
(1935) 05 CAL CK 0034
In the Calcutta High Court

Haru Bepari and Others

APPELLANT

Vs

Roy Kshitish Bhusan Roy Bahadur and Others

RESPONDENT

Date of Decision : 21-05-1935

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 1
Court Fees Act, 1870 — Section 17

Citation : AIR 1935 Cal 573 : 158 Ind. Cas. 780

Hon'ble Judges : Khundkar, J;Henderson, J

Bench : Full Bench

Judgement

Khundkar, J.—This is a Rule to show cause why an appellate order of the learned District Judge of Pabna and Bogra, dated 22nd February 1934, disposing of an objection to the sufficiency of court-fees in connexion with the plaint in a suit, and the memorandum of the appeal, which arose out of that suit, should not be set aside. The suit was instituted by 73 persons who averred that they held each a separate jama as in Sch. "Ka" of the plaint, consisting of 73 items, but that certain lands of each of these jamas as in Sch. "Kha", also containing 73 items, were included within the subject matter of a suit under Bengal Act 5 of 1920, which was decreed on the basis of a compromise entered into by certain persons whom the 73 plaintiffs interpleaded as defendants in their suit. It was alleged that by virtue of the compromise decree to which the plaintiffs were not parties the defendants were trying to oust the plaintiffs from their holdings, and they prayed for the following reliefs:

(1) A declaration that the plaintiffs had raiyati jote interest in Sch. "Kha" lands as appertaining to Sch. "Ka" jotes; (2) a declaration that the compromise decree was illegal, ultra vires, void, and inoperative against the plaintiffs.

2. The court-fee paid on the plaint was Rs. 20 as for a suit for a declaration without consequential relief under Article 17(iii), Schedule 2, Court-fees Act, and on the Memorandum of Appeal also a court-fees of Rs. 20 only was paid. The District Judge held, that as the plaintiffs were in reality praying for 73 different

sets of declarations, the suit embraced 73 subjects within the meaning of Section 17, Court-fees Act, and 73 separate amounts of Rs. 20 should have been paid both in respect of the plaint and of the memorandum of appeal. It has been argued that "subject" means distinct kinds of relief and that therefore Section 17 does not apply to the present case. Distinct reliefs are certainly subjects within the meaning of Section 17, but we cannot agree that the connotation of the word "subject" is co-extensive with that of the expression "kind of relief." No authorities have been cited to show that a suit in which one kind of relief only is asked for cannot be a suit embracing more than one subject within the meaning of Section 17.

3. In the alternative, it has been submitted that the word "subject" in Section 17 means cause of action, and that in so far as the joinder of so many plaintiffs is permissible by the operation of Order 1, Rule 1, Civil P. C, the suit is based on one cause of action only. It seems to us that one infirmity of this argument is the assumption, that the conditions which Order 1, Rule 1 requires to be fulfilled, amount in their totality to the elements which constitute one cause of action, and that Order 1, Rule 1 excludes by its force the joinder of plaintiffs in a suit based on more causes of action than one. The advocate for the petitioner cited *Haramony Dassi v. Hari Churn* (1895) 22 Cal 833. That decision was concerned with the construction of S, 26 of the Code of 1882 (now Order 1, Rule 1) and the passage relied upon at p. 840 is as follows:

Following the ordinary canon of construction that a clause in a statute should be construed, so as to give some meaning to every part of it, and bearing in mind that the expression "cause of action" has not been defined anywhere in the Civil Procedure Code, except indirectly for the purposes of Section 17, and that so far as that section goes it is used in a restricted as well as in some respects in an elastic sense, we think the proper way to construe Section 26, so as to give the words in the alternative

some meaning, is to hold that the expression "cause of action" occurring in it is used, not in its comprehensive, but in its limited sense, so as to include the facts constituting the infringement of the right, but not necessarily also those constituting the right itself, so that the qualification implied in the words in respect of the same cause of action" will be satisfied if the facts which constitute the infringement of the right of the several plaintiffs are the same, though the facts constituting the right upon which they base their claim to that relief in the alternative may not be the same. Section 26 of the Code of 1882 was thus expressed:

All persons may be joined as plaintiffs in whom the right to any relief claimed is alleged to exist whether jointly severally or in the alternative in respect of the same cause of action.

4. Even under the Code of 1882 the decisions of the meaning of the expression "cause of action" were not uniform: see *Nusserwanji Merwanji v. Gordon* (1881)

6 Bom 266 at p. 275; Ramanuja v. Devanayaka (1885) 8 Mad 361; Salima Bibi v. Shaikh Mahomed (1896) 18 All 131; Rahim Bakhsh v. Amireen Bibi (1896) 18 All 219 and Rajjo Kaur v. Debi Dial (1896) 18 All 432. Order 1, Rule 1 is much wider and the words "in respect of the same cause of action" do not occur. In Ramendra Nath v. Brojendra Nath 1918 Cal 858 it was held that O, 1, Rule 1 applies to questions of joinder of parties as well as causes of action. Hence it follows that the conditions which render the joinder of several plaintiffs permissible under Order 1, Rule 1, do not necessarily imply that there can be only one cause of action in the suit in which the several plaintiffs join. The Advocate for the petitioner contended however that the present suit was based on one cause of action alone, in so far as the plaintiffs were seeking for no more than the removal of the cloud upon their titles occasioned by the compromise decree.

