

## APPELLATE CIVIL.

*Before Mr. Justice Venkatasubba Rao.*

C. M. MAROOF SAHIB AND FOUR OTHERS (PLAINTIFFS  
ONE AND FOUR TO EIGHT), PETITIONERS,

1934,  
December 14.

v.

AYYAKANNU NAICKER (DEFENDANT), RESPONDENT.\*

*Court Fees Act (VII of 1870), sec. 7 (iv) (c) and (v)—Applicability—Inamdar—Declaration of his ownership of kudivaram and recovery of holding—Suit by inamdar for—Court-fee payable in—Court-fee valuation—Trial Court's power to revise—Remand order—Case coming back to it for fresh disposal after—Civil Procedure Code (Act V of 1908), O. VII, r. 11.*

An inamdar, whose right to the melvaram in a holding comprised in the inam was admitted, but whose right to the kudivaram therein was disputed, by the tenant, sued the tenant for a declaration that he was the owner of the kudivaram and for the recovery of the holding.

*Held* that the suit was governed by section 7 (v) and not by section 7 (iv) (c) of the Court Fees Act and that under sub-clause (d) of section 7 (v) court-fee was leviable on the market-value of the kudivaram right, which alone was the subject-matter of the suit.

*In re Sobhanadri Rao*, (1932) I.L.R. 56 Mad. 314, dissented from.

*Held further* that the trial Court had the power to revise the valuation even after the case had come back to it for fresh disposal on an order of remand.

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 orders of the Court of the District Munsif of Chingleput, dated 27th April 1933 and made in Original Suits Nos. 44 to 57 of 1929.

\* Civil Revision Petitions Nos. 888 to 901 of 1933.

MARCOF  
v.  
AYYAKANNU.

*K. Bhashyam Ayyangar* for petitioners.  
*P. V. Rajamannar* for *Government Pleader*  
(*P. Venkataramana Rao*) for respondent.

### JUDGMENT.

The question raised is whether a proper court-fee has been paid on the plaints in each of these fourteen suits. They were filed by an inamdar for the recovery of holdings comprised in the inam, each suit being against a particular tenant in respect of his holding. It is alleged that, so far as the plaintiff's right to the melvaram is concerned, there is no dispute and that the only quarrel between the plaintiff and the defendants is as regards the former's right to the kudivaram. The plaintiff brings these suits for a declaration that he is the owner of the kudivaram and for the recovery in each suit of the specific holding to which it relates. These cases were originally filed in the District Munsif's Court in 1929 and a plea of *res judicata* having been raised and upheld, the suits were dismissed. Appeals were taken to the District Court and the finding of the learned Munsif on the question of *res judicata* having been reversed, the suits were remanded on 22nd April 1932 to the trial Court for fresh disposal. When the cases came back to the District Munsif's Court, the Court-fee Examiner found on scrutiny that the reliefs were inadequately valued and that the proper provision applicable is not section 7 (iv) (c) but section 7 (v) of the Court Fees Act. The District Munsif upheld this view and the first question that arises is, whether the suits are governed by section 7 (iv) (c) or by section 7 (v).

On behalf of the plaintiff, it is contended that, as what is prayed for is a declaration with consequential relief, the provision applicable is section 7 (iv) (c). A similar contention was raised before me in *Ramakrishnayya v. Seshamma*(1) and I held that in suits to obtain recovery of possession, the relief ought to be valued under section 7 (v), although the possession is asked for as being consequential on the declaration. There, I quoted a passage from the judgment of BODDAM and BHASHYAM AYYANGAR JJ. in *Chinnammal v. Madarsa Rowther*(2) to the effect that, where the relief prayed for, though consequential upon the declaration, falls within any of the paragraphs, namely, i to iii and v to xi of section 7, the mode of valuing the relief is as provided in the relevant paragraph out of the said paragraphs and not in section 7 (iv) (c). A little reflection will show that if the opposite view should prevail, most anomalous consequences would follow. Supposing before action a person's right to a sum of money claimed by him is denied, in such a case the plaintiff, contending that the declaration is not an idle relief, may so frame his plaint as to contain prayers both for declaration and recovery of money. In effect, whenever there is a previous denial of the plaintiff's right to the money, he may contrive to file his suit in that form ; it seems unreasonable that because there is a prayer for declaration, the suit is not to be valued as for money but under section 7 (iv) (c). Similarly, in every suit for possession of land, on the ground that the plaintiff's title had been previously

MAROOF  
v.  
AYYAKANNU.

