

Satheedevi vs Prasanna & Anr on 7 May, 2010

Equivalent citations: AIR 2010 SUPREME COURT 2777, 2010 (5) SCC 622, 2010 AIR SCW 3754, (2010) 5 MAD LW 209, 2010 (5) SCALE 164, (2010) 2 WLC(SC)CVL 22, (2010) 5 MAD LJ 153, (2010) 2 KER LT 642, (2010) 5 SCALE 164

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Bench: Asok Kumar Ganguly, G.S. Singhvi

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.4347 OF 2010
(Arising out of S.L.P. (C) No.3597 of 2009)

Satheedevi

.....Appellant

Versus

Prasanna and another

.....Respondents

JUDGMENT

G.S. Singhvi, J.

1. Leave granted.

2. This appeal filed for setting aside order dated 21.7.2008 passed by the learned Single Judge of Kerala High Court in Writ Petition No.21820 of 2008 whereby he declined to interfere with the direction given by Sub Judge, Palakkad (hereinafter described as `the trial Court') to the appellant to pay court fee on the market value of the plaint schedule property raises an important question of law relating to interpretation of Section 40 of the Kerala Court-Fees and Suits Valuation Act, 1959 (for short, `the Act').

3. The appellant owned 9.98 acres rubber plantation. She executed power of attorney No.376/2006 in favour of her own daughter (respondent No.1 herein). After sometime, respondent No.1 transferred the property to her husband (respondent No.2 herein) by registered sale deed No.1784/2007. The appellant filed O.S. No.231/2007 for cancellation of the power of attorney by alleging that respondent No.1 had misused the same and sold the property to her husband. By an order dated 21.5.2008, the trial Court directed the appellant to pay court fees on the market value of the plaint schedule property. The appellant challenged that order in Writ Petition No.17032/2008 (C) which was disposed of by the learned Single Judge of Kerala High Court vide his order dated 26.6.2008, the relevant portion of which reads as under:

"The learned counsel appearing for the petitioner further submitted that in view of the contentions raised in the plaint, petitioner has to file an application for amendment of the plaint modifying the relief sought for. In the nature of the contentions raised in the plaint, an amendment of the relief is definitely necessary, as found by the learned Sub Judge. In such circumstances, Writ Petition is disposed granting liberty to the petitioner to amend the plaint and to pay the necessary court fee payable on such pleading. It is made clear that the fact that a time limit is fixed by this Court will not prevent the court from granting amendment, as it is necessary for an appropriate adjudication of the dispute involved in the suit. It is made clear that the actual court fee payable by the plaintiff is to be decided by the trial Court afresh, taking into consideration the relief sought for in the plaint, in the light of the amendment of the pleading."

4. In furtherance of the direction given by the High Court, the appellant applied for and she was granted permission to amend the plaint and to incorporate prayer for cancellation of the sale deed executed by respondent No.1 in favour of respondent No.2. In the amended plaint, value of the property was shown as Rs.7,00,000/- and accordingly, the court fees was paid. However by an order dated 3.7.2008, the trial Court directed the appellant to pay court fee on the market value of the plaint schedule property which was assessed at Rs.12 lakhs per acre.

5. Writ Petition No.21820/2008 filed by the appellant against the above mentioned order was dismissed by the learned Single Judge, who referred to the judgments of the Division Bench in Krishnan Damodaran v. Padmanabhan Parvathy (1972) Kerala Law Times 774, P.K. Vasudeva Rao v. Hari Menon AIR 1982 Kerala 35 and Pachayammal v. Dwaraswamy Pillai (2006) 3 Kerala Law Times 527 and held that in terms of Section 40 of the Act, the writ petitioner is required to pay court fees on market value of the property and not on the value specified in the sale deed.

6. Shri Bechu Kurian Thomas, learned counsel for the appellant argued that the interpretation placed by the trial Court and the High Court on Section 40 of the Act is ex facie erroneous and impugned order is liable to be set aside because that section does not provide for payment of court fee on the market value of the property for which the document, which is subject matter of the suit, was executed. Learned counsel emphasized that in terms of Section 40(1), court fees is required to be paid on the value of the property for which the document was executed and submitted that the appellant had correctly paid the court fees as per the value of the property specified in the sale deed

i.e., Rs. 7 lakhs. In support of his arguments, the learned counsel relied upon the judgments of the learned Single Judges of Madras High Court in *Andalammal v. B. Kannaiah* (1971) 2 Madras Law Journal 205 and of Andhra Pradesh High Court in *Allam Venkateswara Reddy v. Golla Venkatanarayana and others* AIR 1975 Andhra Pradesh

122.

7. Shri T.L.V. Iyer, learned senior counsel appearing for the respondent argued that the expression 'value of the property' for which the document was executed means market value of the property and the same cannot be read as value specified in the document. Learned senior counsel submitted that different High Courts have, following the judgment of the Full Bench of Madras High Court in *Kutumba Sastri v. Sundaramma* AIR 1939 Madras 462, consistently held that the market value of the property has to be taken into consideration for the purpose of payment of the court fees. Learned senior counsel relied upon the judgments of different High Courts - *Appikunju Meerasayu v. Meeran Pillai* (1964) Kerala Law Times 895, *Uma Antherjanam v. Govindaru Namboodiripad and others* (1966) Kerala Law Times 1046, *T. Tharamma v. T. Ramchandra Reddy and others* AIR 1968 Andhra Pradesh 333, *Sengoda Nadar v. Doraiswami Gounder and others* AIR 1971 Madras 380, *Allam Venkateswara Reddy v. Golla Venkatanarayana and others* (supra), *S. Krishna Nair and another v. N. Rugmoni Amma* AIR 1976 Madras 208 and *Smt. Narbada v. Smt. Aashi* AIR 1987 Rajasthan 162 and argued that the learned Single Judge did not commit any error by refusing to interfere with the order of the trial Court.

