SUPREME COURT OF INDIA

J.Vasanthi

Vs.

N.Ramani Kanthammal

C.A.No.3396 of 2017

(Dipak Misra,J., A.M.Khanwilkar and Mohan M.Shantanagoudar,JJ.,)

10.08.2017

JUDGMENT

Dipak Misra,J.,

SLP(C)No.33692 of 2016

1. This appeal, by special leave, is at the instance of the appellants calling in question the legal propriety of the judgment and order dated 16th March, 2016 passed by the High Court of Judicature at Madras, Bench at Madurai in C.R.P. (MD) No. 847 of 2015 (PD), whereby the High Court has affirmed the order passed by the Principal District Judge in I.A. No. 94 of 2014 in Original Suit No. 2080 of 2014 rejecting the prayer of the applicant/defendant for dismissal of the Original Suit on the ground of payment of inadequate court fee by placing reliance on a wrong provision of the Tamil Nadu Court Fees and Suit Valuation Act, 1955 (for brevity, "the Act").

2. The facts in a nutshell are that the "A Schedule property", as appended to the plaint, was purchased by the plaintiff's father, late Raja Chidambara Reddiyar from one Balasundara Iyyer on 12.08.1943 through document No. 412/1943 and also "B schedule property" was purchased by him from one Swaminatha Iyyer on 09.08.1943 through document No. 238/1943. After the purchase, he got the patta transferred in his name and paid the government taxes and enjoyed the properties. On 21.02.1948 through document No. 596/1948 plaintiff's father made a sale of the A and B Schedule properties along with some other properties in favour of Sellammal w/o Rangoon Krishnasamy Reddiyar. As averred in the plaint, the A and B schedule properties and other properties which were sold, were again purchased by the father of the plaintiff on 19.04.1948 through document No. 1469/1948 from Sellammal and, thereafter, changed the patta in his name bearing patta Nos. 621, 705, 2032 and 2133, and held the suit A and B Schedule properties during his life time. As pleaded, the plaintiff's father died on 07.10.1986 leaving behind the plaintiff and her sister Gowri as his legal heirs. The 1st defendant is the son of the plaintiff. The 2nd defendant is the husband of the 3rd defendant and the 4th defendant is their son. The 5th defendant is the father of 3rd

and 6th defendants and father-in-law of the 2nd defendant. The suit was basically filed for seeking declaration that the sale deeds dated 30.08.1991, 23.03.1993, 04.01.1994, 10.06 .2 002 and 11.03.2004 as per document Nos. Document Nos.922/1991, Document No.330/1993, Document No.2395/1994, Document No.1239/2002 and Document No. 214/2004, respectively as null and void and for permanent injunction.

3. The further narration of the factual score is that as regards the "A Schedule property", the plaintiff asked for a loan of Rs. 1 lakh from the 2nd defendant, Janakiraman, who in turn, suggested that an agreement for sale should be made in favour of his brother-in-law, the 6th defendant, Saravanaprabhu. The plaintiff agreed to make an agreement for sale as proposed by the 2 nd defendant. As per the said agreement an amount of Rs. 50,000/- was received by the plaintiff and her son, the 1st defendant and executed an agreement for sell.

4. It is claimed that at that time, the 2nd defendant obtained signatures in blank papers. Since the document was for security which was made in favour of the 6 th defendant on the request of the 2nd defendant, no action was taken regarding document No. 805/91. It is further contended that the A and B Schedule properties were maintained by the plaintiff and her sister in the name of their father only. When the plaintiff was making arrangements for partition of the A and B Schedule properties on 10.03.2011, it came to their knowledge that the defendant Nos. 2 to 6 had created fabricated documents on the basis of the document No.805/91. It is urged in the plaint that the 2nd defendant was a Sub-Registrar and taking advantage of his position the sale agreement made in favour of the 6 th defendant, who is the brother-in-law of the 2nd defendant, fabricated sale deeds were created by the defendant Nos. 2 to 6 as if the plaintiff had executed the sale deed in favour of the 6th defendant.