5. In support of this branch of the argument reliance was placed upon a number of authorities now to be considered, Kishore Lal v. Sharut Chunder (1882) 8 Cal 593. That was a decision of a Full Bench of this Court, in which it was held, that in a suit for possession and mesne profits, the claim was to be taken as one entire claim for the purpose of determining the stamp fee u/s 17, Court-fees Act. It was pointed out in this judgment, that Section 10, Civil P.C. 1859, enacted, that for the purposes of Sections 8 and 9, which provided for causes of action, a claim for possession and mesne profits should be deemed to be distinct causes of action. This decision has been uniformly followed, inasmuch as for the purpose of Section 17, Court-fees Act, a claim for possession and mesne profits has come to be regarded as one entire claim. Reference under the Court-fees Act (1894) 16 All 401.-This decision adopted the considerations set forth in Kishore Lal v. Sharut Chunder (1882) 8 Cal 593. It also, upon a consideration of certain earlier cases of the Allahabad Court, viz., Chameli Rani v. Ram Das (1876) 1 All 552 Mulchand v. Shib Charan Lal (1879) 2 All 676 and Chedi Lal v. Kirath Chand (1879) 2 All 682 formulated the view that two or more distinct subjects in Section 17, Court-fees Act, are equivalent to "two or more distinct causes of action," that Section 17, refers to "multifarious suits," and that it is applicable only to suits in which two or more distinct causes of action have been joined.

6. With great respect to the Judge who decided that case, we are not in agreement with this proposition. Nauratan Lal v. Stephenson, 1922 Pat 359.-In this case it was held that in a suit for recovery of possession of immovable property, for mesne profits, and for malikana the plaintiff was not liable to pay a court-fee assessed separately on each claim, but was entitled to add them together and regard them as one claim for the purpose of assessment. In this judgment it was observed, that one possible view as to the meaning of the word "subject" in Section 17, Court-fees Act, was that it related back to Section 7 of the Act, where the various subjects of suits are divided under various heads. This observation is entitled to respect in view of the difficulties which so constantly present themselves when a precise definition of the word "subject" is sought. The decision followed however Mulchand v. Shib Charan Lal (1879) 2 All 676 in which

"subject" was interpreted as meaning "cause of action." In so far as it did so, we are constrained as already indicated to respectfully dissent.

7. *Durga Prasad v. Purandar Singh* (1904) 27 All 186.-This case related to a suit for pre-emption of shares in two villages, included along with others, in one sale, to vendees who were strangers to the co-pracenary body of co-sharers of the village. The court-fee paid by the plaintiffs was calculated on the basis of the aggregate amount of the Government revenue assessable on the two villages, and the question was, whether they were not liable to pay court-fees calculated separately on the basis of the revenue of each village. It was held that the plaintiffs had only one cause of action made up of their right to pre-emption and of the same by the other co-sharers to persons who were strangers. This decision followed the view with which we are not in agreement in the earlier Allahabad cases that "distinct" subject in Section 17 must be taken to mean "distinct cause of action."

8. *Limatunnessa Khatun v. Govinda Nath* (1903) 30 Cal 788, was a case in which the only prayer made was for a declaration that a certain decree was ineffectual and inoperative against the plaintiff. It was held that all that the plaintiff was asking for a declaratory decree without any consequential relief. In our judgment these cases have no application. It is contended that the plaintiffs are asking for in the present case, is a declaration which will dissipate the cloud cast upon their titles by the compromise decree from which alone their cause of action flows. Now looking at the plaint, it is apparent that there are at least two prayers, viz. (1) for a declaration that each plaintiff has a raiyati jote interest in one out of 73 plots of land, (2) for a declaration that the compromise decree is void and inoperative. Each of the plaintiffs in this suit would be under the necessity of establishing a prima facie title in respect of one plot, and those who failed would not be entitled to the declaration prayed for. There are in fact 73 plaintiffs praying that 73 titles should be recognized and that the cloud upon them be removed. The fact necessary to establish a particular title are peculiar to the particular plaintiff who alleges it. There are indeed 73 groups of facts to be established, each group forming a distinct and separate subject of the claim advanced.

9. In *Chethru Mahton v. Muhammad Karim* 1919 Pat 479 where 78 tenants sued in respect of 78 separate holdings for declaration that the rents recorded in the khatian were higher than those actually payable, and that 59 rent decrees obtained by the landlord were contrary to law, it was held that there were 78 separate causes of action in respect of the holdings, and 59 separate causes of action in respect of the decrees, and that a court-fee of Rs. 10 was payable in respect of each.