8. We have considered the respective submissions. Sections 7(1) (2) (3) (3A) (4), 25(a) (b), 27(a), 29, 30, 37(1) (3), 38, 40, 45 and 48 of the Act which have bearing on the issue raised by the appellant, read as under:

"7. Determination of market value (1) Save as otherwise provided, where the fee payable under this Act depends on the market value of any property, such value shall be determined as on the date of presentation of the plaint.

(2) The market value of agricultural land in suits falling under Section 25(a), 25(b), 27(a), 29, 30, 37(1), 37(3), 38, 45 or 48 shall be deemed to be ten times the annual gross profits of such land where it is capable of yielding annual profits minus the assessment if any made to the Government.

(3) The market value of a building shall in cases where its rental value has been entered in the registers of any local authority, be ten times such rental value and in other cases the actual market value of the building as on the date of the plaint.

(3A) The market value of any property other than agricultural land and building falling under sub-sections (2) and (3) shall be the value it will fetch on the date of institution of the suit.

(4) Where the subject-matter of the suit is only a restricted or fractional interest in a property, the market value of the property shall be deemed to be the value of the restricted or fractional interest and the value of the restricted or fractional interest shall bear the same proportion to the market value of the absolute interest in such property as the net income derived by the owner of the restricted or fractional interest bears to the total net income from the property.

25. Suits for declaration.- In a suit for a declaratory decree or order, whether with or without consequential relief, not falling under Section 26-

(a) where the prayer is for a declaration and for possession of the property to which the declaration relates, fee shall be computed on the market value of the property or on rupees one thousand whichever is higher;

(b) where the prayer is for a declaration and for consequential injunction and the relief sought is with reference to any immovable property, fee shall be computed on one-half of the market value of the property or on rupees one thousand, whichever is higher;

27. Suits for injunction.- In a suit for injunction-

(a) Where the reliefs sought is with reference to any immovable property, and

(i) where the plaintiff alleges that his title to the property is denied, or

(ii) where an issue is framed regarding the plaintiff's title to the property, fee shall be computed on one-half of the market value of the property or on rupees five hundred, whichever is higher;

29. Suits for possession under the Specific Relief Act, 1877.- In a suit for possession of immovable property under Section 9 of the Specific Relief Act, 1877 (Central Act 1 of 1877), fee shall be computed on one-third of the market value of the property or on rupees one hundred and fifty, whichever is higher.

30. Suits for possession not otherwise provided for.- In a suit for possession of immovable property not otherwise provided for, fee shall be computed, on the market value of the property or on rupees one thousand, whichever is higher.

37. Partition suits (1) In a suit for partition and separate possession of a share of joint family property or of property owned, jointly or in common, by a plaintiff who has been excluded from possession of such property, fee shall be computed on the market value of the plaintiff's share.

(2) xxx xxx xxx (3) Where, in a suit falling under sub-section (1) or sub- section (2), a defendant claims partition and separate possession of his share of the property, fee shall be payable on his written statement computed on half the market value of his share or at half the rates specified in sub-section (2), according as such defendant has been excluded from possession or is in joint

possession.

38. Suits for joint possession.- In a suit for joint possession of joint family property or of property owned, jointly or in common, by a plaintiff who has been excluded from possession, fee shall be computed on the market value of the plaintiff's share.

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.

45. Suits under the Survey and Boundaries Act.-In a suit under Section 14 of the Madras Survey and Boundaries Act, 1923, Section 13 of the Travancore Survey and Boundaries Act of 1094, or Section 14 of the Cochin Survey Act, II of 1074, fee shall be computed on one-half of the market value of the property affected by the determination of the boundary or on rupees one thousand, whichever is higher.

48. Interpleader suits.

(1) In an interpleader suit, fee shall be payable on the plaint at the rates specified in Section 50.

(2) Where issues are framed as between the claimants, fee shall be payable computed on the amount of the debt or the money or the market value of other property, movable or immovable, which forms the subject-matter of the suit. In levying such fee, credit shall be given for the fee paid on the plaint; and the balance of the fee shall be paid in equal shares by the claimants who claim the debt or the sum of money or the property adversely to each other.

(3) Value for the purpose of determining the jurisdiction of Courts shall be the amount of the debt, or the sum of money or the market value of other property to which the suit relates."

9. Section 7 (iv), (iv-A) (as inserted by Madras Act of 1922) and (v) of the Court-fees Act, 1870 (for short, 'the Court-fees Act'), which have been considered in various judgments of Madras High Court relied upon by learned counsel for the respondents reads as under:-

"7. Computation of fees payable in certain suits.- The amount of fee payable under this Act in the suits next hereinafter mentioned shall be computed as follows:- "

xxx

xxx

xxx

(iv) In suits-

for movable property of no market-value.-(a) for moveable property where the subject-matter has no market-value, as, for instance, in the case of documents relating to title, to enforce a right to share in joint family property.-(b) to enforce the right to share in any property on the ground that it is joint family property, for a declaratory decree and consequential relief.-(c) to obtain a declaratory decree or order, where consequential relief is prayed, for an injunction.-(d) to obtain an injunction, for easements.-(e) for a right to some benefit (not herein otherwise provided for) to arise out of land, and for accounts.-(f) for accounts-

according to the amount at which the relief sought is valued in the plaint or memorandum of appeal;

In all such suits the plaintiff shall state the amount at which he values the relief sought (iv-A) 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, the valuation should be according to the value of the subject-matter of the suit and such value shall be if the whole decree is sought to be cancelled, the amount or value of the property for which the decree was passed, and if a portion of the decree is sought to be cancelled, such part of the amount or value of the property.

