

(1931) 04 MAD CK 0006
In the Madras High Court

M.M.P. Ramaswami Chettiar

APPELLANT

Vs

A.S.P.L.V.R. Ramaswami Chettiar and Another

RESPONDENT

Date of Decision : 09-04-1931

Acts Referred:

Court Fees Act, 1870 — Section 17
Limitation Act, 1908 — Article 60

Citation : AIR 1931 Mad 712 : (1931) 34 LW 378 : (1931) 61 MLJ 680

Hon'ble Judges : Jackson, J

Bench : Division Bench

Judgement

Jackson, J.—Petitioner seeks to revise the order of the Subordinate Judge of Devakotta in O.S. No. 97 of 1927 in regard to the Court-fee

payable upon the suit.

2. The plaintiff sets forth that his mother's brothers and his father's sister's husband managed moneys for him in the capacity of trustees. There are

three separate deposits amounting to Rs. 1,38,778-10-3. A demand for the aggregate amount was made on 29th March, 1927, which is given as

the date when the cause of action arose.

3. The question is whether Court-fee should be paid upon each deposit or upon the aggregate amount; or, in the terms of Section 17, Court Fees

Act, whether the suit embraces distinct subjects.

4. The petitioner contends that the demand of 29th March, 1927, gathers all his claims into one cause of action, and therefore the subjects are not

distinct. This would turn upon whether the demand was an essential part of the cause of action, and petitioner frankly concedes that it is not. He

could have sued for any of the deposits without previous demand, and the plaint

would itself have been part of the cause of action in any of such suits. Nor, if he had sued for only one of these deposits, would he be precluded from suing in his own good time for the others. Order 2, Rule 2,

Civil Procedure Code, would have no application for the precise reason that the notice of demand is not an essential part of the cause of action.

5. The petitioner relies upon Article 60 of the Indian Limitation Act which is an indirect way of approaching the question and hardly leads to its

proper solution. Even assuming that time would run from the date of the demand, that would not make the subjects any the less distinct. It is here

perhaps that a subtle distinction may be found between ""subjects"" in Section 17 and alleged causes of action.

6. E.I. Railway Co. Vs. Ahmadi Khan, , upon which the petitioner relies, only brings out the distinction, for in that case, undoubtedly, the demand

was essential, and without the demand there could be no cause of action. As observed by Das, J.:

The notice (of demand) is one of these facts which it was necessary for the plaintiff to prove in order to support his right to the judgment of the

Court.

7. In the case under consideration the proof of demand is not necessary for obtaining judgment. So although the plaintiff has elected to treat the

demand as the cause of action, and thereby has a plausible plea that all sums mentioned in that demand are one indistinguishable subject, yet

nevertheless, because the demand is not really essential to the cause of action, the subjects must be regarded independently of that demand, and

are, as a matter of fact, distinct. Thus in Parshotam Lal v. Lachman Das ILR (1887) 9 A. 252 it is held that a suit upon three hundis payable on

maturity is a suit embracing three distinct subjects. If in that case the plaintiff had made a demand it would none the less have been a suit embracing

three distinct subjects. Contrariwise as held in Hiralal Motichand v. Ganpat Lahanu ILR (1921) 46 B. 142 a suit on a balance of account is a suit

embracing one subject.

8. For the above reasons the order of the Lower Court is confirmed and the petition is dismissed with costs. Petitioner must pay the additional

Court-fee on the re-opening of the Lower Court after the summer recess, 1931.