APPELLATE CIVIL.

Before Mr. Justice Wallace and Mr. Justice Madhavan Nayar.

1926, November 19.

VASIREDDI VEERAMMA (PLAINTIFF), APPELLANT,

v.

MARUPUDI BUTCHAYYA AND 4 OTHERS (RESPONDENTS), DEFENDANTS.*

Suit for mere declaration of adoption, with no consequential relief as to lands, houses, etc.—Valuation for jurisdiction—Section 12, *Madras Civil Courts Act* (*III of* 1873).

A suit for a mere declaration of the factum and validity of an adoption, without any consequential relief regarding lands or houses likely to be affected by the declaration has, for purposes of jurisdiction, to be valued, according to section 12 of the Madras Civil Courts Act, on the basis of the market value of the lands or houses likely to be affected by such declaration and not either according to plaintiff's pleasure or according to the valuation under the Court Fees Act as if it were a suit for possession of such lands or houses. *Rachappa Subrao* v. *Shidappa Venkatrao* (1919) I.L.R., 43 Bom., 507 (P.C.), applied.

APPEAL against the Order of the Court of the Additional Subordinate Judge of Bāpatla in Original Suit No. 2 of 1923.

The facts appear from the judgment.

Ch. Raghava Rao for appellant.

P. Kameswara Rao and *B. Somayya* for respondents.

JUDGMENT.

WALLACE, J. WALLACE, J.—This appeal is against the Order of the lower Court holding that it has no jurisdiction to entertain the appellant's plaint and returning it for

* Appeal against Order No. 374 of 1924.

presentation to the proper Court. The point at issue is one of valuation for the purposes of jurisdiction. The suit is for a declaration that the plaintiff's husband was adopted to one Ramasami. Twelve items of property are scheduled in the plaint, of which No. 1 is said to be in possession of the plaintiff. No. 2 was alienated by Ramasami's widow and Nos. 3 to 10 has been alienated by the plaintiff herself. Item 11 is a vacant site and item 12 a channel. The cause of action is that the alienees from the plaintiff have been sued by the first defendant to recover the items alienated by plaintiff on the footing that there had been no such adoption and that first defendant has got a decree. Plaintiff was not a party to that suit, but the alienees are now threatening to enforce against her indemnity clauses in their favour and therefore she has brought the present suit to remove this cloud on her title to alienate in order that her alienees may have a clear title.

The question at present for decision is, what is the proper value for the purposes of jurisdiction of this suit. The Subordinate Judge has held that it should be valued as if it were a suit for possession of the above twelve items, in which case the valuation for jurisdiction would be the same as for court fee purposes. For example, in the case of land he has taken not the market value but 5 times the assessment and on that footing the valuation comes below Rs. 3,000. The appellant contends first, that in such a case the Court is bound to accept the plaintiff's valuation for the purposes of jurisdiction and secondly, that if this view is wrong the proper valuation is the market value of the 12 items.

We have heard a lengthy and able discussion on both sides on the principles of the Suits Valuation Act and sections 12 and 14 of the Madras Civil Courts Act, which is the relevant statute law on the point. The

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Suits Valuation Act VII of 1887 is naturally the statute to be followed if there is any section directly *ad hoc*, but there is not. No rules have been framed by the local Government under section 3 of the Act, nor does the present suit come under the categories mentioned in sub-rule (1); it comes under Schedule II, Article 17, of the Court Fees Act. Section 8 of the Suits Valuation Act does not apply, because this is not a case in which the court fee is payable *ad valorem*, and section 9 does not apply. So we are driven back on sections 12 and 14 of the Madras Civil Courts Act III of 1873. I think it is clear that section 14 does not apply. The scope of that section may be gauged by a reference to section 6 of the Suits Valuation Act. This section is to be wholly repealed if and when rules under section 3 are promulgated. Section 3 relates only to particular categories of suits of which the present suit is not one. Obviously therefore the framing of rules under section 3 and therefore the repeal of section 14 of the Civil Courts Act will not affect a suit like the present, and it follows that section 14 is not intended to apply and does not apply to such a suit. Reference may be made to *Chalasamy Ramiah* v. *Chalasamy Ramasami*(1). Hence the lower Court is wrong in holding that section 14 has any application. This is important as will appear later on, since it implies that the *subject-matter* of the present suit is not land, house or garden.