(added by Madras Act of 1922) for possession of land, houses and gardens.-(v) In suits for the possession of land, houses, and gardens - according to the value of the subject-matter; and such value shall be deemed to be-

where the subject-matter is land, and-

(a) where the land forms an entire estate, or a definite share of an estate, paying annual revenue to Government, or forms part of such an estate and is recorded in the Collector's register as separately assessed with such revenue;

and such revenue is permanently settled - ten times the revenue so payable;

(b) where the land forms an entire estate, or a definite share of an estate, paying annual revenue to Government, or forms part of such estate and is recorded as aforesaid; and such revenue is settled, but not permanently - five times the revenue so payable;

(c) where the land pays no such revenue, or has been partially exempted from such payment, or is charged with any fixed payment in lieu of such revenue, and net profits have arisen from the land during the year next before the date of presenting the plaint -

fifteen times such net profits;

but where no such net profits have arisen therefrom - the amount at which the Court shall estimate the land with reference to the value of similar land in the neighbourhood;

(d) where the land forms part of an estate paying revenue to Government, but is not a definite share of such estate and is not separately assessed as above-mentioned - the market-value of the land:"

10. Before proceeding further, we may notice two well recognized rules of interpretation of statutes. The first and primary rule of construction is that the intention of the legislature must be found in the words used by the legislature itself. If the words used are capable of one construction, only then it would not be open to the courts to adopt any other hypothetical construction on the ground that such hypothetical construction is more consistent with the alleged object and policy of the Act. The words used in the material provisions of the statute must be interpreted in their plain grammatical meaning and it is only when such words are capable of two constructions that the question of giving effect to the policy or object of the Act can legitimately arise - *Kanai Lal Sur v. Paramnidhi Sadhukhan* 1958 SCR 360. The other important rule of interpretation is that the Court cannot rewrite, recast or reframe the legislation because it has no power to do so. The Court cannot add words to a statute or read words which are not therein it. Even if there is a defect or an omission in the statute, the Court cannot correct the defect or supply the omission. - *Union of India v. Deoki Nandan Aggarwal* 1992 Supp (1) SCC 323, *Shyam Kishori Devi v. Patna Municipal Corporation* (1966) 3 SCR 366.

11. Section 7 of the Act lays down different modes for determination of the market value of the property for the purpose of payment of court fee. Sub-section (1) of Section 7 begins with the expression "Save as otherwise provided" and lays down that where the fee payable under the Act depends on the market value of any property, such value shall be determined as on the date of presentation of the plaint. From the plain language of Section 7(1), it is evident that it merely specifies the methodology for determination of the market value of the property where the court fee payable under some other provisions of the Act depends on the market value of the property which is subject matter of the suit. Sections 25, 27, 29, 30, 37, 38, 45 and 48 deal with different kinds of suit i.e., suits for declaration, suits for injunction, suits for possession under the Specific Relief Act, 1877, suits for possession not otherwise provided for, partition suits, suits for joint possession, suits under the Survey and Boundaries Act and interpleader suits. These sections provide for payment of court fee computed on the market value of the property. Sub-section (2) of Section 7 lays down that the market value of the agricultural land in suits falling under Sections 25(a), 25(b), 27(a), 29, 30,

37(1), 37(3), 38, 45 and 48 shall be deemed to be ten times the annual gross profits of such land where it is capable of yielding annual profits minus the assessment, if any, made by the Government. In terms of sub-section (3), the market value of a building in cases where its rental value has been entered in the registers of any local authority, shall be ten times such rental value and in other cases, the actual market value of the building as on the date of the plaint. Clause (a) of sub-section (3) lays down that market value of any property other than agricultural land and building shall be the value it will fetch on the date of institution of the suit. Sub-section (4) lays down that where subject matter of the suit is only a restricted or fractional interest in a property, the market value of the property shall be deemed to be the value of the restricted or fractional interest. Section 40 deals with suits for cancellation of decrees etc. which are not covered by other sections. If this section is interpreted in the light of the expression 'save as otherwise provided' used in Section 7(1), it becomes clear that the rule enshrined therein is a clear departure from the one contained in Section 7 read with Sections 25, 27, 29, 30, 37, 38, 45 and 48 which provide for payment of court fee on the market value of the property. In that sense, Section 40 contains a special rule. Section 40(1) lays down that 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 further lays down that such value shall be deemed to be if the whole decree or other document 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 constitute the basis for fixation of court fee. Sub-section (2) lays down that 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 the property belonging to the plaintiff or the plaintiff's share in such property, fee shall be computed on the value of such property, or share or on the amount of the decree, whichever is less. The deeming clause contained in the substantive part of Section 40(1) makes it clear that in a suit filed for cancellation of a document which creates any right, title or interest in immovable property, the court fees is required to be computed on the value of the property for which the document was executed. To put it differently, the value of the property for which the document was executed and not its market value is relevant for the purpose of court fee. If the expression 'value of the subject matter of the suit' was not followed by the deeming clause, it could possibly be argued that the word 'value' means the market value, but by employing the deeming clause, the legislature has made it clear that if the document is sought to be cancelled, the amount of court fee shall be computed on the value of the property for which the document was executed and not the market value of the property. The words "for which"

appearing between the words "property" and "other documents" clearly indicate that the court fee is required to be paid on the value of the property mentioned in the document, which is subject matter of challenge.

