APPELLATE CIVIL.

Before Mr. Justice Venkatasubba Rao.

1934, October 16.

DASARI NAGABHUSHANAM (PLAINTIFF), PETITIONER,

v.

KUNEMNENI VENKATAPPAYYA (DEFENDANT), RESPONDENT.*

Court Fees Act (VII of 1870) (as amended by Madras Act V of 1922), Sch. II, art. 17-A (i)—Consequential relief and additional relief—Distinction between—Suit for declaration that an instrument is a forgery and for refund of costs incurred in registration proceedings—Character of—Proper court-fee to be levied for the two prayers.

N complained to the Registrar that his signature in a sale deed had been forged and objected to the registration of the same. In spite of the objection the Registrar directed its registration. N filed a suit praying that the instrument may be declared to be a forgery, and also prayed for a refund of the costs incurred in the registration enquiry. A question arose as to what was the proper court-fee payable on the same.

Held (1) that, so far as the relief for declaration was concerned, it fell under Schedule II, article 17-A(i), of the Court Fees Act inasmuch as he, not being a party to the instrument, was not bound to ask for the cancellation of the same as a consequential relief;

(2) that, in regard to the refund claimed, *ad valorem* fee should be paid on the amount claimed by way of refund since it was merely an additional relief and not a consequential one.

PETITION under sections 115 of Act V of 1908 and 107 of the Government of India Act, praying the High Court to revise the order of the Court of the District Munsif of Tenali, dated 21st February 1933 and made in Original Suit No. 306 of 1931.

V. Subrahmanyam for petitioner.

* Civil Revision Petition No. 878 of 1933.

P. V. Rajamannar and *K. Subba Rao* for *Government Pleader* (*P. Venkatramana Rao*) for respondent.

JUDGMENT.

In my opinion, the view of the Court-Fee Examiner and the decision of the District Munsif supporting that view, are clearly wrong. There is a distinction between the getting rid of a document to which a person is a party and one to which he is not. The plaintiff in the suit complains that the sale deed was forged by the defendant, that, in spite of his objection, the Registrar directed its registration, and he prays that the instrument may be declared to be a forgery.

When a person impeaches a deed as having been forged, to refer to him as being a party to it, is an obvious misuse of words. Mr. K. Subba Rao, who supports the lower Court's view, contends that the provision applicable is section 7 (iv-A) of the Court Fees Act, which runs thus :

"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, according to the value of the subject matter of the suit, and such value shall be deemed to be—

if the whole decree or other document is sought to be cancelled, the amount or the value of the property for which the decree was passed or the other document executed,

if a part of the decree or other document is sought to be cancelled, such part of the document or value of the property."

His contention is that, for the purposes of the Court Fees Act, it is incumbent upon the plaintiff to have even a forged sale deed set aside or cancelled ; in other words, that the section (in regard to the decrees and instruments of the kind

NAGABUSHANAM v. VENKATAPPAYYA.

dealt with by it) forbids declaratory suits and enacts that cancellation should always be prayed for. This argument is, in my opinion, utterly untenable. To declare what the substantive rights of the parties are or to prescribe the modes of enforcing those rights is outside the province of a fiscal enactment like the Court Fees Act. The question then really is, when a person alleges that a forged instrument has been brought into existence as if he were a party to it, does the law cast upon him a duty to have it cancelled or set aside by suit? There are two statutory provisions which show that a suit for declaration lies : (i) Section 39 of the Specific Relief Act, illustration (*b*) to that section contains an express reference to forged instruments ; and (ii) article 92 of the Limitation Act refers to suits " to declare the forgery of an instrument issued or registered ". While the law thus entitles a person to sue to have the document adjudged a forgery, does it compel him or make it obligatory upon him to get it cancelled or set aside ? The cases cited by Mr. Subba Rao refer to instruments or decrees to which the plaintiff was a party. In *Arunachalam Chetty* v. *Rangasawmy Pillai*(1) the referring Judges clearly point out the distinction between a document to which a person is a party and that to which he is not. When a document is of the former class, they point out that until it is set aside, it cannot be treated as void and that the necessary result of declaring that such a document is not binding on the plaintiff is to cancel or set aside the deed. The case might be different, they go on to add, where a declaration is sought by a person who is

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

not a party to the document ; the suit may in such a case be properly regarded as one for declaration only. In the second case referred to by the learned Counsel, namely, *Venkatasiva Rao* v. *Satyanarayanamurty*(1), this distinction is equally borne in mind. Adverting to *Balakrishna Nair* v. *Vishnu Nambudri*(2), REILLY J. affirms that it was correctly decided, because the plaintiffs there, not having been parties to the decree, could have asked only for a declaration and it would not have been appropriate for them to pray that the decree should be set aside. Throughout his judgment, the learned Judge makes it perfectly clear that he is dealing with decrees obtained by fraud ; in such a case, the plaintiff being a party to the decree which, he complains, is vitiated by fraud, there can be no doubt that he must get it set aside. ANANTAKRISHNA AYYAR J. refers to this distinction in even clearer terms. Observes the learned Judge :

> " In fact, not being a party to the document, he cannot have it ' set aside '. All that he can pray for is a declaration that he is not affected in any way by that document."

