APPELLATE CIVIL.

Before Mr. Justice Krishnan Pandalai.

1932, October 18.

ARUMUGHA MUDALIAR (SECOND DEFENDANT—FIRST RESPONDENT), PETITIONER,

v.

VENKATACHALA PILLAI AND TWO OTHERS (PLAINTIFFS 1 TO 3—APPELLANTS), RESPONDENTS.*

Civil Procedure Code (Act V of 1908), O. XXI, r. 63—Suit under—Subject-matter—Suit land and not the amount of debt—Proper method of valuation—Court Fees Act (VII of 1870), sec. 7 (v)—Value for purposes of jurisdiction—Madras Civil Courts Act (III of 1873), sec. 14—Not confined to suits mentioned in sec. 3 of the Suits Valuation Act (VII of 1887).

In a suit brought under Order XXI, rule 63, of the Code of Civil Procedure by an unsuccessful claimant for a declaration that the suit land was not liable to be attached in execution of a decree obtained against his vendor by a third party, *held*, that, even assuming that in such a suit the subject-matter was the suit land and not the amount of the debt for which it was attached in execution, the value of the land for the purposes of jurisdiction was not its market-value but its value computed according to section 7 (v) of the Court Fees Act. There is nothing in the Suits Valuation Act which prevents the application of section 14 of the Madras Civil Courts Act which declares that when the subject-matter of a suit is land the proper method of valuing it for purposes of jurisdiction is under section 7 (v) of the Court Fees Act.

Section 14 of the Madras Civil Courts Act is not confined to suits mentioned in section 3 of the Suits Valuation Act.

PETITION under section 115 of Act V of 1908 praying the High Court to revise the order of the Court of the Subordinate Judge of Cuddalore in Civil Miscellaneous Appeal No. 2 of 1931 (Civil Miscellaneous Appeal No. 3 of 1931 on the file of the District Court

* Civil Revision Petition No. 1904 of 1931.

of South Arcot, at Cuddalore) preferred against the order of the Court of the District Munsif of Cuddalore, dated the 9th day of October 1930, and made in Original Suit No. 962 of 1928.

K. Balasubramania Ayyar for petitioner.

N. K. Mohanarangam Pillai for respondents.

JUDGMENT.

This petition affords a good example of the regrettable delays to which litigation has now become subject owing to questions of court-fee and jurisdiction having become a common feature in the subordinate Courts which take years for their determination. In this case the suit was of a common enough kind and was brought in 1928. At the end of 1932 it remains still to be decided which is the proper Court to try it. The plaintiff had bought some property from the second defendant and his mother for Rs. 3,700. The first defendant obtained a decree for Rs. 1,170 in 1927 against the second defendant alone and attached that property. The plaintiff preferred a claim in execution which was dismissed. Within the year allowed for a suit he brought this suit impleading the decree-holder, first defendant, and the judgment-debtor, the second defendant. In the plaint he set out these facts as affording the cause of action and prayed (here the trouble begins) (1) to cancel the order dated 6th October 1928 on the claim petition; (2) to declare the plaintiff's title to the property under his sale deeds; (3) to raise the attachment; and (4) for a permanent injunction against the execution being continued to sale. It will be observed that, although the plaintiff made four prayers, the substance of the whole matter was that his property had been illegally attached and he wanted that to be avoided; all else was mere words.

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The first and third prayers mean the same thing that the plaintiff wanted the claim order avoided. The fourth prayer is the consequence of that and the second is incidental to it. In this suit the plaintiff paid a court-fee of Rs. 10 under Schedule II, article 17, of the Court Fees Act. That this was right there is now no question. The matter is set at rest by the decision of the Privy Council in *Phul Kumari* v. *Ghanshyam Misra*(1), a very similar case in which their Lordships point out that in spite of unnecessary prayers the substance of the suit should be looked at to determine what the court-fee payable is.