12. If the legislature intended that fee should be payable on the market value of the subject matter of the suit filed for cancellation of a document which purports or operates to create, declare, assign, limit or extinguish any present or future right, title and interest, then it would have, instead of incorporating the requirement of payment of fees on value of subject matter, specifically provided

for payment of court fee on the market value of the subject matter of the suit as has been done in respect of other types of suits mentioned in Sections 25, 27, 29, 30, 37, 38, 45 and 48. The legislature may have also, instead of using the expression "value of the property for which the document was executed", used the expression "value of the property in respect of which the document was executed". However, the fact of the matter is that in Section 40(1) the legislature has designedly not used the expression 'market value of the property'.

13. If the interpretation placed by the trial Court and the High Court on the expression "value of the property for which the document was executed"

is accepted as correct then the word 'value' used in Section 40(1) of the Act will have to be read as 'market value' and we do not see any compelling reason to add the word 'market' before the word 'value' in Section 40(1) of the Act.

14. We may now advert to the judgments relied upon by the learned counsel for the parties and some other judgments of different High Courts in which Section 40(1) of the Act and similar provisions of other State legislations have been interpreted.

15. In Venkata Narasimha Raju v. Chandrayya AIR 1927 Madras 825, the Division Bench of Madras High Court interpreted Section 7 (v) (a) of the Court-fees Act as amended by Madras Act of 1922 and observed:

"One point raised is whether the market value of the property should not be taken for the purpose of this valuation, or whether the statutory value should be adopted. We think the latter is the proper course as there is nothing in the Act to show that the market value is the value contemplated in S.7 (iv) (a). When there is in the Act itself a special rule as to valuing 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."

(emphasis supplied)

16. In Balireddi v. Khatipulal Sab AIR 1935 Madras 863, the learned Single Judge of the High Court considered the question whether in a suit for setting aside mortgage deeds and sale deeds, the plaintiff is required to pay court-fees on the market value of the property and answered the same in affirmative. The learned Judge referred to two earlier judgments in Venkata Narasimha Raju v. Chandrayya (supra) and Venkatasiva Rao v. Satyanarayanamurthi AIR 1932 Madras 605 but disagreed with the ratio of those judgments and held:

"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 S.7(v) can possibly be applied. Now as regards the sale- deed, 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 S.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. Cl. (iv-A) refers simply to "the value of the property," which means "value" as generally understood, whereas Cl. (v) prescribes an artificial method of valuation. There is no reason to construe Cl. (iv-A) in the light of Cl. (v) which deals with a specific matter; indeed, when the legislature intends to prescribe an artificial method, it says so in express terms, as Cl. (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."

17. In *Kutumba Sastri v. Sundaramma* (supra), the Full Bench of Madras High Court interpreted paragraph (iv-A) of Section 7 of the Court- fees Act. The Full Bench referred to the earlier judgments in *Venkata Narasimha Raju v. Chandrayya* (supra), *Venkatasiva Rao v. Satyanarayanamurthi* (supra), *Balireddi v. Khatipulal Sab* (supra) and approved the view expressed by the learned Single Judge in *Balireddi v. Khatipulal Sab* (supra) by making the following observations:

"We consider that the view taken by Venkatasubba Rao J. in 59 Mad 240 is preferable to that taken in 53 MLJ 267. Para (iv-A) deals with suits where it is necessary for the plaintiff to seek the cancellation of a decree or of a deed. Para (v) relates merely to suits for possession. In a suit for possession it is not always 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 para (iv-A) to S.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 para (v). It said that a suit within para (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 to its market value. By the Amending Act of 1922 para (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 para (v) but in adding para (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 para

(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."

(emphasis supplied)

18. In *Navaraja v. Kaliappa Gounder* (1967) 80 Madras Law Weekly 19 (SN), the learned Single Judge noted that in the earlier suit, the properties were valued at Rs.4000/-, referred to Section 40(1) of the Madras Court-fees and Suits Valuation Act, 1955, which is *pari materia* to the Section 40 of the Act and observed:

".....that as the decree itself specified the value of the property it will fall within the language of Section 40(1), namely, the amount or value of the property for which the decree was passed and ordered that the court-fee has to be paid calculated on the sum of Rs.4000, which is the value given in the decree, and not the market value of the properties on the date of the filing of the plaint."

(emphasis supplied)

19. In *Arunachalathammal v. Sudalaimuthu Pillai* (1968) 83 Madras Law Weekly 789, another learned Single Judge examined the correctness of order passed by the Subordinate Judge, Tirunelveli, who had allowed the plaintiff to pay the court-fee for the cancellation of settlement deed on the value of the document i.e. Rs.3500/-. While dismissing the revision filed by the defendants, the learned Judge referred to Section 40(1) of the Madras Act, distinguished the Full Bench judgment in *Kutumba Sastri v. Sundaramma* (*supra*) and observed:

"It will be seen that the section provides for suits (1) relating to cancellation of a decree for money, (2) cancellation of a decree for other property having a money value, and (3) cancellation of other document which purports or operates to create, declare, assign, limit or extinguish rights in moveable or immoveable property. The sub-section provides that fee shall be computed on the value of the subject matter of the suit. Then it proceeds to state how such value should be calculated. It provides that if the whole decree is sought to be cancelled, the amount or value of the property for which the decree was passed should be taken into account. In the case of other document which purports or operates to create, declare, assign, limit or extinguish rights in moveable or immoveable property, the value shall be deemed to be the value of the property. It is not clear as to whether the words "the amount or value of the property for which the decree was passed" are applicable to the cancellation of a document which creates or declares rights in moveable or immoveable property. In the case of suits for cancellation of either documents, apart from suits for cancellation of a decree for money or other property, the above clause would be certainly applicable. This would mean that in the case of suits for cancellation of other documents, the value of the subject matter of the suit shall be deemed to be the amount for which the documents was executed. It was submitted on behalf of the defendants that even in the case of a suit for cancellation of other documents, the

value shall be deemed to be the value of the property. But this contention would ignore the effect of the words "value of the property for which the decree was passed".