10. *Lachman Sahu v. Abdul Karim* 1919 Pat 468 arose out of a suit by a landlord against 25 sets of tenants for a declaration that their lands were held under the batai system, and that they were wrongly recorded as paying cash rent and here it was held following *Chethru Mahton v. Muhammad Karim* 1919 Pat 479 that the

rent of each holding was distinct subject within Section 17, Court-fees Act and that a court-fee of Rs. 10 was payable in respect of each of the 25 holdings. *Moti Singh v. Kaunsilla* (1894) 16 All 308 was a Full Bench decision, which arose out of a suit instituted by a person whose claim to certain property attached in execution of a decree, under the provisions of Section 278, Civil P.C. 1882, had been disallowed. The decree-holders and the judgment-debtors were both impleaded as defendants in the suit. It was held that inasmuch as the plaintiff was asking for a declaration of his title to the property as against the judgment-debtor, and also for a declaration in denial of the decree-holder's right to bring that property to sale in execution of a decree, there were two substantial declarations asked for in respect of each of which court-fee was payable. At p. 311 of the report there occurs the observation:

The rights of the two separate sets of defendants would have to be adjudicated upon, and declarations if the plaintiff's prayer was acceded to, given in denial of the right of each defendant

11. *Daiva Chilaya Pillai v. Ponnathal* (1895) 18 Mad 459 was a case in which plaintiffs sued as reversionary heirs for a declaration that certain alienations, 42 in number, made by the defendant who was the widow of the last male holder, were invalid as against them. It was held that each alienation was a separate subject within the meaning of Section 17, Court-fees Act. In the words of the judgment:

Each alienation creates a distinct right vesting in the alienee, and therefore when the reversioner seeks for a declaration that a number of distinct alienations are invalid, he must be held to be suing for that number of declarations.

12. The last case to which reference need be made is *In re Parameswara Pattar* 1930 Mad 833. Here again the question which arose was whether, in a suit for possession of immovable property and for mesne profits, the court-fees should be paid on the aggregate value of both the reliefs, or on the value of each of the reliefs separately, and it was held following *Kishore Lal v. Sharut Chunder* (1882) 8 Cal 593 that the two claims should be treated as one entire claim. As to the question whether separate causes of action would invariably be the criterion for treating the claim based on them as distinct subjects within the meaning of Section 17, Court-fees Act, Sundaram Chetty, J., observed very appositely that this does not appear to have been taken as the deciding test in *Kishore Lal v. Sharut Chunder* (1882) 8 Cal 593. On the meaning of the word "subject" in Section 17, Court-fees Act, his Lordship observed that its meaning was somewhat obscure, and that it had been held in some decisions to be not capable of precise definition, and that any doubt or obscurity as to its precise meaning should be cleared by the legislature in due course.

13. With these observations we are in respectful agreement. The expression "cause of action" may be capable of definition. Indeed, definitions have been often formulated in the past, although the terms of one definition have not

always been identical with those of another, the elements varying to suit the particular exigency which evoked the attempt. Be that as it may, we are of opinion that the word "subject" in Section 17, Court-fees Act, covers a multitude of matters which cannot be confined within a precise formula. We find it difficult to see how distinct causes of action can ever be one subject within the meaning of Section 17. But the converse does not necessarily hold good, for it may well be that a suit based on one cause of action alone may nevertheless embrace more than one subject within the meaning of Section 17, Court-fees Act. In the result we are of opinion that in the suit and in the appeal to which it gave rise there were in effect prayers for 73 declarations affecting 73 separate titles, and that therefore the proceedings embraced 73 distinct subjects within the meaning of Section 17, Court-fees Act.

Henderson, J.

14. I agree and have little to add. There can be no question that apart from the provisions of Order 1, Rule 1, Civil P. C, each of the plaintiffs would have been compelled to institute a separate suit on a properly stamped plaint. Order 1, Rule 1 merely provides for procedure and has nothing to do with the payment of court-fees and the point for our decision has to be determined with reference to Section 17, Court-fees Act. Although it is impossible to give any precise or complete definition of the word "subject" as used in that section, I have no doubt that in the present case each of the tenancies claimed by the various plaintiffs is a distinct subject and that the decision of the learned District Judge was correct. In one matter the order is not very clear; but it was not disputed by the learned Government Pleader that the petitioner cannot be made jointly and severally liable to pay all the court-fees: any plaintiff who pays the fees is necessary for the determination of his own claim will be entitled to prosecute his appeal. The result is that this Rule must be discharged with costs to the Government Pleader. We assess the hearing-fee at two gold mohurs. The petitioners will be given one month from the arrival of the record in the lower Court to pay the court fees. The appeal of any petitioner who complies with this order will be heard.