), sec. 7, cls. (iv) (c) and (v)— Suit for declaration of the invalidity of a decree as against the plaintiff for his properties and for possession of some of those properties sold under the decree—Relief for possession only consequential on grant of declaration—No liability to value the declaration as on the amount of the decree—Plaintiff's right to give a combined valuation for both reliefs.

In a suit for (1) a declaration that a certain decree was of no legal effect against the plaintiffs or the properties in their hands and (2) possession of part of those properties, which had been sold in execution of the decree,

Held (1) that the two reliefs were connected and were to be taken together the relief for possession being consequential on the grant of declaration, (2) that the plaintiff was entitled to put in respect of both the reliefs a combined valuation for the purpose of court-fees, (3) that the whole suit was not governed by section 7, clause (iv) (c) of the Court Fees Act (VII of 1870), as there was a prayer for possession also which was to be valued as per section 7, clause (v), notwithstanding that the declaration was asked for, and (4) that the prayer for declaration was not liable to be valued for purposes of court-fees as upon the amount of the decree sought to be set aside as invalid.

PETITION under section 115 of the Code of Civil Procedure (Act V of 1908), to revise the order of C. G. SPENCER, the District Judge of Tanjore, in Civil Miscellaneous Appeal No. 18 of 1912, preferred against the order of S. C. RAMASWAMI AYYAR, the District Munsif of Shiyali, in Original Suit No. 139 of 1910.

The amended plaint in this case prayed for two reliefs (1) a declaration that a certain decree was of no legal effect against the plaintiffs or the various properties in their hands, and (2) possession of part of those properties which had been sold in execution of the decree and the reliefs were valued as follows:—

Court-fee for declaration	Rs. 10-0-0
Court-fee for possession of properties on	Rs. 500 being five times the kist of the	lands sought to be recovered.	} Rs. 37-8-0

* Civil Revision Petition No. 401 of 1913.

On objection by the defendants the District Munsif held that the prayer for the declaration of the decree was a substantial relief and that the plaintiffs must, in addition to the court-fee paid as per section 7, clause (v) of the Court Fees Act, value their relief for declaration at Rs. 2,400, i.e., the amount of the decree sought to be set aside and pay court-fee on Rs. 2,400 also. The District Munsif accordingly returned the plaint to be presented to the proper Court as the total valuation of both the reliefs exceeded his jurisdiction and came to Rs. 2,900.

On appeal by the plaintiffs, the District Judge holding that section 7, clause (iv) (c), of the Court Fees Act was applicable and that the plaintiffs' valuation of his reliefs must be accepted, set aside the order of the Munsif and directed him to dispose of the suit according to law.

Defendants preferred this revision petition against the order of the District Judge.

R. Kuppuswami Ayyar for the petitioner.

G. S. Venkatarama Ayyar and *G. S. Ramachandra Ayyar* for the respondents.

JUDGMENT.—The plaintiffs sued for (1) a declaration that a certain decree was of no legal effect against them or the various properties in their hands, (2) possession of part of those properties, which had been sold in execution of the decree. No distinction need be drawn between the rights of each of the plaintiffs to these reliefs, since they sued for them jointly without objection from the defendants. The learned District Judge held that section 7 (iv) (c) of the Court Fees Act applied and that therefore the valuation for purposes of jurisdiction was identical with the valuation for court-fee and the plaintiffs' presentation of the plaint in the District Munsif's Court was proper. The District Munsif had held that the valuation should be based on the value of the property sold in addition to the amount of the decree, in respect of which declaration was asked for, in all Rs. 2,995.

OLDFIELD
AND
TYABJI, JJ.

The learned District Judge was clearly mistaken in his statement that section 7 (iv) (c) regulated the valuation of the whole suit, since part of the relief claimed was possession and it had to be valued in accordance with section 7 (v), notwithstanding that a declaration also was asked for. That is recognised in one of the cases cited by the learned District Judge, *Ohinammal*

RAJAGOPALA
 V.
 VIJAYA-
 RAGHAVALU.

