**(2007) 10 AP CK 0039**

**In the Andhra Pradesh High Court**

**Case No :** Civil Revision Petition No. 3939 of 2007

Grandhi Narayana Chetty APPELLANT

Vs

Mitta Lokesh RESPONDENT

**Date of Decision :** 06-10-2007

**Acts Referred:**

Andhra Pradesh Court Fees and Suits Valuation Act, 1956 — Section 20, 6, 6(3)
Civil Procedure Code, 1908 (CPC) — Order 1 Rule 1, Order 1 Rule 3, Order 2 Rule 3, Order 7 Rule 1, 9
Court fees Act, 1870 — Section 17
Railways Act, 1989 — Section 77

**Citation :** AIR 2008 AP 42 : (2008) 1 ALD 718 : (2008) 1 ALT 573

**Hon'ble Judges :** A. Gopal Reddy, J

**Bench :** Single Bench

**Advocate :** O. Manohar Reddy, for the Appellant; None, for the Respondent

**Final Decision :** Dismissed

# Judgement

A. Gopal Reddy, J.—Plaintiff is in revision against the order passed by the Principal Senior Civil Judge, Tirupati in an unnumbered suit (R.R. No. 2598 of 2007) filed for recovery of Rs. 6.00 lakhs on the basis of ten promissory notes executed by defendant-respondent, whereby the learned Principal Senior Civil Judge ordered for payment of Court fee separately on each of the ten promissory notes as per Section 6(3)(a) of A.P. Court Fees and Suits Valuation Act granting time till 17.7.2007.

2. The petitioner herein filed a suit before the Principal Senior Civil Judge, Tirupathi for recovery of a sum of Rs. 6.00 lakhs based on ten promissory notes executed by the defendant herein, out of which, two promissory notes are executed for Rs. 1.00 lakh each and the remaining eight promissory notes are executed for Rs. 50,000/- each, alleging that the said amounts are borrowed by the defendant on the same day i.e. 27.10.2004 executing separate promissory notes. In paragraph 3 of the plaint it is stated that the defendant borrowed a sum of Rs. 6.00 lakhs on 27.2.2004 for business purpose from the plaintiff and

executed two promissory notes of Rs. 1.00 lakh each and eight promissory notes of Rs.50,000/- each on the same day itself for the amounts borrowed according to his convenience for the taxation purposes and promising to repay the same with interest at 24% per annum and delivered all the ten promissory notes after receiving the consideration. According to the petitioner, since the entire transaction is a single transaction happened and at one time on the same day and the cause of action being the same, he paid a court fee of Rs. 11,826/- u/s 20 of A.P. Court Fee and Suits Valuation Act (for short ''the Act''). It appears that the Office of the lower Court took an objection that each promissory note constitute separate cause of action and, therefore, each one has to be valued separately and separate court fee has to be paid as per Section 6(3)(a) of the Act on each of the promissory notes.

3. When the office objection was placed before the lower Court, the learned Counsel appearing for the plaintiff placing reliance on the decision of this Court in Seth Purshothamadas v. Pannalal 1963 An.W.R. 289 contended that since the cause action is one and the same i.e. borrowal of Rs. 6.00 lakhs is one and the same and on the same day the execution of the promissory notes cannot be treated as different transactions and therefore the court fees paid on the total value of the promissory notes is correct.

4. On a consideration of Section 6(3)(a) of the Act and the decision relied upon by the plaintiff, the Court below held that the promissory notes filed by the plaintiff show that separate cheques were issued for each promissory note except the two promissory notes for Rs. 1.00 each as security, drawn on two different banks. If the transaction was single there was no need to issue separate cheques as surety for the amounts mentioned under each promissory note and a single cheque for Rs. 6.00 lakhs would have been issued as surety though separate promissory notes were executed. The learned Judge held that the promissory notes show distinct and separate causes of action regarding borrowal and regarding surety furnished to each of them and, therefore, the plaintiff cannot contend that the transaction is single transaction and the plaintiff has to pay court fees separately on each promissory note as per Section 6(3)(a) of the Act. Distinguishing the decision of this Court in Seth Purshothamdas case 1963 An.W.R. 289, the learned Judge held that the facts in the said case are different from the facts of the present case and, therefore, the same has no application. Before we examine the question that arises for consideration, Section 6(3)(a) of the act, which is relevant for our purpose, may be quoted:

Where a suit is based on two or more distinct and different causes of action and separate relief''s are sought in respect thereof, either alternatively or cumulatively the plaint shall be chargeable with the aggregate amount of the fees that would be chargeable on the plaints under this Act if separate suits were instituted in respect of several causes of action.