5. The defendants filed I.A. No.94 of 2014 in O.S. No.20 of 2014 praying for directing the plaintiff to pay the court fees under Section 40 of the Act failing which to reject the plaint since the plaint was highly undervalued. The said application for rejection of the plaint preferred under Order VII Rule 11 of the Code of Civil Procedure was dismissed by the Principal District Judge, Dindigul, as mentioned hereinbefore. The trial Judge, while dismissing the I.A., relied upon the decisions in *G. Seethadevi v. R. Govindaraj & Ors*[1]. , P. *Thillai Selvan v. Shyna Paul & Anr.*[2] , and *Siddha Construction (P) Ltd. Rep. By its Power Agent, Anjay Sharma, No.32 Guruswamy Road, Chetpet, Chennai - 600031 v. M. Shanmugam & Ors.*[3] . Be it clarified that the original plaintiff died during the pendency of the case, i.e., on 15.01.2015, and her legal heirs have been brought on record.

6. Being dissatisfied with the aforesaid order, the appellants preferred C.R.P. (MD) No. 847 of 2015 (PD). It was contended before the High Court that the learned trial Judge has completely erred by rejecting the prayer inasmuch as the plaintiff was seeking declaration for cancellation of the sale deeds and hence, she was liable to pay the court fee under Section 40 of the Act and not under Section 25 (d) of the said Act. It was also urged that the trial court has completely erred by placing reliance on Siddha Construction (supra). The said stand of the revisionists was resisted by the opposite parties contending, inter alia, that when a plea had been advanced that she had not executed any sale deed and the documents were

fabricated, then the court fee is payable as per Section 25(d) and Section 40 of the Act is not attracted. That apart, it was also urged that the payment of the court fee is a mixed question of fact and law and, therefore, the plaint was not liable to be rejected by entertaining a petition as regards evaluation of the suit property. It is worthy to mention here that the issue of limitation was raised before the trial court which was not accepted as a ground for rejection of the plaint and the High Court concurred with the same. We do not intend to address the issue of limitation as that can be dealt with at the stage of trial of the suit.

7. The High Court, as the impugned judgment would show, referred to the averments in the plaint which were to the effect that the sale deeds were not executed by their predecessor-in-interest and she had not received consideration and, therefore, the principle enunciated in G. Seethadevi (supra) is squarely applicable to them. The High Court further observed that on a perusal of the plaint, it is manifest that the plaintiff had denied execution of the sale deeds and in that context the court fee payable could be under Section 25(d) and not under Section 40 of the Act.

8. Ms. V. Mohana, learned senior counsel appearing for the appellants submits that the court fees has to be paid under Section 40 of the Act when the plaintiff has sought declaration for treating the documents as null and void, which basically amounts to seeking the relief of cancellation of the said documents. It is urged by her that when the requisite court fees as payable under the Act is not paid, the court has no other option but to reject the plaint and the said factum is obvious from the assertions in the plaint.

9. Mr. G. Gowthaman and Mr. P. Soma Sundaram, learned counsel for the respondent Nos. 1, 5, 6, 7 and 9 to 14 in support of the order passed by the High Court contend that the reasons ascribed by the High Court are absolutely impregnable and in a case of the present nature, court fee has to be paid under Section 25(d) of the Act. It is further submitted by the learned counsel for the respondents that the sale deeds executed in favour of the defendants were fraudulent ones, for they were never executed by the original plaintiff and hence, the court fees is required to be paid under Section 25(d) of the Act.

10. Section 40 of the Act reads as under:

> "40. Suits for cancellation of decrees, etc.-- (1) In a suit for cancellation of a decree for money or other property having a money value, or other document which purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest in money, movable or immovable property, fee shall be computed on 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 value of the property for which the decree was passed or other document was 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.

(2) If the decree or other document is such that the liability under it cannot be split up and the relief claimed relates only to a particular item of property belonging to the plaintiff or to the plaintiff's share in any such property, fee shall be computed on the value of such property or share or on the amount of the decree, whichever is less.
Explanation.-- A suit to set aside an award shall be deemed to be a suit to set aside a decree within the meaning of this section."