But the question was raised as to the proper Court for purposes of jurisdiction which was to try this suit. One would have thought at this distance of time that there can be no arguable question on such a matter. But not only has it been argued but, while the District Munsif held following *Narayanan Singh* v. *Aiyasami Reddi*(2) that he had no jurisdiction to entertain the suit because the value for purposes of jurisdiction is according to him the market-value of the property which is more than Rs. 3,000 as the plaintiff admittedly bought it for Rs. 3,700, the learned Subordinate Judge in appeal held following *Krishnasami Naidu* v. *Somasundaram Chettiar*(3) that the value for jurisdiction is the amount of the debt Rs. 1,170; that even if it be considered to be the value of the property it was not more than one-half of Rs. 3,700, the market-value, viz., Rs. 1,850, as a result of the Madras amendment to section 7, clause (iv)(*c*) of the Court Fees Act; but that in his view the value of the land should be computed for purposes of jurisdiction according to section 7, clause (v),

(1) (1907) I.L.R. 35 Calc. 202 (P.C.). (2) (1915) I.L.R. 39 Mad. 602.
(3) (1907) I.L.R. 30 Mad. 335 (F.B.).

of the Court Fees Act, i.e., at 10 times the assessment, in which case the whole value would be less than Rs. 3,000.

In this Court learned Counsel for the petitioner has addressed a very able argument that the view of the Munsif is right. He certainly has one or two decisions which would seem to support by parity of reasoning his argument that in a suit like this, which must be deemed a declaratory suit respecting land, the proper value for purposes of jurisdiction is the full market-value of that land and not either the value as determined under section 7, clause (v), of the Court Fees Act or half the market-value according to the Madras amendment to section 7, clause (iv) (c). The decisions he relies upon are *Vasireddi Veeramma* v. *Butchayya*(1) and *Chalasamy Ramiah* v. *Chalasamy Ramaswami*(2) which it relies on and follows. On the other hand the respondents' learned Advocate argues that the Subordinate Judge's view is right and that the value for purposes of jurisdiction in the present suit is the amount of the debt Rs. 1,170 and even if the subject-matter is taken to be the land its value should be computed as prescribed by section 14 of the Madras Civil Courts Act which adopts the valuation in section 7, clause (v), of the Court Fees Act for purposes of jurisdiction in all cases where the subject-matter of the suit is land, houses or gardens.

Now if this suit were really of the same nature as that in *Vasireddi Veeramma* v. *Butchayya*(1) or *Chalasamy Ramiah* v. *Chalasamy Ramaswami*(2) I should be bound by them, because they are Bench decisions. But *Vasireddi Veeramma* v. *Butchayya*(1) was a suit to establish the validity of an adoption and not one in

(1) (1926) I.L.R. 50 Mad. 646. (2) (1912) 13 I.C. 903.

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which the subject-matter was land. The Court held that the properties which might accrue to the adopted person were not the subject-matter of the suit, but only the adoption itself. The grounds of the decision are entitled to very great weight but the decision itself was on the point just stated, viz., that in a suit to establish an adoption, section 14 of the Madras Civil Courts Act, which relates only to cases where land is the subject-matter, is not applicable. Similarly in *Chalasamy Ramiah* v. *Chalasamy Ramaswami*(1) the suit was one for partition of lands of which the plaintiff was in joint possession and what was held was that in such a suit the plaintiff was entitled to place his own valuation for the purposes of jurisdiction. Although there were observations as to the effect of section 14 of the Civil Courts Act in that case also, they were for purposes of that decision that the plaintiff was entitled to value the relief for purposes of jurisdiction as he liked.

It appears to me that in the suit before me, even if it is governed by *Narayanan Singh* v. *Aiyasami Reddi*(2) and not by *Krishnasami Naidu* v. *Somasundarum Chettiar*(3), all that it leads to is that the subject-matter is the land and not the debt. The plaintiff's land was attached, his claim thereto was dismissed, and he wants that summary decision set aside. Assuming that in such a suit the subject-matter is the land concerned in the claim order, section 14 of the Madras Civil Courts Act is explicit when it declares that "when the subject-matter of any suit or proceeding is land, a house or garden, its value shall, for purposes of jurisdiction conferred by that Act, be assessed in the manner provided by the Court Fees Act of 1870, section 7,

(1) (1912) 13 I.C. 903. (2) (1915) I L.R. 39 Mad. 602.
(3) (1907) I.L.R. 30 Mad. 335 (F.B.).

