

APPELLATE CIVIL—FULL BENCH.

Before Sir Lionel Leach, Chief Justice, Mr. Justice Krishnaswami Ayyangar and Mr. Justice Somayya.

KOLACHALA KUTUMBA SASTRI (PLAINTIFF),
PETITIONER,

v.

LAKKARAJU BALA TRIPURA SUNDARAMMA
(DEFENDANT), RESPONDENT.*

Court Fees Act (VII of 1870), as amended by Madras Act V of 1922, sec. 7 (iv-A) and v—Suit for cancellation of document and for possession—Proper section applicable—Basis of calculation for court-fee.

In a suit for the cancellation of a deed of conveyance which the plaintiff had executed and for possession of the land covered by the deed,

held that the plaintiff should value his relief in accordance with the provisions of section 7 (iv-A) and not in accordance with the provisions of section 7 (v) of the Court Fees Act of 1870, as amended by Madras Act V of 1922, and that the stamp fee to be paid must be based not on the amount stated in the conveyance but on the market value of the property at the date of the plaint.

Venkatanarasimha Raju v. Chandrayya(1) and *Venkatasiva Rao v. Satyanarayanamurty*(2) overruled.

Balireddi v. Abdul Satar(3) and *Venkatakrishnayya v. Sheikh Alli Sahib*(4) approved.

PETITION under section 115 of Act V of 1908 and section 224 of the Government of India Act praying the High Court to revise the order of the Court of the District Munsif of Tenali, dated 28th July 1938, and made in Checkslip No. 931-3-1-N of 1938 in Original Suit No. 434 of 1935.

* Civil Revision Petition No. 898 of 1938.

(1) (1926) 53 M.L.J. 267.

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

(3) (1935) I.L.R. 59 Mad. 240.

(4) (1938) 48 L.W. 277.

V. Subramanyam for petitioner.—In this case the plaintiff filed a suit for the cancellation of a sale deed on the ground of want of consideration, undue influence and fraud and for possession of the properties covered by the sale deed. He valued the suit under section 7 (v) of the Court Fees Act. This was objected to on the ground that section 7 (iv-A) of the Act applied as there was a prayer for cancellation of the sale deed. The objection is not sound and valid. In substance the suit is mainly for possession.

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[THE CHIEF JUSTICE.—But you cannot get possession until the document is cancelled.]

Section 7 (v) provides specially for calculating the court-fees in suits for possession of lands. The method of calculation as provided by the statute should be followed. In section 7 (iv) (c) which refers to immovable properties the basis of calculation is that provided in section 7 (v). Section 7 (iv-A) does not refer to suits where possession is asked for. As the main prayer is for possession of lands the court-fee paid by the plaintiff under section 7 (v) is correct. The decisions in *Venkatanarasimha Raju v. Chandrayya*(1) and *Venkatasiva Rao v. Satyanarayanamurty*(2) lend support to this view.

[*Balireddi v. Abdul Satar*(3) and *Venkatakrishnayya v. Sheik Alli Sahib*(4) were referred to as holding the other view that section 7 (iv-A) applied and that the market value of the property should be the basis of calculation for the court-fee to be paid in such cases.]

T. Krishna Rao for Government Pleader (*B. Sitarama Rao*) for Government was not called upon.

Y. Suryanarayana for *K. Kotayya* for first and second respondents was not called upon.

Third respondent was not represented.

The JUDGMENT of the Court was delivered by LEACH C.J.—The question which the Court is called LEACH C.J. upon to consider in this case is whether in a suit for the cancellation of a deed of conveyance and for possession of the property the plaintiff should value his relief in

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

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accordance with the provisions of section 7 (iv-A) or those of section 7 (v) of the Court Fees Act. The plaintiff in this case filed a suit in the Court of the District Munsif of Tenali for a decree setting aside a conveyance which he had executed and for possession of the land covered by the deed, pleading that he had been induced to sign the instrument as the result of undue influence and fraud. On the basis that the plaint fell for the purpose of valuation within paragraph (v) of the section he affixed a stamp fee of the value of Rs. 34-13-0. The District Munsif considered that paragraph (iv-A) applied, which meant a court-fee of Rs. 119-15-0. Paragraph (v), as amended by the Madras Act of 1922, requires that in a suit for the possession of land the relief shall be valued at ten times the annual revenue payable to Government where such revenue is settled but not permanently, and that is the position here. By the amending Act paragraph (iv-A) was inserted. This paragraph requires the court-fee in a suit for the cancellation of a conveyance to be calculated on the value of the property. The case has been placed before a Full Bench because there are conflicting decisions of this Court on the question whether on a suit of this nature the valuation should be according to the market value or whether the relief should be valued in accordance with one of the methods mentioned in paragraph (v).