Even conceding that the value of the property should be taken into account in suits for cancellation of other documents, there are two modes provided for to compute the value of the subject matter of the suit, (1) the value of the property and (2) the amount for which the document was executed.

Mr. Venugopalachari, learned counsel for the petitioners, submitted that this view is opposed to the one taken in the decision in *Kutumba Sastri v. Sundaramma* where the Full Bench held that in a suit for cancellation of a deed of conveyance the valuation must be the valuation based on the market value of the property at the date of the plaint. The Full Bench was considering the question as to the Court fee payable in a suit for cancellation of a deed of conveyance and for possession of the property covered by the deed. The court held that the plaintiff should value his relief in accordance with the provisions of S.7(4)(A), and not according to S.7(V) of the old Court fees Act, 1870. After referring to the difference of opinion between the various decisions, the Full Bench preferred the view taken in *Bali Reddi v. Khatifulal Sab* 59 Mad. 240, followed in *Venkatakrishniah v. All Sahib* 48 L.W. 277. S. 7(4-A), of the old Act is slightly differently worded and it runs as follows:-

"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".

It will be seen that the above section relates to 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. There was some doubt whether the third part of the section relating to either document securing money would include sales. In *Balireddy v. Badul Sabar*, Venkatasubba Rao, J. referring to his earlier decision in *Doraiswami v. Thangavelu* held that sale deeds would come within the meaning of this section. Whether this sub-section includes sale deeds or need not detain us, as S. 40(1) of Madras Act XIV of 1955 is differently worded and there can be no doubt that it brings within its purview sale deeds as it relates to other documents which purports or operates to create, declare, assign, limit or extinguish any right in moveable or immoveable property, S. 7(iv-A) of the old Act states that the value 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". The same words are used in S. 40(1) of the new Act. In construing this sub-clause in S. 7(iv-A) of the old Act, the Full Bench pointed out in the decision cited above that the suit within the meaning of the above section should be valued according to the value of the property, unless there is an indication to the contrary, must mean its market value. It may be noted that the court was considering the value of the property and does not appear to have taken note of the words

"the other document executed".

As already pointed out, S. 7(iv-A) of the Old Act as well as S. 40(1) of the present Act deal with suits for cancellation of a decree for money, cancellation of a decree for other property having a money value and suit for cancellation other document. In the case of other documents, the clause "the amount or the value of the property for which the decree was passed" cannot be held to be applicable and the only clause that can be properly applied is only the value for which the document was executed. In the third category in S. 40(1), to the words `other document, the words `which purports or operates to create, declare, assign, limit or extinguish' rights in moveable or immoveable property are included. Obviously in suits for cancellation of other documents referred to in S. 40(1) of the new Act the valuation should be the value of the other document executed. In *Balireddy v. Abdul Satar* the court refers to the section which says that the value of the subject matter shall be deemed to be the amount for which the document is executed. But it confined its discussion to the actual value of the property and held that it referred only to the market value. This decision also does not refer to the valuation of the document on the basis of the amount for which the document is executed."

(emphasis supplied)

20. In *Appikunju Meerasayu v. Meeran Pillai* (supra), the learned Single Judge of Kerala High Court relied on the judgment of Madras High Court in *Narasamma v. Satyanarayana* AIR 1951 Madras 793 and observed:

"As I have pointed out earlier, the emphasis in S.40(1) of the Court Fees Act is regarding the subject matter of this suit and in respect of that subject matter which admittedly is immovable property it will have to be valued on the amount or valued as the property which was no doubt covered by the decree in O.S. 21/1125. But the value or amount must certainly be the market value as on the date of the filing of the suit."

The same view was reiterated by another learned Single Judge of the Kerala High Court in *Uma Antherjanam v. Govindaru Namboodiripad and others* (supra).

21. In *Sengoda Nadar v. Doraiswami Gounder and others* (supra), the learned Single Judge of Madras High Court referred to earlier judgments but disagreed with the view expressed by the other learned Single Judges in *Navaraja v. Kaliappa Gounder* (supra) and *Arunachalathammal v. Sudalaimuthu Pillai* (supra) and followed the ratio of Full Bench judgment by recording the following observations:

"With respect, I need hardly add that this is not the correct reading of the Full Bench decision. He has concluded by stating that obviously in suits for cancellation of "other documents"

referred to in Section 40 (1) of the present Act, the valuation should be the value of the other document executed. I have already pointed out that in the documents just as in the case of decrees, the distinction is between those that dealt with money and those that dealt with property. The amount mentioned in the decree or the document is relevant only when the question is with regard to the decree for money or document securing money. But in the case of decrees or documents dealing with property of money value, the value of the subject-matter of the suit should be computed on the value of the property for which the decree was passed or the document was executed. I need not repeat that the valuation in respect of the property dealt with by the decree or document should be the market value and such a market value should be as on the date of suit."

22. In *S. Krishna Nair and another v. N. Rugmoni Amma* (supra), another learned Single Judge followed the ratio of *Sengoda Nadar v. Doraiswami Gounder and others* (supra) and held that in a suit for cancellation of decree, the property is to be valued under Section 40(1) of the Tamil Nadu Court Fees and Suits Valuation Act, 1955 and the court fee is required to be paid on the market value of the property as on the date of the plaint.