5. In Seth Purshothamdas case 1963 An.W.R. 289 on which reliance has been placed by the learned Counsel for the petitioner, five mortgage deeds were

 

executed by the defendants therein in favour of the plaintiffs in pursuance of an agreement entered into at the time of execution of a surety bond. Placing reliance on the Full Bench decision of the Madras High Court in In Re: D. Lakshminarayana Chettiar and Another, the Registry took an objection that separate court fee should be paid on each of the mortgages as if it is a distinct cause of action. A learned Single Judge of this Court held that all the mortgage deeds executed by the defendants in favour of the plaintiffs pursuant to the agreement entered into at the time of the execution of the surety bond, all constitute but one cause of action, and that the plaintiffs, even if they wanted, could not institute separate suits on the five mortgage deeds. It may be noted that though the Full Bench decision of the Madras High Court in In Re: D. Lakshminarayana Chettiar and Another, was relied upon contending that separate court fees has to be paid on each of the mortgage deeds, the learned Judge held that the said decision has no application as the entire discussion in that case was, whether the test of separate causes of action is invariably to be applied for ascertaining if a suit comprised of a distinct subject, though it may not be an unerring test, and it was answered in the affirmative. Holding so, it was held that the objection raised by the Office that court fee should be paid on each of the mortgages as if it is a distinct cause of action, placing reliance on the Full Bench decision in In Re: D. Lakshminarayana Chettiar and Another, , is unsustainable and accordingly negatived the office objection and held that court fee already paid is sufficient.

6. The learned Counsel for the petitioner, in support of her contention, placed reliance on the following decisions:

E.I. Railway Co. v. Ahmadi Khan 1924 Patna 596; Hakim Mehr Din v. Swami Kultilak Ram AIR 1943 Lah 275 (FB); Kapil Charan Nayak Vs. Gitanjali and Others, and Mohammad Khalil Khan and Ors. v. Mahbub Ali Mian and Ors. 1948 (2) Mad L.J. 318.

7. In Ahmadi Khan''s case 1924 Patna 596 the suit was filed for recovery of a sum of money for losses in respect of 38 consignments of mangoes of different dates, after service of notice to the defendant u/s 77 of Indian Railways Act claiming a consolidated sum of money in respect of the losses sustained by him by reason of the negligence of the Railway administration. A Court fee of Rs.130 was paid by him on the consolidated sum of Rs. 20,214.60 claimed by him. The Patna High Court after taking into consideration of the notice served u/s 77 held that ''cause of action'' means every fact which it would be necessary for the plaintiff to prove, if traversed in order to support his right to the judgment of the Court. It was further observed that the question whether a suit does or does not embrace two or more distinct causes of action must be decided on the terms of the plaint. On considering the pleadings of plaint, it was held that it is impossible to hold that the suit embraced 38 distinct causes of action to maintain separate suits after the notice. In my opinion, the said decision is misplaced to the facts of the case on hand.

 

8. In the case of Hakim Mehr Din AIR (30) 1943 Lahore 275 (FB) where the suit was filed on the basis of two mortgage bonds treating entire mortgage debt as one consolidated sum, the Full Bench of Lahore High Court held that the two mortgage bonds did not constitute two distinct subjects within the purview of Section 17 of the Court fees Act (1870). Whereas, the Calcutta High Court in the case of Kapil CharanAIR (38) 1951 Cal 509while dealing with a case where a suit was filed for declaration of title to several properties purchased on the basis of different documents, held that the suit is not one for distinct relief and that the plaintiff is entitled to institute the present suit with a single court fee stamp and not required to pay separate court fee for each of the 65 documents as ordered by the Subordinate Judge. Similarly, the judgment of Privy Council in Mohammed Khalil Khan 1948 (2) Mad L.J. 318 was with regard to the cause of action, which is also misplaced to the facts of the case on hand.