clause (v)." In my opinion those words are imperative and clear. But it is said that that section is applicable only in classes of suits referred to in section 3 of the Suits Valuation Act, viz., suits governed by section 7, clauses (v), (vi) and (x) (*d*), of the Court Fees Act; that is, suits for possession of land, pre-emption, and specific performance of an award. This method of interpreting this section is adopted by inference from the effect of section 6 of that Act. It says that, when rules under section 3 are made for the territories under the administration of the Madras Government, section 14 shall stand repealed as regards this presidency. A fallacy lurks in this inference because the effect of section 4 of the Suits Valuation Act which is material in this connection is left out. That section says that when rules for valuing land have been made under section 3 the same value shall be applicable as a maximum in suits relating to land or an interest in land falling within section 7, clause (iv), or Schedule II, article 17. Now the suits relating to land in section 7, clause (iv), are in subclauses (*b*), (*c*), (*d*) or (*e*). Clause (*b*) deals with suits for partition, (*c*) with declaratory suits where consequential relief is prayed, (*d*) for injunction and (*e*) for a right to some benefit not otherwise provided for to arise out of land. In these suits and suits falling like the present one under Schedule II, article 17, relating to land, the valuation according to the rules made under section 3 are to be adopted but as a maximum. This is to prevent over-valuation of such suits. In suits for partition, declaration or injunction in respect of land or for some benefit to arise out of land not otherwise provided for, it would be necessary to value the land and it would be also necessary to value the interest involved, and in such cases the section provides that the valuation of land under rules made under section 3 shall be adopted as a maximum. The effect of this

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section on section 6 is that if rules are made under section 3 the valuation thereby prescribed will be applicable also to the suits mentioned in section 4 and then the need for section 14 of the Civil Courts Act ceasing to exist that section shall stand repealed. Therefore it seems to me incorrect to say that section 14 of the Civil Courts Act refers only to suits mentioned in section 3 of the Suits Valuation Act.

The present is a suit falling within Schedule II, article 17, of the Court Fees Act which is expressly mentioned in section 4 of the Suits Valuation Act as a class to which the valuation under section 3 will apply. Therefore if the subject-matter of the suit is land, not only is there nothing in the Suits Valuation Act which prevents the application of section 14 of the Civil Courts Act to this suit, but that section requires that the proper method of valuing land for purposes of jurisdiction is under section 7, clause (v), of the Court Fees Act. This view of section 14 is fortified by a decision in *Narayanan Nair* v. *Cheria Kathiri Kutty*(1) where it was held that the valuation therein prescribed is applicable to suits for pre-emption which are governed by section 7, clause (vi).

Reliance was placed for the petitioner on the decision in *Narayanan Singh* v. *Aiyasami Reddi*(2) and by the other side on the Full Bench decision in *Krishnasami Naidu* v. *Somasundaram Chettiar*(3). It seems to me that the principle of the Full Bench decision has been upheld by the Privy Council in *Phul Kumari* v. *Ghanshyam Misra*(4) that it is the substance and object of the suit which should be regarded and not the words and also that where the debt is less than the value of the property it is the former that determines the value of the suit to the plaintiff. But in *Narayanan Singh* v.

(1) (1918) I.L.R. 41 Mad. 721. (2) (1915) I.L.R. 39 Mad. 602.
(3) (1907) I.L.R. 30 Mad. 335 (F.B.). (4) (1907) I.L.R. 35 Calc. 202 (P.C.).

Aiyasami Reddi(1) emphasis was laid on the words of the various prayers, which, it was thought, took the case out of the category of cases dealt with by the Full Bench. In the Full Bench case which was decided at a time when the Munsif's jurisdiction was only Rs. 2,000, it was held that a suit to avoid a claim was not a suit to obtain a declaration of title to the property but one for getting rid of the effect of the order disallowing the claim and ought to be valued for purposes of jurisdiction at the amount for which the property was attached when such amount is less than the value of the property which was more than Rs. 2,000. In *Narayanan Singh* v. *Aiyasami Reddi*(1) a distinction was made that where the judgment-debtor is party to the claim order and there is a distinct prayer for declaration of title to the property it is the value of that property which determines the jurisdiction. This distinction has no bearing on the present case because assuming that it is the value of the property which does determine the jurisdiction the Munsif would still have jurisdiction. [The remark in *Narayanan Singh* v. *Aiyasami Reddi*(1) that the Full Bench decision does not refer to the Privy Council decision in *Phul Kunari* v. *Ghanshyam Misra*(2) must be due to an oversight as the former was the earlier.] The only point in dispute is how the property is to be valued, whether on the market-value or under section 7, clause (v), of the Court Fees Act. I have given grounds for thinking that the latter is the correct view. The learned Judge's order was therefore right in either view and this petition must be dismissed with costs.

K.W.R.

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(1) (1915) I.L.R. 39 Mad. 602. (2) (1907) I.L.R. 35 Calc. 202 (P.C.).