Dealing with the case of a forged will, I made the following observation in *Kattiya Pillai* v. *Ramaswamia Pillai*(3) which, I think, applies with equal force here :

> " For instance, if a person, who feels aggrieved by a will, sues for recovery of immovable property covered by it which happens to be in the possession of a third party, claiming the property on the strength of the will, can it be successfully contended that such a suit is governed not by the ordinary twelve years period but that the plaintiff is first bound to get the will set aside within the shorter period provided by article 91 of the Limitation Act ? Such a contention cannot prevail."

---

(1) (1932) I.L.R. 56 Mad. 212. (2) 1930 M.W.N. 509.
(3) (1929) 56 M.L.J. 594.

NAGABUSHANAM v. VENKATAPPAYYA.

In *Ratnamasari* v. *Akilandammal*(1) there is an observation of BHASHYAM AYYANGAR J., which is even more germane to the present discussion, as it deals with forged instruments. The learned Judge treats it as beyond doubt that, when a person seeks to recover immovable property, the period of limitation is not under articles 92 and 93 abridged, because the defendant resists the action by relying upon a forged conveyance (see page 313). In deciding what the proper court-fee payable is, the Court must have regard to the substance of the thing and not to the mere form in which the relief has been prayed for, *Kattiya Pillai* v. *Ramaswamia Pillai*(2). Where it is therefore essential for the plaintiff to pray for cancellation, he cannot, by merely asking for a declaration, evade the provisions of the Court Fees Act. But in the present case I am clearly of the opinion that the only relief that the plaintiff can ask for is that of declaration and that a prayer for cancellation would be quite inappropriate.

It is next contended that section 39 of the Specific Relief Act itself shows that the plaintiff is under a duty to pray for cancellation also. In overruling a similar contention, I made the following observations in *Kattiya Pillai* v. *Ramaswamia Pillai*(2), already referred to :

"The plaintiff asks that the will may be declared void. That section further enacts that in such a suit the Court may, in its discretion, adjudge the instrument void or voidable and order it to be delivered up and cancelled. In a suit rightly framed under that section, it is the Court's function to order the instrument to be cancelled ; it is not a part of the prayer in the plaint. Then again, the section goes on to say that if the instrument is one that has been registered under the

(1) (1902) I.L.R. 26 Mad. 291.

(2) (1929) 56 M.L.J. 394.

Registration Act, the Court shall send a copy of its decree to the Registration Officer, who shall note in his book that the instrument has been so cancelled. This, again, is not a relief which it is the duty of the plaintiff to sue for, but is the duty of the Court to grant."

REILLY J., who was also a party to that judgment, concurred in this view.

As to the effect of registration, I think, the judgment in *Mohima Chunder Dhur* v. *Jugul Kishore Bhuttacharji*(1) may be usefully referred to. As in the present case, the defendant there obtained from the Registrar an order for the registering of the document, and the plaintiff, alleging it to be a forgery, brought the suit to have it declared void. The learned Judges held that the decision of the Registrar, whose proceedings were only those of an executive officer, did not have even the effect of shifting the onus of proof and that it lay upon the defendant to establish that the deed impeached was genuine.

I must mention that Mr. Subba Rao has brought to my notice the decision of STONE J. in Civil Revision Petition No. 1597 of 1933. He says that, in circumstances somewhat similar, the learned Judge held that the case fell within section 7 (iv-A). The judgment contains no discussion and merely purports to follow *Venkatasiva Rao* v. *Satyanarayanamurty*(2) which, as I have shown above, does not bear out the learned Counsel's contention.

Lastly, it is argued that the prayer for the refund of the costs incurred in the registration enquiry must be deemed to be one for consequential relief. I do not think this contention requires

(1) (1881) I.L.R. 7 Calc. 736. (2) (1932) I.L.R. 56 Mad. 212.

NAGABUSHANAM v. VENKATAPAYYA.

serious notice. The relief for the refund is undoubtedly an additional relief but in no sense a consequential relief; it is not a relief consequential upon the declaration.

My decision therefore is, that, so far as the relief of declaration is concerned, the case falls under Schedule II, article 17-A (i) and that the court-fee that the plaintiff has paid is proper. In regard to the refund claimed, *ad valorem* fee on the amount should be paid.

I make no order as to costs.

G.R.

APPELLATE CIVIL.

Before Mr. Justice Varadachariar and Mr. Justice Burn.

1934, September 6.

A. L. RAMA PATTER AND BROTHERS BY PARTNER A. L. RAMA PATTER (PLAINTIFFS), APPELLANTS,

v.

MANIKKAM ALIAS LINGAPPA GOUNDER (THIRD DEFENDANT), RESPONDENT.*

Indian Contract Act (IX of 1872), sec. 16—Scope of—Indian Trusts Act (II of 1882), sec. 89—Effect of undue influence—English Law—Applicability of—Burden of proof.

Section 16 of the Indian Contract Act deals with the exercise of undue influence on one party to a contract by the other party, whether directly or in conspiracy with or through the agency of others. But apart from that section, the principle of English cases like *Maitland* v. *Irving*, (1846) 15 Sim. 437; 60 E.R. 688, has been made applicable here by section 89 of the Indian Trusts Act, with the result that, even in India, the onus lies on a third party, who takes the benefit of a transaction with notice or knowledge of circumstances raising a presumption or

* Appeal No. 398 of 1932.