

APPELLATE CIVIL.

Before Mr. Justice Venkatasubba Rao.

ANNAMALAI MUDALIAR (PLAINTIFF), PETITIONER,

v.

KRISTAPPA MUDALIAR AND SIX OTHERS (DEFENDANTS),
RESPONDENTS.*

1934,
September 28.

Court Fees Act (VII of 1870), sec. 7 (iv) (b)—Partition suit by coparcener in possession of joint family property governed by—Prayer for declaration that sales in discharge of father's debts are not binding—Art. 17-A (i) of Schedule II (Madras Act V of 1922)—Whether governs such a prayer.

Section 7 (iv) (b) of the Court Fees Act (VII of 1870) applies to a suit for partition of joint family property by a coparcener in possession and under that section the valuation of the relief rests with the plaintiff.

Where, in such a suit, the plaint prayed also for a declaration that certain sales made by the Official Receiver for discharging debts of the plaintiff's father, who had become an insolvent, were not binding upon the plaintiff and that they should be set aside,

Held, that, in regard to that relief, court-fee was payable on the basis that it was governed by article 17-A (i) of Schedule II to the Court Fees Act.

The sales attacked being virtually those by an undivided father, it was not obligatory upon the plaintiff to get them set aside, and it would be sufficient to obtain a mere declaration that they were invalid. Section 7 (iv-A) of the Court Fees Act was therefore inapplicable.

The Secretary of State for India in Council v. Lakhanna, (1932) 64 M.L.J. 24, followed.

PETITION under section 115 of Act V of 1908 praying the High Court to revise the order of the District Court of North Arcot, dated 22nd December 1930 and made in Appeal Suit No. Nil

* Civil Revision Petition No. 696 of 1931.

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of 1930 (Receipt No. 2315 dated 25th November 1930).

M. Patanjali Sastri for petitioner.

P. V. Rajamannar for Government Pleader
(*P. Venkataramana Rao*) on behalf of Government.

JUDGMENT.

The suit as framed is one for partition of the joint family property by a coparcener in possession and, that being so, the provision of the Court Fees Act that applies is section 7 (iv) (b), which reads thus :

“ To enforce the right to share in any property on the ground that it is joint family property.”

Rangiah Chetty v. Subramania Chetty(1). The valuation of the relief under that section rests with the plaintiff, who has valued it at Rs. 10, and I must hold that the proper court-fee has been paid in respect of this relief. There is no allegation in the plaint that the plaintiff became divided in status, and there is nothing to show in what circumstances he was allowed to put forward such a case at the trial. It is suggested that probably at the framing of the issues, on the statements made by the party or his Counsel, an issue was raised as to whether there was a division in status. With this I am not concerned and I do not propose to consider whether the plaintiff should have been allowed to put forward a different case without amending his plaint. If the claim is to be treated as by a divided member, Mr. Rajamannar contends that not only would the court-fee payable be different (he argues that article 17-B of Schedule II would then apply) but that even a question of

(1) (1910) 21 M.L.J. 21 (F.B.).

jurisdiction would arise. As I have said, all that I am now concerned with is, what is the proper court-fee payable on the plaint as it stands? I wish to make it quite clear that that is the only question with which I can now deal.

There is a further relief prayed for in the plaint, namely, that certain alienations made by the Official Receiver should be set aside. The plaintiff alleges that his father, the first defendant, became insolvent, that the latter's debts are not binding upon his share and that therefore he is not bound by the sales made by the Official Receiver, the seventh defendant. On that ground he prays for a declaration that the sales are not binding, and further that they may be set aside. Mr. Rajamannar contends that it is obligatory upon the plaintiff to get the sales set aside and, that being so, section 7 (iv-A) applies. It reads 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.”

The case on which he relies, *Doraisami v. Thangavelu*(1), decided by me, relates to a transaction by a guardian of a minor, whereas the present suit is altogether of a different kind, the sale attacked being virtually that by an undivided Hindu father. It has been held by a Bench of this Court, of which I was a member, in *The Secretary of State for India in Council v. Lakhanna*(2) that, in the case of an alienation by the father, it is sufficient to obtain a mere declaration that it is not binding and the article that was held applicable in respect of such a relief is 17-A (i) of

(1) A.I.R. 1929 Mad. 668.

(2) (1932) 64 M.L.J. 24.

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Schedule II, the one relating to the obtaining of a declaratory decree where no consequential relief is prayed. By that decision of the Bench I am bound, but a distinction, it is urged, exists between that case and the present one. There, all that appears from the report is that the mortgage was effected by the father ; in such a case it is for the creditor to make out that the alienation is binding upon the son. In the present case, however, the sale was made for paying off the father's antecedent debts and such a sale is binding upon the son, unless he affirmatively proves that the debts are either illegal or immoral. It is contended that on that ground the sale in the case in hand is *prima facie* good and therefore it is the son's duty to have it set aside. I do not think it would be right to import such a distinction in deciding a question of court fee—a distinction based upon the onus of proof. I therefore hold that, in regard to this relief, the plaintiff should be called upon to pay a court fee on the basis that it is governed by article 17-A (i) of Schedule II as already stated.

The case will go back to the lower appellate Court for being dealt with according to law. I make no order as to costs.

K.W.R.