---

(1) (1934) 68 M.L.J. 369.

(2) (1903) I.L.R. 27 Mad. 480.

MAROOF  
 2.  
 AYYAKANNU.

denied, he may frame his plaint as one for declaration and recovery of possession ; to hold likewise that such a suit is to be valued not as one for possession but under section 7 (iv) (c) seems opposed to the scheme of the Act. These examples will serve to show that it is both good practice and good sense that, as observed by BODDAM and BHASHYAM AYYANGAR JJ. in the passage quoted above, the relief claimed consequent on the declaration should be valued under the paragraph dealing with that particular relief and not under section 7 (iv) (c). This view has also been taken in the Full Bench judgment in *Arunachalam Chetty v. Rangasawmy Pillai*(1) and again in *Rajagopala v. Vijayaraghavalu*(2). In accordance with these decisions I held, in the case referred to above, that a suit for declaration and possession is governed by section 7 (v) and not section 7 (iv) (c). To that view I still adhere notwithstanding the decision in *In re Sobhanadri Rao*(3), cited for the petitioners. In that case, as in this, the inamdar's right to the melvaram was not in controversy and the only dispute was in respect of his kudivaram right. JACKSON J. held that section 7 (iv) (c) applied on the ground that

“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.”

I should have regarded it as a binding decision, were it not opposed to the Full Bench ruling and the other cases to which I have referred ; in fact, the view of JACKSON J. seems to be based more

(1) (1914) I.L.R. 38 Mad. 922 (F.B.).

(2) (1914) I.L.R. 38 Mad. 1184.

(3) (1932) I.L.R. 56 Mad. 314.

upon some principle of natural justice than upon any provision of the Court Fees Act. Suits for possession of land are in terms governed by section 7 (v) and the fact that the melvaram right is not in dispute seems to make no difference. I therefore agree with the lower Court that the provision applicable is section 7 (v) and not section 7 (iv) (c).

MAROOF  
v.  
AYYAKANNU.

In holding that section 7 (v) governs the case, the learned Munsif has applied sub-clause (d) and the correctness of that view has not been questioned. Under that sub-clause, it is upon the market-value of the land that the court-fee has to be levied ; but in assessing the market-value, the lower Court has made no deduction in respect of the melvaram right, regarding which there is no dispute. The kudivaram right alone (which in the present actions constitutes "the land" under this section) being the subject-matter of the suits, it is on the market-value of that right that the court-fee has to be levied. I therefore direct that the lower Court, while making a computation on this basis, shall make the necessary deduction.

There is no substance in the last contention of the petitioners that the District Munsif was wrong in revising the valuation when the cases came back to him for fresh disposal on an order of remand. The Court's power to correct the valuation is not limited under Order VII, rule 11, of the Civil Procedure Code to any particular stage of the suit. It has been held that the power under that provision to reject a plaint is not exhausted when it had been admitted and registered. That being so, the Court must be held to retain the power till the point is raised and it

MARGOP  
v.  
AYYAKANNU.

decides it, whatever the stage may be in the course of the trial. Moreover, the analogy of section 12 of the Court Fees Act, which says that even a Court of appeal, if it finds that a question was wrongly decided to the detriment of the revenue, may exact the proper court-fee, also shows the trial Court's power may be exercised at any stage of the suit.

I direct that the parties shall bear their own costs and the Government Pleader's fee in all the fourteen petitions is fixed at a consolidated sum of Rs. 200.

A.S.V.

---

## APPELLATE CIVIL.

*Before Mr. Justice Pandrang Row.*

THE OFFICIAL RECEIVER, KISTNA AT MASULI-  
PATAM (PETITIONER), APPELLANT,

v.

GOGINENI KODANDARAMAYYA AND ANOTHER,  
(RESPONDENTS), RESPONDENTS.\*

*Provincial Insolvency Act (V of 1920), sec. 52—Application under—Executing Court—Competent only to direct delivery to Receiver of property against which execution has issued—No longer competent to investigate or decide questions of disputed title.*

In an application under section 52 of the Provincial Insolvency Act (V of 1920) where the conditions prescribed therein have been fulfilled, the executing Court has no other duty to perform than to direct the delivery to the Receiver of the property against which it has issued execution as the property of the insolvent. That section does not contemplate any enquiry

---

\* Appeals Against Appellate Orders Nos. 176 and 177 of 1933.