[Emphasis added]

11. The singular issue that gains significance in this case is that the original plaintiff was a party to the transaction. Section 40 of the Act, as we notice, provides that in a suit for cancellation of a document, the court fee has to be computed on the value of the subject-matter of the suit and such value shall be deemed to be the whole decree or other document which is sought to be cancelled, the amount or value of the property for which the decree was passed or other document was executed. It also spelt out that a part of the decree or other document is to be cancelled, such part of the amount or value of the property. On a careful scrutiny of the provision, it is limpid that it refers to the decree or other document and in that context, it uses the word "value". The stand of the respondents before the High Court as well as before this Court is that the documents were sought to be declared as null and void on the ground of fraud and, therefore, Section 40 of the Act would not be attracted. In this regard, we may notice certain decisions of the High Court of Madras.

12. In Siddha Construction (supra), the learned single Judge has opined that for the value of the Court Fee payable by the plaintiff the averments in the plaint alone are to be considered. In the said case, it was observed that the plaintiffs had not executed the sale deed and did not receive any sale consideration and they had not alienated the property in favour of any one. In the said case, the third defendant was the petitioner in the revision petition. The suit was filed to declare that the sale deed executed by the first defendant in favour of the third defendant was null and void. The High Court referred to the decision in *Alamelu v. Manickammal*[4] wherein it has been held that the plaintiff is not a party to the sale deed and when he seeks only a declaration that the impugned sale deed is null and void, it is subject to the value of the suit under Section 25(d) of the Act. The learned single Judge also quoted a passage from *Gnanambal Ammal v. Kannappa Pillai*[5] wherein it has been held:

"Where a plaintiff's case is that a document is sham and nominal, it need not be set aside, and the suit for relief on that footing is not one for cancellation, so as to attract the application of Section 40 of the Madras Court-fees and Suits Valuation Act, 1955. But even in such a case, if the plaintiff sues for cancellation he would have to pay Court-fee on that relief, whether it is necessary to have the deed cancelled or not."

13. The learned counsel for the appellant would submit that the said decision is distinguishable as in the said case the plaintiffs were not parties to the impugned sale deed.

14. In G. Seethadevi (supra), the High Court followed the principle stated in Siddha Construction (supra) and held thus:

> "In the case on hand, it is to be seen that the case of the Petitioner is that she has not executed Power of Attorney in favour of one Bhaskaran so as to execute the sale deed in favour of third parties. That apart, it is contended that the said Bhaskaran is unknown to the Petitioner and he is an employee of the first Respondent in his petrol bunk. When such statement has been made in the plaint, the court fee that has to be payable on the relief that has been sought for by the Petitioner viz., for declaration that the sale deed dated 25.04.2008 is null and void and not binding on the Petitioner, under Section 25(d) of the Act and not under Section 40 of the Act. The Petitioner has not admitted the execution of Power of Attorney. The court below is not justified in directing the Petitioner to pay the court fee under Section 40 of the Act. In the case relied on by the Respondents, the Power of Attorney was admitted by the Respondents/Plaintiffs therein and hence, this Court in the said decision has directed the party to pay the Court Fee under Section 40 of the Act."

15. In *K. Palaniswamy and another v. S.B. Subramani and another*[6], the learned single Judge took note of the facts that the plaintiff had filed a suit for declaring the sale deeds executed by the first defendant in favour of the second and third defendants as null and void and unenforceable and would not bind the plaintiff and for consequential permanent injunction and an application under Order VII Rule 11 of Civil Procedure Code (CPC) was filed as proper court fee had not been paid and the suit was not properly valued and it deserved to be rejected. In the said case, the second respondent was the power of attorney of the first respondent and after revocation of power of attorney, he had executed the sale deed in favour of the defendants. The High Court took note of the fact that when the first respondent was not a party to the document, the relief sought for in the suit would not come under Section 40 of the Act and accordingly, dismissed the civil revision.

