

APPELLATE CIVIL.

Before Mr. Justice Madhavan Nair.

THANGACHI AMMAL (PLAINTIFF), PETITIONER,

1932,
October 4.

v.

MOHAMED MOIDEEN MARICAIR (DEFENDANT),

RESPONDENT.*

Court Fees Act (VII of 1870), sec. 7 (iv-A) and (v)—Applicability of—Vendor—Setting aside of sale deed and recovery of possession of property covered by it—Suit for—Court-fee payable in.

In a suit by a vendor to set aside a sale deed and for the recovery of possession of the property covered by the deed, it is enough if the plaintiff pays court-fee under section 7 (iv-A) of the Court Fees Act. He need not also pay court-fee on the relief with regard to possession under section 7 (v) of the Act, because the claim with regard to possession is only ancillary to the main claim which is the setting aside of the sale deed.

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 Tiruvarur, dated 5th February 1932 and made in Original Suit No. 37 of 1931.

K. S. Desikan for petitioner.

K. S. Champakesa Ayyangar for respondent.

JUDGMENT.

The plaintiff is the petitioner. The question raised in the case is whether the court-fee paid by her is sufficient.

The suit was for cancellation of a sale deed executed by the plaintiff and for recovery of possession of the land and mesne profits. The consideration for the sale deed was Rs. 2,750. The petitioner paid court-fee for the cancellation of the sale deed on the amount of the consideration specified in the deed under section 7 (iv-A)

* Civil Revision Petition No. 365 of 1932.

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of the Court Fees Act. She also paid court-fee on the mesne profits. The defendant's contention is that the petitioner should pay court-fee in respect of the claim for possession of the property also.

The point for decision is whether the plaintiff is bound to pay court-fee in respect of the claim for recovery of possession of the land from the defendant. The lower Court held that the plaintiff should pay court-fee for possession as well under section 7 (v) of the Court Fees Act. Section 7 (iv) of the Court Fees Act has been amended in 1922 and clause (iv-A) has been newly introduced by the amendment. It states: "In a suit for cancellation of a decree for money or other property having a money value, or other document securing money or other property having such value," the court-fee should be calculated "according to the value of the subject-matter of the suit, and such value shall be deemed to be, etc." Prior to this amendment suits like the present one fell under section 7 (iv) (c); that is, for purposes of court-fee, such suits were considered as suits to obtain a declaratory decree or order where consequential relief is prayed. It is not disputed that the plaintiff has to pay court-fee so far as the setting aside of the sale deed is concerned under clause (iv-A) of the section. The only question is whether besides paying court-fee under clause (iv-A) the petitioner should be compelled to pay court-fee under section 7 (v) also. No decision directly bearing on the point has been brought to my notice. Though the question has not been specifically decided in any case, some decisions of this Court may with advantage be referred to, those being *Lakshmi Ammal, In re*(1) and *Venkatasiva Rao v. Satyanarayanamurthy*(2). Of these two, the first one, *Lakshmi Ammal, In re*(1), is very much like the

(1) (1925) 49 M.L.J. 608.

(2) (1932) I.L.R. 56 Mad. 212.

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present case though the particular point now argued does not seem to have been specifically raised in that case. The present suit, as I have already stated, is one by a vendor to set aside a sale deed and for the recovery of possession of the property covered by the deed. The suit in *Lakshmi Ammal, In re*(1) was by the vendee. That was also for setting aside a sale deed. The relief asked for was the return of the consideration and some damages. It was argued in that case that the suit should be valued as one falling under section 7 (iv) (c), i.e., for the purpose of court-fee it should be treated as a suit for a declaratory decree where consequential relief is prayed. Having regard to the prayer for cancellation of the document and the new amendment introduced by the Legislature in 1922, DEVADOSS J. held that the suit should be valued under section 7 (iv-A). Should it be valued also under section 7 (v) with regard to the return of the money does not seem to have been specifically argued. But it was urged that under section 7 (iv) (c) the plaintiff is bound to value the relief sought for at Rs. 1,300, i.e., the amount so claimed. With regard to this argument the learned Judge pointed out: "The main relief claimed is really the setting aside of the conveyance and the claim for money is only ancillary to it. To such cases section 7 (iv) (c) has no application." And then the learned Judge held that the new clause applied to the case. In the same way it may be said in this case also that the claim with regard to the possession of the property is ancillary to the setting aside of the document and, if so, section 7 (iv-A) is the only provision under which the court-fee has to be levied. In *Venkatasiva Rao v. Satyanarayanamurthy*(2) a decree was sought to be set aside and possession as a result of such setting aside of the decree was also

(1)(1925) 49 M.L.J. 608.

(2) (1932) I.L.R. 56 Mad. 212.

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asked for. The learned Judges held that the case fell under both section 7 (iv-A) and section 7 (v). But they did not say that both the provisions applied to the case and that the plaintiff should pay court-fee under the two provisions. No doubt the point was not specifically raised in the case as I have already pointed out. Some support for the position contended for by the petitioner may be found in *Rajagopala v. Vijayaraghavan*(1) though the question of court-fee in that case arose before the amendment of the Act in 1922. That was a suit for a declaration that a certain decree was of no legal effect and for possession of the properties. Under the present Act the suit would be one for cancellation of the decree and for possession of the properties. The learned Judges in the course of their judgment pointed out with reference to the claim of possession in that case: "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." Using a similar language it may be said in the present case that possession is not asked for on any other ground than that the sale deed by the execution of which it was lost should be set aside and it is therefore asked for consequently on the setting aside of the sale deed or in other words as mentioned by DEVADOSS J. in *Lakshmi Ammal, In re*(2) the claim with respect to possession is only ancillary to the main claim which is the setting aside of the sale deed.

For the above reasons I am of opinion that in this case the petitioner need not pay court-fee on the relief with regard to possession. The order of the lower Court is set aside with costs here and in the Court below.

K.N.G.

(1) (1914) I.L.R. 38 Mad. 1184.

(2) (1925) 49 M.L.J. 608.