SAMBAMURTHI AYYAR v. RAMAKRISHNA AYYAR.

PAKENHAM WALSH, J.

the decisions quoted in that analogy which renders one part of that Act inconsistent with another whereas the effect here is to wipe out a definite proviso as to appeal. It is a settled principle of construction that an Act must be construed if possible consistently with itself. We, therefore, find against the contention and dismiss the appeal with costs.

N.R.

APPELLATE CIVIL.

Before Mr. Justice Devadoss.

1928, August 31.

RAMASWAMI ASARI (PLAINTIFF), APPELLANT.*

Court Fees Act (VII of 1870), as amended by Madras Act (V of 1922)—Art. 17 (a) (iii) of the 2nd schedule—Suit to set aside an adoption—Valuation.

Article 17 (*a*) (iii) of the second schedule of the Court Fees Act, as amended by Madras Act V of 1922 enacts that the court-fee to be paid in suits to set aside an adoption is "hundred rupees, if the value for purposes of jurisdiction is less than rupees ten thousand and five hundred, if the value is ten thousand rupees or upwards."

Held, construing the above article, (*a*) that the plaintiff in such a suit is not entitled to put his own valuation upon the relief claimed, and (*b*) that the market value of such interest and not the value thereof as in a suit for possession is the proper valuation; *Keshara* v. *Lakshminarayana*, (1882) I.L.R., 6 Mad., 192, followed.

STAMP REFERENCE No. 11458 of 1927 in Appeal sought to be preferred against the decree of the Court of Subordinate Judge of Dindigul in O.S. No. 25 of 1925.

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* Stamp Reference No. 11458 of 1927.

The following facts are taken from the Order of DEVADOSS, J. :—

"This is a reference by the Taxing Officer of the High Court. The terms of reference are :

'Whether, in valuing the interest that would be lost to the alleged adopted son (the first defendant in the present case) if the adoption be declared invalid, the market value is to be taken.'

Plantiff's suit was for a declaration that no adoption had taken place and even if an adoption had taken place, it was an invalid adoption. The appeal is by the plaintiff. He paid a court-fee of Rs. 100 under article 17 (*a*) (iii) of the Court Fees Act. The office objects to the amount and requires the appellant to pay Rs. 500, that is, Rs. 400 in addition, as the market value of the property is more than Rs. 10,000."

Further facts are to be found in the Order of DEVADOSS, J.

C. V. Harihara Ayyar for appellant.—A case falling under article 17 (*a*) (iii) of the Court Fees Act, like the present one, is incapable of valuation and the plaintiff is entitled to put his own valuation. *Sheo Deni Ram* v. *Tulshi Ram*(1), *Bai Machhbai* v. *Bai Hirbai*(2) and *Prahlad Chandra Das* v. *Dwarka Nath Ghose*(3). The plaintiff is only a reversioner and cannot get possession of the estate even if he succeeds; he can only ask for a declaration. At the most, the valuation should be as in a suit for possession and not on the market value of the interest that will be affected; *Ganapati* v. *Chathu*(4) and *Mohini Mohan Misser* v. *Gour Chandra Rai*(5). He distinguished *Keshava* v. *Lakshminarayana*(6) and *Vasireddi Veeramma* v. *Butchayya*(7).

Government Pleader (*P. Venkataramana Rao*) for Government.—The reference is very limited and the arguments and answer must be limited only to the question whether the market value of the interest that will be affected is to be the basis of the valuation. The amendment of the Court Fees Act assumes

(1) (1893) I.L.R., 15 All., 378.
(2) (1911) I.L.R., 35 Bom., 264.
(3) (1910) I.L.R., 37 Calc., 860.
(4) (1889) I.L.R., 12 Mad., 223.
(5) (1920) 5 P.L.J., 397.
(6) (1882) I.L.R., 6 Mad., 192.
(7) (1926) I.L.R., 50 Mad., 646.

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that a suit like this is capable of valuation. The value to be put is the value that will be lost to the adopted son, in case the adoption is set aside; see *Keshava* v. *Lakshminarayana*(1) and such value must be the market value when the suit is not for possession of revenue-paying lands.

JUDGMENT.

After stating the facts extracted above, his Lordship (DEVADOSS, J.) continued:—It is admitted that the market value of the property in dispute is not less than Rs. 10,000. Mr. Harihara Ayyar, who appears for the appellant, contends that in a case falling under article 17 (*a*) (iii), the plaintiff is entitled to put his own valuation upon the relief claimed by him, as it is not capable of valuation and even if it be held that the relief is capable of valuation, the relief should be valued not at the market value but upon the value of the relief which would accrue to the plaintiff. The question whether a relief with regard to an adoption is capable of valuation or not need not be gone into at length. Whatever may be the view of the other High Courts, this Court has taken the view that a relief with regard to the validity or otherwise of an adoption is capable of valuation. In *Keshava* v. *Lakshminarayana*(1) it was observed that he (meaning the plaintiff)

> "has asked for a declaration that the adoption was not made, and that, if it was made, it was invalid. The fact and validity of the adoption is then the subject of the suit, and in valuing it for purposes of jurisdiction, a computation must be made of the value of the interest that would be lost to the alleged adopted minor, if the adoption be declared invalid."