16. *Chella.kannu v. Kolanji*[7], dealt with a civil revision that was filed by the plaintiff assailing the order of the trial court directing the plaintiff to pay the court fee under Section 40 of the Act. The narration of the facts in the plaint was adverted to by the High Court and for proper appreciation of the controversy that has been raised in the instant case, we may reproduce the same: the Suit Property belonged to his Father- Pichamuthu. Pichamuthu had two wives, through whom he had Three Sons. Earlier, there was Partition in the family of the Plaintiff on 04.08.1971 wherein the Plaintiff and the Sons through the First Wife have partitioned the family properties. There was further partition between the Plaintiff and his Brothers in 1977. Item 1 of the Suit Property was allotted to one Poomalai. Items 2 and 4 - S.Nos.155/3 and 339/13A were allotted to the Plaintiff. First Defendant is the Wife of Shanmugam. Third Defendant has been keeping the First Defendant as his concubine. The Third Item was allotted to the Plaintiff's Sister. The Third Defendant is the Third Party. With the help of the First Defendant, the Third Defendant secured the Suit Properties - Item Nos.1 to 3 under a false representation that the Plaintiff is executing a Will in favour of the First Defendant. On that mis-representation, Plaintiff's thumb impression was obtained and

two Sale Deeds dated 05.06.1995 and 23.08.1995 are said to have been obtained. Those Sale Deeds obtained from the Plaintiff under false representation is not binding on the Plaintiff. Hence, the Plaintiff has filed the Suit for Declaration that the Sale Deeds are not binding on him and for Permanent Injunction, restraining the Defendants from in any way interfering with the Plaintiff's peaceful possession and enjoyment of the Plaint Schedule Items I, II and IV."

17. The further stand taken by the plaintiff was that the sale deeds were obtained from him under fraud and hence, suit had been filed for declaration that the sale deeds were not binding on the plaintiff and since the suit was not filed for cancellation of the sale deeds, the defendants could not insist the plaintiff to pay the court fee under Section 40 of the Act. The trial court recorded a find that the sale deeds had been executed by the plaintiff himself and prima facie the sale deeds were binding on the executants and when there is a prayer to declare the sale deeds as invalid, it tanta-mounts to seeking cancellation of sale deeds and therefore, court fee payable would be governed by Section 40 of the Act.

18. The High Court posed two questions, namely, (i) whether in the Suit filed for Declaration that the Sale Deeds are invalid, Court Fee paid under Section 25(d) of the Act is incorrect and (ii) whether the impugned order directing the Plaintiff to pay the Court Fee under Section 40 of the Act suffers from any infirmity warranting interference. Dealing with the factual matrix, the High Court observed:

> "Thus, the Plaintiff himself is a party to the Sale Deed; when the Party himself seeks to get rid of the Sale Deeds in substance it amounts to Cancellation of Decree. The Plaintiff might seek to avoid the Sale Deeds if he is not a party to the Sale Deeds. But, since the Plaintiff himself is a party to the Sale Deeds before he is suing for any relief, the Plaintiff must first obtain the cancellation of the Sale Deeds."
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> And again:
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> "The word "Cancellation" implies that the persons suing should be a party to the document. Strangers are not bound by the documents and are not obliged to sue for cancellation. When the party to the document is suing, challenging the document, he must first obtain cancellation before getting any further relief. Whether cancellation is prayed for or not or even it is impliedly sought for in substance, the Suit is one for cancellation. in the present case, when the Plaintiff attacks the Sale Deeds as having been obtained from him under fraud and misrepresentation the Plaintiff cannot seek for any further relief without setting aside the Sale Deeds.
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> The allegation on the Plaint in substance mounts to cancellation of the document. Though the prayer is couched in the form of seeking declaration that the document is not valid and not binding, the relief in substance indirectly amounts to seeking for cancellation of the Sale Deed. Learned District Munsif was right in ordering payment

of Court Fee under Section 40 of the Act. This Revision Petition has no merits and is bound to fail."

Being of this view, the High Court dismissed the civil revision and directed the plaintiff to pay court fee with further stipulation that unless paid, plaint would stand rejected.

