(1943) 04 MAD CK 0021

Madras High Court

Case No: None

Ramaswamy Gurukkal		APPELLANT
	Vs	
Sivasubramania Gurukkal and Others		RESPONDENT

Date of Decision: April 22, 1943

Acts Referred:

- Court Fees Act, 1870 - Section 7(v)(c)

Citation: AIR 1943 Mad 655 : (1943) 56 LW 388 : (1943) 2 MLJ 106

Hon'ble Judges: King, J

Bench: Division Bench

Judgement

King, J.
This petition raises a question of jurisdiction to try O.S. No. 532 of 1941 on the file of the learned District Munsiff of Udumalpet.

The District Munsiff has held that he has jurisdiction to try the case and the first defendant has filed this revision petition against that decision. The

suit was by the plaintiff for partition of a one-fourth share in the family estate. The market-value of the whole estate is Rs. 4,000. It was first argued

on behalf of the petitioner that inasmuch as the decision of this suit will affect the whole of the family estate the principles of the ruling reported in S.

Kadir Hussain Rowther and Others Vs. Jamila Bi and Another, which deals with a case of the administration of the estate of a Mohammadan will

apply to the present case, and whatever may be the correct court-fee payable, jurisdiction will be only with that Court which could try a suit, the

subject-matter of which is worth Rs. 4,000, that is to say, the Subordinate Judge''s Court. It seems to me that I cannot extend the principles of S.

Kadir Hussain Rowther and Others Vs. Jamila Bi and Another, to a partition suit of the present kind. Interference with the whole estate is

inevitable in an administration suit. In a partition suit it may well be that the only relief which the Court grants will be to separate the plaintiff''s share

from the rest of the estate and give a decree to him, leaving the remainder of the estate absolutely unaffected in any other way.

2. The question will then be, what is the correct court-fee payable on this suit? And that will depend upon whether the plaintiff has asserted in his

plaint, that he has been in joint possession with the other sharers till the time of the suit or has been excluded from possession for some time before

it. It seems clear to me from a study of the plaint, and this point has not been seriously challenged by earned Counsel for the respondents, that

there are the clearest possible assertions of fact in the plaint which show that for six years before the plaint was filed, the plaintiff had been

completely excluded from all enjoyment in the family property. This therefore is, in my opinion, emphatically a case in which the court-fee ought to

have been calculated on the value of the plaintiff''s share. The question of court-fee however is not directly before me in this petition, and it appears

from the records that the court-fee was in fact calculated under Article 17-B of the Court-Fees Act on the ground that the subject-matter of the

suit was incapable of valuation. For the reasons which I have just stated I think this decision is wrong. But as the learned District Munsiff himself

points out, once that decision has been taken by the Court it is final so that no further interference would be possible on the question of court-fee.

It remains however that in order to decide which Court has the jurisdiction we must look, not to the actual decision on the question of court-fee but

to what the right decision should be. If, then, the right decision should have been that the court-fee should be calculated on the value of the

plaintiff''s share, the question of jurisdiction will now depend upon the nature of the land.

3. As is set out in paragraph 3 of the learned District Munsiff"s order if the land is inam land the proper court-fee u/s 7, Clause (v)(c) of the Court-

Fees Act would be on a sum of Rs. 3,109-6-0. If on the other hand it is Government land then the valuation for the purposes of court-fee would

be less than Rs. 3,000. There is a dispute so far between the parties as to the nature of the land, plaintiff asserting that it is Government land and

the first defendant, that it is inam land. It will therefore be necessary for the learned District Munsiff to decide this dispute immediately as a

preliminary issue. If he finds that the land is Government land he may then proceed to dispose of the remaining issues in the suit. If he finds that it is

inam land he must return the plaint for presentation to the Court of the Subordinate Judge.

4. The costs will be costs in the suit.