It stands to reason that, when a plaintiff comes into Court urging that an alleged adoption did not take place, and even if it did take place, it is not valid, he asks for a relief not merely with regard to the adoption but to the property which the adopted boy would acquire

(1) (1882) I.L.R., 6 Mad., 192.

by means of the adoption. In other words, the value of the relief is the value of the property which the adopted boy would get if the adoption were true and valid. The argument of Mr. Harihara Ayyar is, that, when a person asks for a declaration that a certain adoption is invalid or that it did not take place, he asks for a relief, which, if granted, would not benefit him as soon as the declaration is made. This argument overlooks the fact that the adopted boy, in case the adoption is declared invalid, would lose the property which he would not otherwise, and the value of the relief is the value of the property the loss of which would entail on the adoption being declared invalid. Whether the plaintiff gets anything at present or not, we must consider the value of the relief as being the loss to which the defendant would be put, in case the relief asked for is granted. It is conceded that in the converse case, that is, if a person asks for a declaration that he is the adopted son of X, the valuation of the relief prayed for, would be the value of the property he would acquire by the adoption being upheld and I fail to see why a different principle should be applied when the defendant happens to be the adopted boy and the plaintiff a person who chooses to contest the factum or validity or both, of the adoption. The Allahabad High Court in *Seho Deni Ram* v. *Tulshi Ram*(1) departed from the view of this Court in *Keshava* v. *Lashminarayana*(2), and in *Bai Machhbai* v. *Bai Hirbai*(3) this question did not directly arise. That was a case between Muhammadans. In *Prahlad Chandra Das* v. *Dwarka Nath Ghose*(4) the learned Judges followed the practice which they had been following for a number of years. I do not think that on the strength of these cases, the correctness of the decision in *Keshava* v.

(1) (1893) I.L.R., 15 All., 378.
(2) (1882) I.L.R., 6 Mad., 192.
(3) (1911) I.L.R., 35 Bom., 264.
(4) (1910) I.L.R., 37 Calc., 860.

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Lashminarayana(1) can in any way be questioned. It is also urged that in the case of a karnavan of a Malabar tarwad and in the case of a trustee, the relief cannot be valued and that principle should be applied to this case. In the case of karnavan, he does not own any property in his own individual right ; he is only a manager of the tarwad for the time being and in the case of a trustee, it is well known that he has no personal interest in the matter though he may think much of his office as a trustee. Those cases cannot apply to a case like the present. The legislature in amending the Court Fees Act by inserting in column 3, the following, namely,

> " Hundred rupees if the value for purposes of jurisdiction is less than ten thousand rupees and five hundred rupees if such value is ten thousand rupees or upwards "

has expressed its view that a relief with regard to an alleged adoption is capable of valuation. Under the old Act, the declaration was sought on a ten-rupee stamp. When the legislature advisedly enacted the clause with regard to the proper fee, it assumed that a relief in regard to an adoption was capable of valuation. This must be remembered in applying the case law to the present case.

The next question is, what is the correct mode of valuation ? Mr. Harihara Ayyar contends that the correct mode of valuation would be the same as in the case of a suit for possession of property. In the case of property paying land revenue, the Court Fees Act requires an *ad valorem* fee of ten times the Government assessment for suits for possession. But in the case of a house and other immovable property, the market value is taken to be the value for purposes of court-fee. I do not see why, when a declaration is asked for in

(1) (1882) I.L.R., 6 Mad., 192.

respect of property, the valuation should be on the basis of the valuation in a suit for possession. The mere fact that the Court Fees Act makes a distinction in some cases between property paying land assessment to Government and other property not paying any assessment is no ground for importing that distinction into clause 17 (*a*) (iii) of the Court Fees Act. As it reads, it only means the market value of the property. The clause is

"Hundred rupees if the value for purposes of jurisdiction is less than ten thousand rupees."

In cases where possession is asked for, the valuation for purposes of jurisdiction would be the same as the valuation for purposes of court-fee. But in other cases, the valuation for purposes of jurisdiction need not necessarily be the same as the valuation for purposes of court-fee. I therefore hold that in a case like this, the valuation should be calculated on the market value of the property which is likely to be affected by the declaration being granted or refused. In this view, it is unnecessary to consider *Vasireddi Veeramma* v. *Butchayya*(1). That is a case in which the question of jurisdiction was involved and no doubt there are some observations as to clause 17 (*a*) (iii), schedule 2 of the Court Fees Act. *Ganapati* v. *Chathu*(2) and *Mohini Mohan Misser* v. *Gour Chandra Rai*(3) do not touch the present point.

I answer the reference in the affirmative, that is, the market value should be taken as the value of the relief claimed in cases coming under clause 17 (*a*) (iii) of the second schedule of the Court Fees Act. The Taxing Officer will give such time as is necessary for supplying the deficiency in court-fee.

N.R.

(1) (1926) I.L.R., 50 Mad., 646. (2) (1889) I.L.R., 12 Mad., 223.
(3) (1920) 5 P.L.J., 397.