

APPELLATE CIVIL.

Before Mr. Justice Jackson and Mr. Justice Mockett.

1932,
August 30.

IN RE MAZUMDAR SOBHANADRI RAO PANTULU
GARU (PLAINTIFF), PETITIONER.*

*Court Fees Act (VII of 1870), sec. 7 (iv) (c), v and xi (cc)—
Applicability of—Inamdar admittedly entitled to mel-
varam—Ejectment suit by, after due notice, in virtue of
his title to kudivaram—Nature of—Court-fee payable on
plaint in.*

A suit by an inamdar, who is admittedly entitled to the melvaram in the suit lands comprising the inam, asserting his title to the kudivaram therein and claiming the right to eject the defendants after due notice by virtue of his title to the kudivaram, is a suit to obtain a declaratory decree (that he is entitled to the kudivaram) and consequential relief of possession within the meaning of section 7 (iv) (c) of the Court Fees Act and is to be valued accordingly for purposes of court-fee.

PETITIONS under section 115 of Act V of 1908 and section 107 of the Government of India Act, praying the High Court to revise the order of the Court of the Subordinate Judge of Masulipatam, dated the 26th day of August 1931 and made in Original Suits Nos. 12 to 46 of 1930.

S. Varadachariar for *N. Rama Rao* for petitioner.
Government Pleader (P. Venkataramana Rao) for
Government.

Our. adv. vult.

The ORDER of the Court was delivered by
JACKSON J. JACKSON J.—This is a question of court-fees. The plaintiff, an inamdar, claims to have full right to both kudivaram and melvaram in the land which comprises

* Civil Revision Petitions Nos. 1195 to 1229 of 1931.

the inam (paragraph 3) so the letting to tenants is for temporary periods (paragraph 4) and the inam is not an estate within the definition in the Madras Estates Land Act (I of 1908) (paragraph 5) all tenants are tenants at will (paragraph 6) in December 1926 the defendants who are temporary tenants were given notice to quit (paragraph 7) and the plaintiff prays for a decree establishing his right in the suit lands, and removing the defendants.

SOBHANADRI
 RAO,
In re.
 JACKSON J.

This plaint plainly sets forth a familiar form of suit. The inamdar claims both varams, and therefore though he has no proof of actually letting the defendants into possession, he claims the right to eject them after due notice, by virtue of his title to the kudivaram. The tenants do not dispute his claim to the melvaram, but assert occupancy right.

The court-fee has been paid under section 7, clause xi (cc) of the Court Fees Act. The lower Court has ordered that the fee shall be computed under section 7 (v) and the plaintiff appeals.

Clause xi is applicable when the suit is based on a lease, but not when the plaintiff also wants a decree establishing his title; *Balasi dhantam v. Perumal Chetti*(1). So far the order of the lower Court is unexceptionable. But the learned Subordinate Judge finds that the suits are for the declaration of plaintiff's title to the plaint scheduled lands, which is not quite correct. The defendants, though they do not put plaintiff's title as high as he would like, at least admit that he is the landholder of the land in question, and so far his title to the land is not in dispute. The only quarrel between them is whether he is entitled to the kudivaram, and that is not on the same footing as a dispute between alleged

(1) (1914) 27 M.L.J. 475.

SORHANADRI RAO,
In re.
JACKSON J.

owner and trespasser. Clause v (c) would apply to a case where the plaintiff is suing to be put into possession of an inam, and it can hardly have been contemplated that a plaintiff should pay the same court-fee when he sues for possession of an inam against a rival claimant, and when as undisputed inamdar he asserts his title to the kudivaram.

The appropriate section would therefore seem to be 7 (iv) (c) to obtain a declaratory decree (that he is entitled to the kudivaram) and consequential relief of possession.

The record will be returned to the lower Court to value the suits accordingly.

A.S.V.

APPELLATE CIVIL.

Before Mr. Justice Jackson and Mr. Justice Mockett.

GURUSAMY GOUNDAN (PETITIONER), APPELLANT,

v.

SIVANMALAI GOUNDAN AND THREE OTHERS
(RESPONDENTS), RESPONDENTS.*

Code of Civil Procedure (Act V of 1908), O. XXI, rr. 2 and 15—Uncertified adjustment—Plea of—Applicability of bar to—Decree-holder and third person, such as a purchaser from judgment-debtor—Transaction pleaded as an adjustment being between—Joint decree-holders—Application for execution by one of—Plea of uncertified adjustment by other decree-holders—Entertainment of—Power of Court as to.

The bar under rule 2 of Order XXI of the Code of Civil Procedure to a plea by the judgment-debtor of an uncertified adjustment applies as much to a case where the transaction

* Appeal against Order No. 477 of 1929.