23. In *Krishnan Damodaran v. Padmanabhan Parvathy* (supra), the Division Bench of Kerala High Court reiterated the views expressed in *Kutumba Sastri v. Sundaramma* (supra), *Appikunju Meerasayu v. Meeran Pillai* (supra) and *Sengoda Nadar v. Doraiswami Gounder and others* (supra) and held that court fee is payable on the market value of the property covered by the document and not on the basis of the valuation given in the document.

24. In *P.K. Vasudeva Rao v. Hari Menon* (supra), the Division Bench of the Kerala High Court held as under:

"True, as contended for on behalf of the plaintiff-revision petitioner, S.40 nowhere uses the expression 'market value'. But it is clear therefrom that the legislative intent is to levy court-fee on the just equivalent in money of the 'other property' comprised in the decree or portion thereof sought to be set aside; or dealt with in the 'other document' or part thereof sought to be cancelled. The section opens by saying that 'in a suit for cancellation of a decree for money or other property having a money value' (emphasis supplied) 'fee shall be computed on the value of the subject matter of the suit'. 'Money value' of a property is its worth in terms of the currency of the land or in other words, is such money- equivalent thereof in open market; and not any amount less than that as where it is overvalued at a fancy-price. It cannot be that when, what is sought to be cancelled is a decree or part thereof for 'other property', i.e. property other than money, the value of such property for computation of court-fees is its 'money- value', and when, what is sought to be cancelled is a document or part thereof in respect of 'other property', the value of such property for such computation is not its 'money-value'. Value of the subject matter, namely, value of the 'other property' in both cases is its money-value.

The object of the second and the third paras in sub-section (1) of S.40 is not to introduce any fiction but to provide for two situations, namely, (i) where the decree

or the document as a whole is sought to be cancelled and (ii) where only part thereof is sought to be cancelled. In the first situation, the value of the subject matter is the amount for which the decree was passed or the document was executed; or the value of the property concerning which the decree was passed or the document was executed. In the second class of cases, the value of the subject matter of the suit is such part of the amount for which the decree was passed or the document was executed, in respect of which part, the decree or the document is sought to be cancelled; or the value of such part of the property concerning which the decree was passed or the document was executed, in respect of which part, the decree or the document is sought to be cancelled.

Section 40(1) has to be read as a whole. So read: (A) when the suit is for cancellation of a decree or other document for money, then the value of the subject-matter of the suit will be:-

(i) the whole amount for which the decree was passed or the document was executed, if what is sought to be cancelled is the whole of the decree or the whole of the document; and (ii) such part of the amount for which the decree was passed or the document was executed, if only part of the decree or part of the document is sought to be cancelled; (B) when the suit is for cancellation of a decree or other document for a property having money-value, then, the value of the subject-matter of the suit will be:- (i) if the whole of the decree or the document is sought to be cancelled - the value of the property covered by the decree or the document; and (ii) if only part of the decree or of the document is to be cancelled; value of such part of the property in respect of which the decree was passed or the document was executed and to which extent such decree or such document is to be cancelled. We are not impressed with the submission that there is a distinction between the expressions 'the value of the property for which the decree was passed or other document was executed' and 'the value of the property in respect of which the decree was passed or other document was executed' for the purpose of computation of court-fees. The scheme of S.40 is to make court-fees leviable on the sum of money or portion thereof, when what the plaintiff seeks is to get rid of his obligation and liability therefor or part thereof under a decree passed or a document executed by cancellation thereof, and on the money-equivalent of the property or portion thereof, when what he seeks to get rid of is his obligation and liability in relation to that property or portion thereof under a decree passed or a document executed in respect of it by cancellation thereof."

25. In *R. Rangiah v. Thimma Setty* (1963) 1 Mysore Law Journal 67, the Division Bench of Mysore High Court interpreted Section 4(iv)(A) of Mysore Court Fees Act, which is substantially similar to Section 40 of the Act and held that:

"Now, one thing which is very clear from the paragraphs 1 & 2 of S.4 (iv) A is that in a suit brought for the cancellation of a document executed for the purpose of securing property, the Court Fee payable is on the value of such property. Although those

paragraphs do not refer in terms to the market value of the property, as some of the other parts of the Act do, I have no doubt in my mind that the word 'value' occurring in those paragraphs has reference to no other value than the market value. The word 'value' when it occurs in an enactment like the Court Fees Act, has to my mind, particularly known and definite meaning. That word has reference to the price which the property will fetch when exposed to the test of competition.

Mr. Gopivallabha Iyengar had to admit that the word 'value' occurring in the first paragraph would have to be understood as the market value if paragraphs 2 and 3 did not exist in S.4(iv) A. If, therefore, the word 'value' occurring in the first paragraph means market value, I see nothing in paragraphs 2 and 3 on which Mr. Gopivallabha Iyengar strongly relied which can persuade me to take the view that the word 'value' occurring in the first paragraph which, as ordinarily understood, is the market value, should be understood differently.

Paragraph 2 does no more than to merely provide that, if a document is sought to be cancelled in its entirety, the Court Fee is payable on the value of the whole of the property in respect of which the document is executed. Likewise paragraph 3 merely provides that where the cancellation sought is a partial cancellation, Court Fee is payable only on the value of the property in respect of which cancellation is sought. It is for that purpose that the words "value shall be deemed to be" are used by the Legislature in the first paragraph of the clause and not for the purpose of assigning to the word 'value' occurring in the first paragraph a meaning different from that which has to be ordinarily given to it.