Section 12 then, the general section, as amended by Act III of 1916, remains, whereby it is declared that the jurisdiction of a Subordinate Judge extends to all civil suits and the jurisdiction of a District Munsif to such suits of which the amount of value or the subject-matter does not exceed Rs. 3,000. Two points then arise for

(1) (1912) 13 I.C., 903.

decision—(1) What is the subject-matter of the present suit, and (2) What is the value of that subject-matter? As to (1) it has been noted above that the subject-matter of the suit is not the land or other properties which may be affected directly or indirectly by the declaration of adoption. The subject-matter is clearly the fact and validity of the adoption. The plaintiff is not in any sense suing for possession of the property. She is in possession of some and need not sue for that and she does not want possession of the remainder. The term "subject-matter" is obviously not to be confined and applied only to what is capable of valuation in money. There are many suits which are incapable of such valuation, for example, suits for restitution of conjugal rights, suits for precedence in ceremonial worship, and so on. The test simply is, what is the nature of the relief sought, and in the present case that is the fact and validity of the alleged adoption.

The next point is how that is to be valued. The answer to this question cannot be wholly gathered from the statute law. The definition of "value" in the Madras General Clauses Act I of 1891, section 3 (32), takes us no further; but I am clear that the word "value" in section 12 of the Civil Courts Act means *market value*. The general principle as to valuation of suits and appeals is laid down in sections 12 and 13, and the exception is in section 14. Another exception is in section 8 of the Suits Valuation Act. In these two cases valuation for jurisdiction and valuation for court fees are to be the same; in others the general principle that valuation is to be based on market value must apply. This has been laid down in *Rachappa Subrao* v. *Shidappa Venkatrao*(1), a Privy Council case, and *Rattayya* v. *Brahmayya*(2). The former case was a suit

(1) (1919) I.L.R., 43 Bom., 507. (2) (1925) 49 M.L.J., 309.

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for a declaration of adoption and the Privy Council held decidedly that the test was not the notional value imposed by the Court Fees Act and the Suits Valuation Act but the real value of the property. Here the conflict was between the valuation for the purposes of jurisdiction calculated on the court fee paid and the real value of the property. The notional value of land as equivalent to so many times the assessment was not in issue. The Privy Council held that the jurisdiction was determined by the real value of the land affected and not by its notional value. In *Rattayya* v. *Brahmayya*(1) it is clearly laid down that the word "value" in section 12 of the Civil Courts Act means market value. In *Keshava* v. *Lakshminarayana*(2) where the suit was to set aside an adoption, the Court appears to have accepted the valuation given by the Commissioner who presumably estimated the market value. On the other hand in *Chingacham Vitil Sankaran Nair* v. *Chingacham Vitil Gopala Menon*(3), a suit for mere declaration of title to land, the value of the land had been calculated at five times the assessment; but the Court did not consider whether this method of calculation was correct, since in any case, whichever method was adopted, the proper forum was the Subordinate Judge's Court; so it was not necessary to go into that point in that case.

It does no doubt seem an anomaly that a suit for a mere declaration of title to property should in certain cases have to be filed in a Court higher than the Court in which a suit for the property itself or a suit for a declaration of title with consequential relief should be filed. But that is the result of an anomaly in the law itself which lays down that in the latter cases a mere artificial method of valuation at so many times

(1) (1925) 49 M.L.J., 309. (2) 1883) I.L.R., 6 Mad., 192.
(3) (1907) I.L.R., 30 Mad., 18.

the assessment is to be adopted. The anomaly is due to the statute law and not to the general principle. No case has been brought to our notice which lays down that in a suit for a declaration of title to property the method of calculating the value of the property is the court fees method and not the real value. The respondent relies on *Ganapati* v. *Chathu*(1) in which it is laid down generally that the valuation in a suit for a declaration of title by the party in possession shall be as if it was a suit for possession. But that can be interpreted in two ways, either as laying down that the value of the subject-matter is to be the value of the property or as laying down that the method of calculating the valuation of the subject-matter is to be the method of calculating that value in a suit for possession. The decision is not clear that the latter interpretation is meant. Section 4 of the Suits Valuation Act is also relied upon. No doubt if rules had been framed under section 3 the method of calculation argued for by the respondent would come into force but the section seems to imply rather that if this method is to be employed it is necessary that the rule should have been framed under section 3. The principle would be a good principle, but, so far, it has not been embodied in any rule or statute.