19. To appreciate the decision in P. Thillai Selvan (supra), we have carefully gone through the same and we find the High Court has referred to Order VII Rule 11 CPC, adverted to the issue of payment of court fee both as a question of fact and law and opined that the trial court has rightly rejected the petition. Thus, the said decision does not really deal with Section 40 of the Act.

20. In this context, we may profitably refer to the pronouncement of this Court in *Suhrid Singh alias Sardool Singh v. Randhir Singh and others*[8]. In the said case, the Court referred to several elaborate prayers contained in the plaint and summarized the same. The Court took note of the fact that the issue had come before the trial court which had come to hold that prayers relating to the sale deeds amounted to seeking cancellation of the sale deeds and, therefore, ad volerem court fee was payable on the sale consideration in respect of the sale deeds. The said view was affirmed in the revision. The Court addressed the core issue pertaining to court fee payable in regard to the prayer for a declaration that the sale deeds were void and not "binding on the coparcenary", and for the consequential relief of joint possession and injunction. After referring to the provisions of the Court Fees Act, 1870 as amended in Punjab (as the controversy arose from the High Court of Punjab and Haryana), the Court held:

> "Where the executant of a deed wants it to be annulled, he has to seek cancellation of the deed. But if a non-executant seeks annulment of a deed, he has to seek a declaration that the deed is invalid, or non est, or illegal or that it is not binding on him. The difference between a prayer for cancellation and declaration in regard to a deed of transfer/conveyance, can be brought out by the following illustration relating to A and B, two brothers. A executes a sale deed in favour of C. Subsequently A wants to avoid the sale. A has to sue for cancellation of the deed. On the other hand, if B, who is not the executant of the deed, wants to avoid it, he has to sue for a declaration that the deed executed by A is invalid/void and non est/illegal and he is not bound by it. In essence both may be suing to have the deed set aside or declared as non-binding. But the form is different and court fee is also different. If A, the executant of the deed, seeks cancellation of the deed, he has to pay ad valorem court fee on the consideration stated in the sale deed. If B, who is a non-executant, is in possession and sues for a declaration that the deed is null or void and does not bind him or his share, he has to merely pay a fixed court fee of Rs. 19.50 under Article 17(iii) of the Second Schedule of the Act. But if B, a non-executant, is not in possession, and he seeks not only a declaration that the sale deed is invalid, but also the consequential relief of possession, he has to pay an ad valorem court fee as provided under Section 7(iv)(c) of the Act. Section 7(iv)(c) provides that in suits for a

declaratory decree with consequential relief, the court fee shall be computed according to the amount at which the relief sought is valued in the plaint. The proviso thereto makes it clear that where the suit for declaratory decree with consequential relief is with reference to any property, such valuation shall not be less than the value of the property calculated in the manner provided for by clause (v) of Section 7."

21. On the basis of the aforesaid analysis, the Court opined that the view expressed by the trial court and the High Court was not justified in holding that the court fee is required to be paid on the sale consideration mentioned in the sale deeds.

22. In *Shailendra Bhardwaj and others v. Chandra Pal and another* [9], the Court was dealing with an issue whether suit filed seeking a declaration that a will and a sale deed are void resulting in their cancellation fell under Section 7(iv-A) of the Court Fees Act, 1870 as amended by the U.P. Amendment Act (Act 19 of 1938) or Article 17(iii) of Schedule II of the Court Fees Act, 1870 for the purpose of valuation. Be it noted, in the said case the trial court had taken the view that the court fee had to be paid under Section 7(iv-A) and the High Court has concurred with the same. The two-Judge Bench took note of the provisions of the Court Fees Act, 1870 as amended by the U.P. Amendment Act (Act 19 of 1938) and after referring to the same in detail, held thus:

"On comparing the abovementioned provisions, it is clear that Article 17(m) of Schedule II of the Court Fees Act is applicable in cases where the plaintiff seeks to obtain a declaratory decree without any consequential relief and there is no other provision under the Act for payment of fee relating to relief claimed. Article 17(iii) of Schedule II of the Court Fees Act makes it clear that this article is applicable in cases where the plaintiff seeks to obtain a declaratory decree without consequential reliefs and there is no other provision under the Act for payment of fee relating to relief claimed. If there is no other provision under the Court Fees Act in case of a suit involving cancellation or adjudging/declaring void or voidable a will or sale deed on the question of payment of court fees, then Article 17(iii) of Schedule II shall be applicable. But if such relief is covered by any other provisions of the Court Fees Act, then Article 17(iii) of Schedule II will not 584be applicable. On a comparison between the Court Fees Act and the U.P. Amendment Act, it is clear that Section 7(iv-A) of the U.P. Amendment Act covers suits for or involving cancellation or adjudging/declaring null and void decree for money or an instrument securing money or other property having such value."

23. The Court took note of the fact that the suit was filed after the death of the testator and, therefore, on that basis observed that the suit property covered by the will was required to be valued. The Court further opined that since Section 7(iv-A) of the U.P. Amendment Act specifically provides that payment of court fee in case where the suit is for or involving cancellation or adjudging/declaring null and void decree for money or an instrument, Article 17(m) of Schedule II of the Court Fees Act would not apply. The U.P. Amendment Act, therefore, is applicable in the said case, despite the fact that no consequential relief has been

claimed. Consequently, in terms of Section 7(iv-A) of the U.P. Amendment Act, the court fees have to be computed according to the value of the subject-matter and the trial court as well as the High Court have correctly held so. The two-Judge Bench distinguished Suhrid Singh's case by expressing thus:

> "10. We are of the view that the decision of this Court in Suhrid Singh (supra) is not applicable to the facts of the present case. First of all, this Court had no occasion to examine the scope of the U.P. Amendment Act. That was a case in which this Court was dealing with Sections 7(iv)(c), (v) and Schedule II Article 17(iii), as amended in the State of Punjab. The position that we get in the State of Punjab is entirely different from the State of U.P. and the effect of the U.P. Amendment Act was not an issue which arose for consideration in that case. Consequently, in our view, the said judgment would not apply to the present case.
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> 11.The plaintiff, in the instant case, valued the suit at Rs 30 lakhs for the purpose of pecuniary jurisdiction. However, for the purpose of court fee, the plaintiff paid a fixed court fee of Rs 200 under Article 17(iii) of Schedule II of the Court Fees Act. The plaintiff had not noticed the fact that the abovementioned article stood amended by the State, by adding the words "not otherwise provided for by this Act". Since Section 7(iv-A) of the U.P. Amended Act specifically provides for payment of court fee in case where the suit is for or involving cancellation or ad-judging/declaring void or voidable an instrument securing property having money value, Article 17(iii) of Schedule II of the Court Fees Act shall not be applicable."

24. The decisions in Suhrid Singh (supra) and Shailendra Bhardwaj (supra) have to be understood in their proper perspective. There was U.P. Amendment in Shailendra Bhardwaj (supra). In Suhrid Singh (supra) the Court was dealing with a different situation. Be that as it may, the valuation of a suit and payment of court fee shall depend upon the special provision in a State if provided for. The view taken by the Madras High Court in Chellakannu (supra), in our considered opinion, is the correct exposition of law.

25. Another aspect needs to be noted. As we notice from the impugned judgment, the High Court has expressed the view that payment of the court fee is a mixed question of fact and law and that has to be decided on the basis of evidence.

26. In this context, we have been commended to the decision in *A. Nawab John and others v. V.N. Subra- maniyam*[10]. On a careful perusal of the said decision, we find that the said authority nowhere addresses the issue that is involved in the case at hand. Proper valuation of the subject matter or under valuation is an aspect which can be con-tested by the defendant, but the said contest is limited. In this regard, the two-Judge Bench has reproduced two passages from *Rathnavarmaraja v. Vimla*[11] which we think seemly to reproduce:

> "The Court Fees Act was enacted to collect revenue for the benefit of the State and not to arm a contesting party with a weapon of defence to obstruct the trial of an

action. By recognizing that the defendant was entitled to contest the valuation of the properties in dispute as if it were a matter in issue between him and the plaintiff and by entertaining petitions preferred by the defendant to the High Court in exercise of its revisional jurisdiction against the order adjudging court fee payable on the plaint, all progress in the suit for the trial of the dispute on the merits has been effectively frustrated for nearly five years. We fail to appreciate what grievance the defendant can make by seeking to invoke the revisional jurisdiction of the High Court on the question whether the plaintiff has paid adequate court fee on his plaint. Whether proper court fee is paid on a plaint is primarily a question between the plaintiff and the State. How by an order relating to the adequacy of the court fee paid by the plaintiff, the defendant may feel aggrieved, it is difficult to appreciate. Again, the jurisdiction in revision exercised by the High Court under Section 115 of the Code of Civil Procedure is strictly conditioned by clauses (a) to (c) thereof and may be invoked on the ground of refusal to exercise jurisdiction vested in the subordinate court or assumption of jurisdiction which the court does not possess or on the ground that the court has acted illegally or with material irregularity in the exercise of its jurisdiction. The defendant who may believe and even honestly that proper court fee has not been paid by the plaintiff has still no right to move the superior courts by appeal or in revision against the order adjudging payment of court fee payable on the plaint. But counsel for the defendant says that by Act 14 of 1955 enacted by the Madras Legislature which applied to the suit in question, the defendant has been invested with a right not only to contest in the trial court the issue whether adequate court fee has been paid by the plaintiff, but also to move the High Court in revision if an order contrary to his submission is passed by the court. Reliance in support of that contention is placed upon sub-section (2) of Section 12. That sub-section, insofar as it is material, provides:

But this section only enables the defendant to raise a contention as to the proper court fee payable on a plaint and to assist the court in arriving at a just decision on that question. Our attention has not been invited to any provision of the Madras Court Fees Act or any other statute which enables the defendant to move the High Court in revision against the decision of the court of first instance on the matter of court fee payable in a plaint. The Act, it is true by Section 19 provides that for the purpose of deciding whether the subject-matter of the suit or other proceeding has been properly valued or whether the fee paid is sufficient, the court may hold such enquiry as it considers proper and issue a commission to any other person directing him to make such local or other investigation as may be necessary and report thereon. The anxiety of the legislature to collect court fee due from the litigant is manifest from the detailed provisions made in Chapter III of the Act, but those provisions do not arm the defendant with a weapon of technicality to obstruct the progress of the suit by approaching the High Court in revision against an order determining the court fee payable."

(emphasis supplied)

27. On a perusal of the decision in Rathnavarmaraja (supra), we find the controversy had arisen with regard to proper valuation and the stand of the defendant was that the court fee had not been properly paid and in that context, the Court has held what as we have reproduced hereinabove. The issue being different, the said decision is distinguishable. We may reiterate that proper valuation of the suit property stands on a different footing than applicability of a particular provision of an Act under which court fee is payable and in such a situation, it is not correct to say that it has to be de-termined on the basis of evidence and it is a matter for the benefit of the revenue and the State and not to arm a contesting party with a weapon of defence to obstruct the trial of an action. It is because the Act empowers the defendant to raise the plea of jurisdiction on a different yardstick.

28. In the ultimate anlaysis, we arrive at the conclusion that the appeal is to be allowed, the impugned orders passed by the trial court and the High Court, being unsustainable are to be set aside and we so direct. The trial court is directed to grant three months time to the plaintiff to pay the requisite court fee. There shall be no order as to costs.

Judgment Referred.

[1]*(2011) 6 MLJ 0399*
[2]*(2014) 7 MLJ 0732*
[3] *(2006) 4 MLJ 0924*
[4]*(1979) II M.L.J. 0008*
[5]*(1959) I M.L.J. 0353*
[6]*(2007) 1 CTC 0300*
[7]*AIR 2005 Mad 0405*
[8]*(2010) 12 SCC 0112*
[9]*(2013) 1 SCC 0579*
[10]*(2012) 7 SCC 0738*
[11]*AIR 1961 SC 1299*