

(1935) 11 MAD CK 0039
In the Madras High Court
In Re: R.R. Gopalachari

Date of Decision : 21-11-1935

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 46 Rule 1

Citation : 162 Ind. Cas. 175 : (1936) 43 LW 362 : (1936) 70 MLJ 308

Hon'ble Judges : Beasley, C.J.;Stodart, J

Bench : Division Bench

Judgement

Beasley, C.J.—This is a reference made by the District Munsif of Madura Town under Order. XLVI, Rule 1, Civil Procedure Code, and raises a question of court-fees in relation to the plaints in two Small Cause suits there (S.C.S. No. 2508 of 1934 and S.C.S. No. 2509 of 1934). In each of the two cases the plaintiff claims a sum of money as being due from the defendant in respect of dealings, those dealings being the sale and delivery of goods which the plaintiffs in the suits claim have not been paid for In the particulars filed with the plaints the various dealings are set out and also the amounts due in respect of them. In S.C.S. No. 2508 of 1934, there is in addition a claim in respect of the following matters.

Rs. a. p. 6-2-33. Debit to Vakil's clerk for sending lawyer's notice ... 0 6 0
25-2-33 Debit Re. 1 as fees for sending lawyer's notice through Vakil P.S. Nagasamy Ayyar regis- tration charges for the same.0-5-3 out of Re 1-5-3 in all deduct- ing 0-6-0 paid to the Vakil's clerk on the 25th, balance ... 0 15 3
_____ making a total ... 1 5 3

2. In S.C.S. No. 2509 of 1934 similar particulars are set out with regard to the dealings between the parties in respect of the goods delivered and at the end of the particulars there is the following item:

Rs. a. p. 10-10-34. Debit Vakil's fees, re- gistration charges, etc., for the Lawyer's notice sent registered on 27-8-1934 ... 1 1 0 3. In each case the plaintiff paid court-fee on the aggregate of all the items found in the account but objection was taken to this practice, by the court-fee examiner during his inspection, his objection being that the item regarding costs of the Lawyer's notice, etc., should be valued as a separate and distinct subject from the other

items relating only to the dealings. This question arises u/s 17 of the Court Fees Act which reads as follows:

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 plaints or memoranda of appeal in suits embracing separately each of such subjects would be liable under this Act.

4. The Court Fee Examiner was of the opinion that the items relating to the dealings, that is to say, goods sold and delivered should be separately valued and that the items relating to the costs of sending notice of demand should also be separately valued. We are told that if this had been done, an additional court-fee of eight annas would be due from the plaintiff in each case. The question here is whether the item in respect of the cost of sending the notice of demand is a "distinct subject" within the meaning of Section 17 of the Court Fees Act. The matter is, in our view, entirely free from authority unless the decision of the Full Bench in *Pidikiti Kotayya and Others Vs. Anne Radhakrishnamurthi and Others*, is of assistance to us here. That was a case of a suit claiming possession of immovable property and past mesne profits and it was there held that the court-fee is payable on the aggregate value of both the reliefs and that the claims for possession of land and for mesne profits are not "distinct subject" u/s 17 of the Court Fees Act. As Sundaram Chetty, J., says in his judgment there is no definition of the word "subject" in the Act and the Full Bench, therefore, did not think it wise to attempt to define it in that case and expressed the opinion that it should be guided by the long course of practice. Undoubtedly this has been the practice in the City Civil Court, the Small Cause Court and appears to be the practice also in the Mofussil. No doubt, if there was no inter-relationship between the claim for the cost of sending the notice of demand and the dealings, the claim in the present cases to have the suit valued as if the claim related to one subject only would be untenable. But it is impossible to say that there is not some inter-relationship between the item in respect of the charges for sending the notices and the dealings. Although it may not be strictly necessary for a notice of demand before suit to be sent in which the particulars of the claim are set out, such is usually given and sometimes there might be some just cause for complaint by the defendant in a suit where a suit to be launched against him without any previous demand and without any particulars of this account between himself and the plaintiff being given to him before hand. It seems to us that there is some inter-relationship between these items; and furthermore, we do not think it would be wise in this case to attempt to define what "distinct subject" u/s 17 of the Court Fees Act are. It is sufficient for us to say that, in our view, these two items can be treated as so linked up together as not to be separate and distinct subjects but one subject. Furthermore, this is of course a taxing Act and, if there is any ambiguity about it, it should be construed in favour of the subject. We accordingly answer the reference by saying that the valuation placed upon the two suits was correct and that there were here not two "distinct subjects" such as is intended by Section 17 of the Court Fees Act. No costs have

been incurred by the respondent whose case has been very ably argued by Mr. V. Meenakshisundararn as amicus curiae to whom we are very much indebted; so that, we make no order as to costs here. The reference is returned to the District Munsif? Court.