The general principles deducible for valuation for purposes of jurisdiction where no special method of valuation has been provided by statute, then, would seem to be (1) that where the subject-matter of a suit is wholly unrelated to anything which can be readily stated in definite money terms, then the plaintiff, having to put some money value for the purpose of jurisdiction, must put a more or less arbitrary value,

(1) (1889) I.L.R., 12 Mad., 223.

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and, there being no factors in the case from which the Court can say his valuation is wrong, or dishonest, the Court will accept that valuation. Such is the case of a suit for restitution of conjugal rights—see *Akkemanneesa Bibi* v. *Mahomed Hatem*(1) and *Zair Husain Khan* v. *Khurshed Jan*(2) or a suit for a declaration that the plaintiff is a member of a charity committee—see *Murza Hyder Alli Sahib* v. *Hussain Raza Sahib*(3), and (2) that where the subject-matter is so related to things which have a real money value that the relief asked for will affect these, then the value of the suit for the purpose of jurisdiction is to be taken as the market value of the property affected, such, for example, as a suit for a declaration of fishery rights—see *Mohini Mohan Misser* v. *Gour Chandra Rai*(4) or a suit to set aside an award—*Venkatachalam Pillai* v. *Srinivasa Iyer*(5) or a suit regarding liability to pay royalty—see *Ryrappan Nambiyar* v. *Chathukutti Nambiyar*(6). But the market value must be the market value of the whole of the property affected and not merely the plaintiff's share. This has been laid clearly in *Keshava* v. *Lakshminarayana*(7) and *Ibrayan Kunhi* v. *Komamutti Koya*(8).

In applying these principles to the present suit which is a suit for a declaration without consequential relief, the appellant contends that the first principle applies, that is, that the Court cannot refuse to accept the plaintiff's valuation unless it holds that that valuation is dishonest. There is a good deal to be said logically for this position, but clearly it has not been adopted in this Presidency as the law. The argument would involve the application of this criterion to all suits

(1) (1904) I.L.R., 31 Calc., 849.
(2) (1906) I.L.R., 28 All., 545.
(3) (1914) 24 I.C., 310.
(4) (1920) 56 I.C., 762.
(5) (1923) 18 L.W., 399.
(6) (1924) 46 M.L.J., 377.
(7) (1883) I.L.R., 6 Mad., 192.
(8) (1892) I.L.R., 15 Mad., 501.

under Schedule II, clause (17) of the Court Fees Act whereas in many such suits, as noted above, the Court has not adopted that principle. The present case cannot therefore come under the first category but must fall under the second, the valuation to be adopted for the purposes of jurisdiction being the actual market value of the property.

The Subordinate Judge is, therefore, wrong in calculating the value as the court fees value of the property. Adopting the market value as given in the plaint which is not challenged except as regards item 1 for which we will adopt the Commissioner's figure of Rs. 1,825 the total value for the purpose of jurisdiction would come to over Rs. 3,000 and the proper Court for the purpose of jurisdiction would be that of the Subordinate Judge. We must, therefore, reverse the order of the lower Court, and direct the Additional Subordinate Judge to entertain the suit.

The respondent has filed a Memorandum of Objections on the matter of costs. The Subordinate Judge directed that costs before him should be costs in the cause, but that is, obviously a wrong order since the appellant might not present his plaint again and the respondent would then lose his costs. However, as it is, as we find in favour of the appellant, he is entitled to and will get his costs in both Courts.

MADHAVAN NAYAR, J.—I agree.

N.R.