9. The decision of this Court in Seth Purshothamdas 1963 An.W.R. 289 on whcih much reliance is placed by the learned Counsel for the petitioner, does not support the contention of the petitioner wherein this Court considered the effect of Section 6(3)(a) of the Andhra Court-fees and Suits Valuation Act, 1956, in a suit filed for recovery of amount assured under six life insurance policies. This Court after considering the Full Bench judgment of Madras High Court in In Re: D. Lakshminarayana Chettiar and Another, , held that the suit as such instituted pertains to relief under several, distinct policies of insurance, which gave rise to distinct and separate causes of action are combined for the simple reason that such a procedure is permitted under Order I Rule 3 CPC and that Section 6 Clause (3) of the Andhra Court Fees and Suits valuation Act applies to the case and that each claim made under each of those polices has to be separately valued and Court-fee paid thereon separately and that it is not permissible for the plaintiff to pay the Court-fee on the aggregate amount claimed in the plaint. Chief Justice Subba Rao (as he then was) speaking for the Bench in In Re: D. Lakshminarayana Chettiar and Another, while considering Section 17 of the Court Fees Act held that:

The first part of Section 17 is a pointer, which reads as under:

Where a suit embraces two or more distinct subjects, the plaint or memorandum of appeal shall be chargeable with the aggregate amount of the fees to which the plaints or memoranda of appeal in suits embracing separately each of such subjects would be liable under this Act. Nothing in the former part of this section shall be deemed to affect the power conferred by the Code of Civil Procedure, Section 9.

The section consists of the main part and a saving clause. A simple illustration makes the meaning of the section clear. A files a suit against B on two promissory notes executed by B in A''s favour. The value of the relief in respect of the first promissory note is taken and the court-fee on such value is calculated. Then the value of the relief on the second promissory note is taken and the court-fee payable on such value is arrived at. Thereafter the said two sums are added and the total amount is the court-fee payable on the plaint. The plaint comprises two subjects in respect whereof two plaints could have been presented. The aggregate value of the court-fee payable on each of the plaints is the court-fee payable on the consolidated plaint. The second clause saves the power of the Court in appropriate circumstances to direct the plaintiff to split up the plaint into its component parts and to have separate trials.

The aforesaid simple illustration brings out the meaning of the section; but it does not completely explain it in its application to complicated situations. That would depend upon the meaning attributable to the crucial words "distinct subjects" in the section and the consideration of the internal indications afforded by the section itself.

10. Then their Lordships proceeded to consider the different causes of action in the light of Order VII Rule 1 of Civil Procedure Code. After considering the procedure contemplated under Order I Rule 1, Order II Rule 3, and the facts and circumstances of the case and considering the various Judgments of the different High Courts, answered the reference as under:

"Distinct subjects" in Section 17 of the Court Fees Act mean distinct causes of action in respect of which separate suits should be filed but for the enabling provisions allowing them to be clubbed in one suit. The distinctness or identity of the cause of action is the only criterion for the applicability of the section.

11. After the reference is answered and when the matter is posted before the Bench, the learned Judge held that "when the suit comprised distinct causes of action namely; that the applicant''s father executed two gift deeds in favour of their mother and the mother sold them under sale deeds in various dates to defendants and when the plaintiffs asked for a declaration that the alienations in favour of the different defendants were not binding on them, the plaintiffs have a separate cause of action against each of the alienees in respect of the property alienated in his favour and each declaration relates to a "distinct subject" within the meaning of Section 17 of the Court Fees Act and the appellants therefore, should pay court-fee in respect of each declaration, and the total amount of Court fee payable by them on that basis would be Rs. 1,400/-" The illustration referred to by the learned Judge, as extracted above, while interpreting Section 17 of the Court Fees Act before answering the reference, squarely covers the issue involved in the case on hand.

12. It is now fairly well settled that all the judgments rendered by the Madras High Court prior to formation of Andhra High Court, will have binding precedent. Therefore, when the plaintiff filed the consolidated suit for recovery of the amounts covered by 10 promissory notes which he could file separate suits for each promissory notes, since the execution of promissory notes is a distinct cause of action for the amounts borrowed covered by the promissory notes, he has to value the relief in respect of first promissory note and Court fee on such value shall be calculated. Like that, he has to calculate the Court fee on each

promissory notes separately payable and consolidated court fee has to be paid and should be payable on aggregate amount of fee chargeable on each promissory note. Hence, the order passed by the lower Court do not suffer from any manifest illegality warranting interference by this Court.

13. The Civil Revision Petition is accordingly dismissed. However, the time granted to the petitioner for payment of Court fee is extended till 15th November, 2007. No costs.

 