It is no doubt true that the second paragraph of S.4(iv) A directs that the Court Fee payable in a suit brought for the cancellation of a document is the Court Fee on the value of the property 'for which' the document was executed. Ordinarily the expression 'for which' occurring in that paragraph might have justified the interpretation that the amount on which the Court Fee has to be paid is the amount specified in the document. But, that, that would not be correct way of understanding those words occurring in paragraph 2 of that clause is clear from the fact that S.4(iv) A does not provide merely for cancellation of a document executed for a specified consideration such as a sale deed, but also provides for the payment of Court Fee even in suits brought for cancellation of other documents such as a deed of settlement, a gift deed or a trust deed. In the latter category of cases it would not be appropriate to regard those documents as executed for a consideration or a specified amount and those cases would not be cases in which there would be any value 'for which the document is executed.

The second paragraph which requires the payment of Court Fee on the value of the property 'for which' the document was executed, does not, when properly understood, direct the payment of such Court Fee on the value for which the document was executed, but on the value of the property for which it was executed.

In other words, the words 'for which' occurring in that paragraph do not refer to the value but to the property to which the document relates. The words 'for which' occurring in that paragraph, in my opinion, mean 'for securing which', so that what that paragraph directs is the payment of Court Fee on the value of the property for securing which the document is executed.

That, that is the correct interpretation is indicated by the word 'securing' occurring in the first paragraph of the clause in the context of a document of which cancellation is sought.

It therefore follows that what is relevant for the purpose of S.4(iv) A is not the value of the property specified in the document but its real and actual value when the suit is brought. It is on that value that the Court fee has to be paid if the suit is for the cancellation of a document recording a transaction involving such property."

26. In *Pachayammal v. Dwaraswamy Pillai* (supra), another Division Bench of Kerala High Court interpreted Sections 7 and 40 of the Act and held:

"Section 7 of the Act though deals with determination of market value, it starts with a saving clause. A reading of Section 7(1) makes it clear that if there is a specific provision in the Act for valuing the suit, the Sub-sections (2) to (4) of Section 7 can have no application. According to the counsel for the petitioners, Section 40 is an independent provision for valuation of suits for cancellation of decrees and documents and in view of Section 7(1), market value of the property is not a criteria at all. Whenever market value of the property is to be taken into account, it is specifically stated in the statute. Sections 24, 25, 27, 29, 30, 37, 38, 45 & 48 etc, specifically provide that market value of the property involved in the suit is to be taken as basis for valuation. But, the word 'market' is conspicuously absent in Section 40. When the section is plain and unambiguous, courts should not venture to add words to it to give an entirely different scope to the said provisions never intended by the legislature. Therefore, it was argued that concept of 'market value of the property' cannot be brought into Section 40. Learned Counsel invited our attention to the decisions of the Apex Court in *Gurudevdatla VKSSS Maryadit and Ors. v. State of Maharashtra and Ors* (2001) 4 SCC 534 (Paragraph 26) and *Padma Sundara Rao (Dead) and Ors. v. State of T.N. and Ors.* (2002) 3 SCC 533 (Paragraphs 14 and

15). It is true that when the words of a statute are clear, plain or unambiguous, i.e. they are reasonably susceptible to only one meaning, the courts are bound to give effect to that meaning irrespective of consequences. The rule stated by TINDAL, C.J.

in *Sussex Peerage case*, (1844) 11 Cl & F 85, p. 143) is in the following form: "If the words of the statute are in themselves precise and unambiguous, then no more can be necessary than to expound those words in their natural and ordinary sense. The words themselves do alone in such cases best declare the intent of the lawgiver".

Here, the question is what is clearly stated in Section 40 as the criteria for valuation of suit filed for cancellation of a document. Section 40 of the Act mandates that if a suit is filed for cancelling a document which creates, assigns or extinguishes the right, title or interest in an immovable property, if the whole document is to be cancelled, the value of the property for which the document was executed and if plaint is only to cancel part of the document, such part of the value of property for which document was executed is the basis for suit valuation. Therefore, value depends on the value of property for which document was executed and sought to be cancelled and not the value mentioned in the document. Here, a gift deed is sought to be cancelled. Then on a plain meaning of Section 40, suit should be valued at the value of the property for which gift deed was executed and not the value of the document or value mentioned in the document. If a gift deed is executed out of love and affection, which is a valid consideration, suit valuation depends upon not on estimation of value of love and affection or null value, but, on the value of the property covered by the gift deed. Then the question is what is the value of property at the time of filing the suit. In legal terms value of property means market value of property and when valuation is considered with regard to suit valuation, it can only be market value of property at the time of filing the suit and nothing else. Section 7(1) clearly states that except otherwise provided, court fee payable under the Act depends on the market value determined on the date of presentation of plaint. No contrary indication is made in Section 40."

27. In *Smt. Narbada v. Smt. Aashi* AIR 1987 Rajasthan 162, the learned Single Judge of Rajasthan High Court followed the ratio of the Division Bench of Kerala High Court in *P.K. Vasudeva Rao v. Hari Menon* (supra) and held that in a suit for cancellation of decree, the court fee is required to be paid on the market value of the property.