In *Venkatanarasimha Raju v. Chandrayya*(1) KRISHNAN and ODGERS JJ. held that the value contemplated in section 7 (iv-A) was not the market value. It was said that where it was sought to set aside a decree affecting immovable property, the value of the relief should be calculated on the basis

(1) (1926) 53 M.L.J. 267.

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of a suit falling within paragraph (v). The reason given was that as the Act itself contained rules for the valuing of suits for possession of immovable property it was proper to take a method indicated by the Act in preference to any other method. A decision to the same effect was given in *Venkatasiva Rao v. Satyanarayanamurty*(1) by a Division Bench consisting of REILLY and ANANTAKRISHNA AYYAR JJ., but the judgments in that case do not add anything to what was said in the earlier case. These decisions were followed by KING and STODART JJ. in a recent unreported case (Second Appeal No. 592 of 1932).

The same question was raised before VENKATASUBBA RAO J. in *Balireddi v. Abdul Satar*(2). The learned Judge considered that the proper method of calculating the value of the subject-matter of a suit falling under paragraph (iv-A) was the market value. He felt that he was not bound by the previous Bench decisions because the case before him related to mortgages and sale deeds whereas *Venkatanarasimha Raju v. Chandrayya*(3) and *Venkatasiva Rao v. Satyanarayanamurty*(1) related to decrees affecting immovable property. The decision of VENKATASUBBA RAO J. was followed by WADSWORTH J. in *Venkatakrishnayya v. Sheik Alli Sahib*(4).

We consider that the view taken by VENKATASUBBA RAO J. in *Balireddi v. Abdul Satar*(2) is preferable to that taken in *Venkatanarasimha Raju v. Chandrayya*(3). Paragraph (iv-A) deals with suits where it is necessary for the plaintiff to seek the cancellation of a decree or of a deed. Paragraph (v) relates merely to suits for possession. In a suit for possession it is not always

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necessary to set aside a decree or a document. Where a suit is merely for possession the Act says how the value of the subject-matter shall be arrived at. When adding paragraph (iv-A) to section 7 the Legislature did not say that in a suit falling within the new paragraph the valuation of the subject-matter should be arrived at in accordance with the method indicated in paragraph (v). It said that a suit within paragraph (iv-A) should be valued according to the value of the property, and the value of the property, unless there is an indication to the contrary, must mean its market value. By the Amending Act of 1922, paragraph (iv) (C) was also amended. Before the amendment this paragraph provided that in a suit to obtain a declaratory decree or order, where a consequential relief was prayed, the value should be according to the value of the relief sought by the plaintiff. The Amending Act inserted the proviso to the effect that in a suit coming under this paragraph in a case where the relief sought is with reference to immovable property, the valuation shall not be less than half the value of the immovable property calculated in the manner provided for by paragraph (v). There the Legislature expressly provided that the method of calculation was to be in accordance with paragraph (v) but in adding paragraph (iv-A) no such direction was given. The court-fee is to be calculated on the amount or the value of the property and to give the wording of paragraph (iv-A) its plain meaning the valuation must be the valuation based on the market value of the property at the date of the plaint. We consider that *Venkatanarasimha Raju v. Chandrayya*(1) and *Venkatasiva*

(1) (1926) 53 M.L.J. 267.

Rao v. Satyanarayanamurty(1) were wrongly decided and they will therefore be overruled.

It follows that the District Munsif was right in requiring the suit to be valued under section 7 (iv-A) of the Court Fees Act, but we do not agree that it necessarily follows that the stamp fee shall be based on the amount stated in the conveyance. It must be based on the value of the property at the time of the suit. It may very well be that on that date the market value was Rs. 900, the amount stated to be the consideration, but this question is not before us. All we need say is that the plaintiff will have to stamp his suit according to the market value of the property before the plaint is received.

In view of the earlier decisions we consider that there should be no order as to costs.

V.V.C.

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