

COMMISSIONER
OF INCOME-
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expected by him or by any other employee. It was not a source from which periodical monetary returns could come in so far as the employee was concerned. The only return he could expect was a single payment on retirement. I am therefore of opinion that the receipt of the lump sum in question is not income.

It follows from the above that the first part of the first question must be answered in the negative and the second part in the affirmative.

Attorneys for respondent : *Short, Bewes & Co.*
A.S.V

APPELLATE CIVIL.

Before Mr. Justice Venkatasubba Rao.

JONNAVARAM BALIREDDI (NINTH DEFENDANT),
PETITIONER,

1935,
April 15.

v.

KHATIPULAL SAB *alias* ABDUL SATAR AND NINE
OTHERS (PLAINTIFF, DEFENDANTS 1 TO 8 AND 10),
RESPONDENTS.*

Court Fees Act (VII of 1870) (Madras Act V of 1922), sec. 7 (iv-A) and (v)—“Value of the subject-matter”—Meaning of—Suit—Prayer for setting aside certain mortgage deeds and sale deeds and for possession and for cancellation of deeds—Whether sec. 7 (iv-A) or sec. 7 (v) applies.

The words “value of the subject-matter” in section 7 (iv-A) of the Court Fees Act mean, in the case of a mortgage deed, the principal amount secured by it, and, in the case of a sale deed, the actual, that is to say, the market-value of the property and not the artificial value prescribed by section 7 (v).

* Civil Revision Petition No. 51 of 1934.

Held accordingly: A suit by a person to set aside certain mortgage deeds and sale deeds executed by his father and for possession of the immovable properties covered by them is governed by section 7 (iv-A) of the Court Fees Act and the fact that a prayer for cancellation of the deeds is also asked for would not take it away from the purview of the said section.

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Venkatanarasimha Raju v. Chandrayya, (1926) 53 M.L.J. 267, and *Venkatasiva Rao v. Satyanarayanamurty*, (1932) I.L.R. 56 Mad. 212, distinguished.

PETITION under section 115 of the Code of Civil Procedure (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 Proddatur in Original Suit No. 1222 of 1930.

Ch. Raghava Rao for petitioner.

M. Ranganatha Sastri for first respondent.

Other respondents were unrepresented.

JUDGMENT.

The suit has been brought by the plaintiff for the setting aside of certain mortgage deeds and sale deeds executed by his father and for possession of the immovable properties covered by them. Section 7 (iv-A) introduced into the Court Fees Act by the Madras Amendment 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, 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 amount or value of the property.”

The plaintiff prays, in the words of this section, for the cancellation of documents securing

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 ABDUL SATAR. money or other property having money value. Mortgage instruments answer the description of documents securing money ; so far as sale deeds are concerned, they are, as I have held in *Doraiswami v. Thangavelu*(1), documents securing "other property" within the meaning of the section. This is what I observed in that case :

"The words 'securing money or other property' are not happy ; but the question is : Is this or is this not a suit for cancellation of a document securing property having money value ? I think it clearly is. I have no doubt that the release deed in question is a document securing property ; in other words, by that document, the property covered by it is made secure to the defendants. Can there be any doubt that a sale deed comes within the terms of this section ? The present instrument does not materially differ from a sale deed. By that, the rights of the plaintiffs in the partnership and its property have been transferred for consideration to the defendants. The word 'secure' may mean, according to the Oxford Dictionary, 'to make the tenure of a property secure to a person'. I am, therefore, of the opinion that the proper section applicable is section 7 (iv-A)."

The amount of court-fee payable depends upon "the value of the subject-matter of the suit"—that is what the section says. Where a document securing money is sought to be cancelled, the section goes on to say that the value of the subject-matter shall be deemed to be "the amount for which the document is executed". In the case of a mortgage instrument therefore, the court-fee has to be computed on the amount for which the instrument is executed, in other words, the principal amount secured by it. This is the plain effect of the words of the section, and I fail to see how the method of computation fixed in section 7 (v) can possibly be applied.

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

Now as regards the sale deeds, the question arises ; is the value referred to in the section, the *actual value* of the property, that is to say, its *market value* or the *artificial value* prescribed by section 7 (v) ? The last-mentioned section deals with suits for possession and the Legislature has expressly enacted that in such suits the value shall be determined in a particular manner. Clause (iv-A), refers simply to "the value of the property", which means "value" as generally understood, whereas clause (v) prescribes an artificial method of valuation. There is no reason to construe clause (iv-A), in the light of clause (v) which deals with a specific matter ; indeed, when the Legislature intends to prescribe an artificial method, it says so in express terms, as clause (iv-C) also shows. I am therefore of the opinion that, in the case of the sale deeds, the amount of court-fee payable must be computed on the market-value of the properties with which they deal. Mr. M. Ranganatha Sastri for the respondents relies upon *Venkatanarasimha Raju v. Chandrayya*(1) and *Venkatasiva Rao v. Satyanarayanamurty*(2) for his contention that the statutory valuation under section 7 (v) furnishes the true basis. The learned Judges in the former case observe :

"When there is in the Act itself a special rule as to valuing the property in suits for court-fees, we think it is proper to take that method of valuation in preference to any other method to get the value where there is no indication that any other method should be adopted."

With great respect, there is a fallacy, as I have shown, underlying this reasoning. Sitting as a single Judge, I should consider myself bound by

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

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

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these decisions, but the present case, as I have said, deals with mortgages and sales, whereas the two cases referred to above deal with decrees.

Another question arises, namely, the prayer for cancellation being coupled with that for possession, is the court-fee to be computed under clause (iv-A) or clause (v)? *Sundara Ramanujam v. Sivalingam*(1) bears on this point. There, the suit was for the specific performance of a contract of sale and for possession of the property. It was held that section 7 (x) (a) applied. This is what I observed in my judgment in that case :

“Then it is argued that, as the plaintiff also claims possession in the suit, the suit must be regarded as one for possession. But the specific provision relating to suits for specific performance excludes the applicability of the general provision relating to suits for possession.”

Moreover, as pointed out by me in *Ramakrishnaya v. Seshamma*(2) while dealing with a cognate subject,

“the maxim *generalia specialibus non derogant* applies. General words do not derogate from special; conversely, a special law derogates from a general law.”

I therefore hold that the section under which the court-fee has to be computed is section 7 (iv-A) and not section 7 (v).

With these observations the case will go back to the lower Court and it is directed to assess the court-fee in accordance with the directions contained in this judgment. If the value of the suit so determined is beyond the pecuniary jurisdiction of the District Munsif's Court, an order will be made by that Court returning the plaint for presentation to the proper Court.

I make no order as to costs.

G.R.

(1) (1923) I.L.R. 47 Mad. 150.

(2) (1934) 68 M.L.J. 369.