OLDFIELD
 AND
 TYABJI, JJ.

v. Madarsa Rowther(1). In the circumstances it cannot be argued that section 8, Suits Valuation Act, applies to more than the remainder of the relief claimed. The defendant contends here and the District Munsif has held that it is inapplicable even to that extent and that the remainder also is subject to *ad valorem* valuation on the amount of the decree, in respect of which declaration is asked for. The questions then are whether the two reliefs asked for are to be taken together, the one as consequential on the other, or, as the District Munsif took them, as independent of each other, and in the latter alternative whether the declaration is to be valued with reference to the amount of the decree.

Firstly, in the latter case it has not in our opinion been shown how such a valuation can be justified. The defendant's argument requires that the claim to declaration shall be valued without reference to its inclusion in a suit for another relief also. It has not been shown how, so regarded, the claim can be treated as involving a claim to further consequential relief also or what such further relief could be; and the case must on that ground be distinguished from *Achammal v. Achammal*(2). It is not suggested that it is covered directly by any section imposing an *ad valorem* valuation. The defendant contends for the application of some principle analogous to that relied on in the Full Bench decision, *Krishnasami Naidu v. Somasundaram Uchettiâr*(3) with reference either to the amount of the decree or the value of the property claimed, whichever is the less. But though the order of reference in that case assumed that section 7 (viii) was inapplicable, is clear that the opinion given was based on its application, since there is no other provision for such an alternative valuation. There the question was only whether the suit property was liable to attachment, as the property of the judgment-debtor, and the clause was in terms applicable. Here it is not, since an attachment is not in question. And there is no reason here for attempting to apply any analogous principle, when the dispute between the parties is different, relating only to the validity of the decree under execution. If the prayer for a declaration is to be regarded for the present purpose

(1) (1904) I.L.R., 27 Mad., 480.

(2) (1910) 20 M.L.J., 791.

(3) (1907) I.L.R., 30 Mad., 335.

independently of that for possession, *Zinnatunnessa Khatun v. Girindra Nath Mukerjee*(1) is clear authority against the defendant's contention.

But in fact we agree with the learned District Judge that the two prayers cannot be regarded separately. As he observes, the plaintiffs' failure to insert a prayer for a combined valuation is not conclusive, the Court's duty being to see whether they are connected. We think that they were so. Possession is not asked for on any other ground than that the decree, in execution of which it was lost, should be declared invalid; and it is therefore asked for consequently on the grant of declaration.

It is conceded that unless the two reliefs claimed can be valued independently and the prayer for declaration can be valued *ad valorem*, the petition must fail. Deciding against both these contentions we dismiss the petition with costs.

N.R.

RAJAGOPALA
v.
VIJAYA-
BAGHAVALU
OLDFIELD
AND
TYABJI, JJ.

APPELLATE CIVIL.

Before Mr. Justice Sankaran Nair and Mr. Justice Spencer.

DAVVUR SUBBA REDDI (PLAINTIFF), APPELLANT,

v.

KAKUTURI VENKATRAMI REDDI *alias* VENKA REDDI
AND ANOTHER (DEFENDANTS), RESPONDENTS.*

1914,
September
15, 16, 18
and 24.

Hindu Law—Contract by father to sell family lands—Suit for specific performance against father—Son added subsequently as defendant—No necessity for contract—Contract not binding on son—Plaintiff's right to conveyance from father of his share only—Partial performance, meaning of—Specific Relief Act (I of 1877), sec. 15—Contract by a co-parcener to sell his share in family property, and contract to sell specific family property, distinction between.

The plaintiff sued for specific performance of a contract for the sale of certain lands and for possession. The contract was entered into by the first defendant, the undivided father of the second defendant who was subsequently added as a party to the suit. The first defendant pleaded that the contract was vitiated by undue influence and was a hard bargain that ought not to be enforced against him. The second defendant pleaded that the contract was entered into by the first without any legal necessity and was not enforceable in

(1) (1903) I.L.R., 30 Cal., 788.

* Appeal No. 240 of 1911.