

MADHAVAN NAIR J.—I agree.

VARADACHARIAR J.—I agree.

VENKATARAMANA RAO J.—I agree.

ABDUR RAHMAN J.—I concur and wish to add nothing more.

SREERAMULU
v.
COMMISSIONER
OF
INCOME-TAX,
MADRAS.

A.S.V.

APPELLATE CIVIL—FULL BENCH.

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

PANANGIPALLI SURYANARAYANACHARYULU (FIRST DEFENDANT), PETITIONER,

1938,
November 29.

v.

RAVI NARASIMHASWAMI AND FOURTEEN OTHERS (PLAINTIFF AND DEFENDANTS 2 TO 14 AND 16), RESPONDENTS.*

Court Fees Act (VII of 1870), sec. 7, cls. (v) and (x) (c)—Lease of immovable property executed and registered—Suit by lessee for specific performance of the contract of lease, for possession and for mesne profits—Strangers in possession of property sued for—Proper court-fee to be paid in suit.

In 1913 A granted a lease of the suit property for twenty years to respondents 2 and 3 and to the fathers of respondents 4 to 6. A died some time before 1929 whereupon the suit property devolved on the petitioner, his son. In November 1929 the petitioner granted a lease of the same property to the first respondent for twenty years, the period to commence from June 1935. A deed of lease was drawn up, duly executed and registered. The first respondent sued for specific performance of the contract of lease entered into with the petitioner, for possession of the property and for the recovery of mesne profits, averring in his plaint that the petitioner had in collusion with respondents 2 to 15 and another put them into possession of the property and had refused his demand for possession. The suit property was found to be worth not less than Rs. 8,000.

* Civil Revision Petition No. 1286 of 1936.

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Held that for purposes of jurisdiction and of court-fee, the suit must be regarded as one for possession and not as one for specific performance, and that as the property was worth not less than Rs. 8,000 the suit could not be tried in the Court of the District Munsif.

The lease had been executed long before suit and according to the first respondent he was compelled to bring the action because the petitioner had parted with possession to the other respondents. The suit was, therefore, one for possession against strangers to the contract, who according to the plaintiff were unlawfully withholding possession from him.

PETITION 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 District Munsif of Razole, dated 7th August 1936 and made in Original Suit No. 200 of 1935.

V. Subrahmanyam for petitioner.—The point that has to be decided in this case is whether the suit in question falls under clause (x) (c) or clause (v) of section 7 of the Court Fees Act. The father of the petitioner leased the suit properties in 1913 for a period of twenty years to the second and third respondents and to the fathers of respondents 4, 5 and 6. He died some time before 1929 and the petitioner succeeded to his properties. On 2nd November 1929 the petitioner gave a lease of the properties to the first respondent for twenty years and the lease was to commence from 2nd June 1935. The lease deed was executed and registered. The first respondent later on filed a suit in the Court of the District Munsif, Razole, praying for specific performance of the contract of lease entered into with the petitioner, for possession of the properties and for the recovery of mesne profits. Treating the suit as one for specific performance of a contract of lease he paid court-fee on the amount of one year's rent, under section 7, clause (x) (c), of the Court Fees Act. The District Munsif upheld that contention and held that he had jurisdiction to try the suit relying on the decision in *Sundara Ramanujam v. Sivalingam*(1). The valuation stated by the plaintiff is wrong. The suit is not really

one for specific performance of a contract of lease. The lease was executed and registered. There is nothing more to be specifically performed. Delivery of possession is not a part of the contract of lease. [Sections 105 and 107 of the Transfer of Property Act were referred to.] The plaintiff wants delivery of possession of the properties. The suit was filed mainly for that purpose. If that is so, section 7, clause (v), governs the case; vide *Madan Mohan Singh v. Gaja Prasad Singh*(1). An *ad valorem* court-fee on the value of the subject-matter will have to be paid. The District Munsif finds that the value of the properties mentioned in the plaint is above Rs. 8,000. An *ad valorem* court-fee on that amount should be paid. The District Munsif has no pecuniary jurisdiction to try the suit.

[THE CHIEF JUSTICE.—For the purpose of this case we need not consider whether *Sundara Ramanujam v. Sivalingam*(2) was correctly decided or not.]

[*Muhi-ud-din Ahmad Khan v. Majlis Rai*(3), *Nihal Singh v. Sewa Ram*(4) and *Fakir Chand v. Ram Datt*(5) were referred to.]

V. *Parthasarathi* for respondents.—The suit is for specific performance of a contract to lease. Specific performance of a contract to lease consists of (i) the execution of the document and (ii) delivery of possession of properties; vide *Sundara Ramanujam v. Sivalingam*(2).

[THE CHIEF JUSTICE.—You have impleaded in the suit third parties also who are in possession of the properties. How can you do that in a suit for specific performance?]

The suit is in conformity with the provisions of section 27 of the Specific Relief Act (I of 1877). Simply because a prayer for possession is added, the suit does not cease to be one for specific performance.

[THE CHIEF JUSTICE.—The suit is really for delivery of possession and for nothing else.]

In a suit for specific performance of a contract to lease, the plaintiff can ask for delivery of possession, even though the contract has been executed. The valuation of the plaint

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(1) (1911) 14 C.L.J. 159.

(2) (1923) I.L.R. 47 Mad. 150.

(3) (1884) I.L.R. 6 All. 231.

(4) (1916) I.L.R. 38 All. 292.

(5) (1923) I.L.R. 5 Lah. 75.

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under section 7 (x) (c) of the Court Fees Act is correct and the District Munsif has jurisdiction to try the suit. [*B. Suraj Patish v. Mt. Atul Bibi*(1) was referred to.]