28. In *Andalammal v. B. Kanniah* (1971) II Madras Law Journal 205, the learned Single Judge considered the question relating to court fee in the context of a suit filed for cancellation of a settlement deed on the ground that the same had been procured by fraudulent misrepresentation. In the settlement deed, the property was valued at Rs.10,000/-. The learned trial Court held that the suit should be valued on the market value of the property as on the date of plaint and not on the basis of the value of suit in the settlement deed and accordingly directed the plaintiff to pay deficit court fee after furnishing the market value of the property. The learned Single Judge referred to Section 40 of the Madras Act and held:

"It is important to mark the words "the amount or value of the property for which the document was executed". If the Legislature had said "the amount or value of the property in respect of which the document was executed", it would be reasonable to hold that the basis shall be the market value of the property, regardless of what the document says it is. But as the section refers to "the amount or value of the property for which the document was executed", the legislative intent is clear that the basis for the purpose of valuation shall be the amount or value mentioned in the document itself. Evidently, the intention of the Legislature is that when a person seeks to cancel a document executed by himself, he shall pay Court-fee upon the value which he has chosen to put upon the property in the document he seeks to cancel. The word "value" ordinarily connotes the price set on a thing, and when the Legislature directs

that the value of the subject-matter shall be deemed to be the amount or value of the property for which the document was executed, I see no warrant for ignoring the plain language or the section and holding that the value shall be the market value of the property. In fact, the Legislature has expressly used the words "market value" in twelve other sections of the Act in contra distinction to the word "value" used in section 40(1) of the Act. I, therefore, hold that the Court-fee paid by the petitioner upon the basis of the value of the property as given in the settlement deed is correct."

29. In *Allam Venkateswara Reddy v. Golla Venkatanarayana* AIR 1975 A.P. 122, a learned Single Judge of Andhra Pradesh High Court construed Section 37 of the Andhra Pradesh Court-fees and Suits Valuation Act, which is *pari materia* to Section 40 of the Act, and held:

"Section 37(1) contemplated two kinds of suits, viz. suits for cancellation of decrees, whether they are for money or for property having a money value and suits for cancellation of documents creating or extinguishing rights whether in money, movable or immovable property. It is stated therein that for the purpose of payment of court-fee in the suit the fee shall be computed on the basis of the value of the subject-matter of the suit and that such value shall be deemed to be the one indicated in clause (a) of Section 37(1) wherein it is mentioned that 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 shall be deemed to be the value for computation of court-fee. From this it is very clear that for cancellation of a document regarding a property the value shall be deemed to be the amount for which the document regarding a property the value shall be deemed to be the amount for which the document sought to be cancelled was executed with regard to the property. In the present case, the two sale deeds in question were executed for a sum of Rs.18,000/-. Therefore, the court-fee has to be paid on that amount and not on the present market value of the properties which are the subject-matter of the two sale deeds. A reading of Section 37 does not show that the court-fee has to be computed on the basis of the present market value of the document sought to be cancelled."

30. In view of our analysis of the relevant statutory provisions, it must be held that the judgments of the Division Bench of Madras High Court and of the learned Single Judges in *Venkata Narasimha Raju v. Chandrayya* (supra), *Navaraja v. Kaliappa Gounder* (supra), *Arunachalathammal v. Sudalaimuthu Pillai* (supra) and *Andalammal v. B. Kanniah* (supra) as also the judgment of the learned Single Judge of Andhra Pradesh High Court in *Allam Venkateswara Reddy v. Golla Venkatanarayana* (supra) lay down correct law. In the first of these cases, the Division Bench of Madras High Court rightly observed that when there is a special rule in the Act for valuing the property for the purpose of court fee, that method of valuation must be adopted in preference to any other method and, as mentioned above, Section 40 of the Act certainly contains a special rule for valuing the property for the purpose of court fee and we do not see any reason why the expression 'value of the property' used in Section 40(1) should be substituted with the expression 'market value of the property'.

31. The judgment of the learned Single Judge of Madras High Court in Balireddi v. Khatipulal Sab (supra), which was approved by the Full Bench of that Court in Kutumba Sastri v. Sundaramma (supra) turned primarily on the interpretation of Section 7(iv-A) of the Court Fee Act as amended by Madras Act which refers to the value of the property simpliciter and the Court interpreted the same as market value. Neither the learned Single Judge nor the Full Bench were called upon to interpret a provision like Section 40 of the Act. Therefore, the ratio of those judgments cannot be relied upon for the purpose of interpreting Section 40 of the Act. In Arunachalathammal v. Sudalaimuthu Pillai (supra), the learned Single Judge rightly distinguished the judgment of the Full Bench by making a pointed reference to the language employed in Section 40(1) of the Madras Act No.XIV of 1955, which is identical to Section 40 of the Act. In Sengoda Nadar v. Doraiswami Gounder and others (supra) and S. Krishna Nair and another v. N. Rugmoni Amma (supra), the other learned Single Judges did not correctly appreciate the ratio of the judgment of the coordinate Bench in Arunachalathammal v. Sudalaimuthu Pillai (supra) and distinguished the same without assigning cogent reasons. We may also observe that if the learned Single Judges felt that the view expressed by the co-ordinate Bench was not correct, they ought to have referred the matter to the larger Bench. The judgments of the Division Benches of Kerala High Court in Krishnan Damodaran v. Padmanabhan Parvathy (supra), P.K. Vasudeva Rao v. Hari Menon (supra) and Pachayammal v. Dwaraswamy Pillai (supra) and of the learned Single Judges in Appikunju Meerasayu v. Meeran Pillai (supra) and Uma Antherjanam v. Govindaru Namboodiripad and others (supra) also do not lay down correct law because the High Court did not appreciate that the legislature has designedly used different language in Section 40 of the Act and the term 'market value' has not been used therein. The same is true of the judgments of the learned Single Judges of Mysore and Rajasthan High Courts noticed hereinabove.

32. In the result, the appeal is allowed. The impugned order of the learned Single Judge of Kerala High Court as also the order passed by the trial Court directing the appellant to pay court fee on the market value of the property, in respect of which the sale deed was executed by respondent No.1 in favour of respondent No.2, are set aside. The trial Court shall now proceed with the case and decide the same in accordance with law. The parties are left to bear their own costs.

.....J. [G.S. Singhvi]J. [Asok Kumar Ganguly] New Delhi May 07, 2010.