LEACH C.J.

The JUDGMENT of the Court was delivered by LEACH C.J.—This matter arises out of a suit filed by the first respondent in the Court of the District Munsif of Razole for specific performance of a contract of lease entered into with the petitioner, for possession of the property, and for the recovery of mesne profits. The property in suit had belonged to the petitioner's father who in May 1913 granted a lease of it for twenty years to the second and third respondents and to the fathers of the fourth, fifth and sixth respondents. The lessor died some time before 1929 and the property devolved on the petitioner. On 2nd November 1929 the petitioner granted a lease of the property to the first respondent for twenty years, the period to commence from 2nd June 1935. A deed of lease was drawn up, duly executed and registered. The first respondent averred in his plaint that the petitioner had in collusion with the other defendants (respondents 2 to 15 and one Maley Venkataratnam, the fifteenth defendant) put the defendants into possession of the property and had refused his demand for possession. He treated the suit as being one for specific performance of the contract of lease and stamped his plaint on the amount of one year's rent under the provisions of section 7 (x) (c) of the Court Fees Act. The petitioner contended that the suit was really one for possession and that it should be stamped in accordance with the provisions of section 7 (v) of the Act, that is, on the value of the property leased. The value which the first respondent had placed on the property in suit was Rs. 2,000. The District

(1) A.I.R. 1935 All. 569.

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Munsif held an inquiry into the question of value and found that the property was worth not less than Rs. 8,000. This finding has not been challenged. If the suit is to be regarded as one for possession and not as one for specific performance, it cannot be tried in the Court of the District Munsif. The Court having jurisdiction will be that of the Subordinate Judge. The District Munsif decided that the suit should be classified as a suit for specific performance and therefore held that it had been properly stamped. In coming to this conclusion he relied on the decision of this Court in *Sundara Ramanujam v. Sivalingam*(1). The petitioner filed an application for revision of this order. The matter came before VARADACHARIAR J. who considered that the observations in *Sundara Ramanujam v. Sivalingam*(1) did lend support for the conclusion arrived at by the District Munsif and referred the matter to a Bench. This Bench has been constituted to decide the question.

In *Sundara Ramanujam v. Sivalingam*(1) KRISHNAN AND VENKATASUBBA RAO JJ. held that a suit to compel the defendant to execute a sale deed in pursuance of an agreement for sale was a suit for specific performance within the meaning of section 7 (x) (a) of the Court Fees Act and did not become a suit for possession by reason of the addition of a prayer for possession. In the course of his judgment KRISHNAN J. observed :

“ The delivery of possession is a part of the specific performance of a contract of sale unless the terms thereof show that the vendee was not under an obligation to deliver possession. The claim for delivery of possession is as much a part of specific performance as the claim for the payment of the price is, when the seller brings the suit for specific performance.”

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He also observed that when the prayer for possession was allowed to be added the suit did not cease to be one for specific performance and become a suit for possession or combination of both suits under the Court Fees Act. In that case there was only one defendant and there was no question of the property being in the possession of a stranger to the contract. The Allahabad High Court in *Muhi-ud-din Ahmad Khan v. Majlis Rai*(1) and *Nihal Singh v. Sewa Ram*(2) also held that a suit for specific performance carried with it the right to claim possession and in *Fakir Chand v. Ram Datt*(3) the Lahore High Court gave a decision to the same effect. On the other hand, the Calcutta High Court in *Madan Mohan Singh v. Gaja Prasad Singh*(4) came to a contrary conclusion. In that case MOOKERJEE and CASPERSZ JJ. held that where in a suit for specific performance a claim for possession is added the suit thereby becomes one in substance for possession of the property and should be valued under section 7, clause (v), of the Court Fees Act.

It is not necessary for the purposes of this case to decide whether the opinion of KRISHNAN J. in *Sundara Ramanujam v. Sivalingam*(5) which is shared by the Allahabad and Lahore High Courts is to be preferred to that expressed by the Calcutta High Court; nor is it necessary for us to discuss whether the observations of KRISHNAN J. went too far, because it is quite clear that in the present case the suit is in substance one for possession and not for specific performance. The lease had been executed long before suit and according to the first respondent he was compelled to bring the action because the petitioner had parted

(1) (1884) I.L.R. 6 All. 231.

(2) (1916) I.L.R. 38 All. 292.

(3) (1923) I.L.R. 5 Lah. 75.

(4) (1911) 14 C.L.J. 159.

(5) (1923) I.L.R. 47 Mad. 150.

with possession to the other respondents. The suit is, therefore, one for possession against strangers to the contract, who according to the plaintiff are unlawfully withholding possession from him. The District Munsif was impressed by the fact that in his written statement the petitioner had said that the property was in his possession and that the other defendants were not in possession. This is a question of fact which will have to be tried in the suit, but for the purposes of the court-fee what the Court has to look at is the plaint. The plaint must be stamped according to the nature of the suit. The plaintiff formulates his claim and the court-fee must be paid according to the category in which the suit falls.

In the course of his argument the learned Advocate for the first respondent laid great stress on the provisions of section 27 of the Specific Relief Act. That section states that except as otherwise provided by Chapter II of the Act specific performance of a contract may be enforced against either party thereto and any other person claiming under him by a title arising subsequently to the contract, except a transferee for value who has paid his money in good faith and without notice of the original contract. In this case defendants 2 to 16 are not, according to the plaint, persons claiming under the first respondent, but persons who have been put in possession of the property in collusion with the petitioner in order to defeat the first respondent.

The petition must, therefore, be allowed and the plaint returned to the first respondent for presentation to the Court having jurisdiction after being stamped with the proper fee. The petitioner is entitled to his costs.

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v.v.c.