
(1996) 08 AHC CK 0097
In the Allahabad High Court
Case No : Civil Revision No. 247 of 1996

Nitangali Prints and Others

APPELLANT

Vs

State Bank of India and Others

RESPONDENT

Date of Decision : 07-08-1996

Acts Referred:

Court Fees Act, 1870 — Section 17
Court Fees Act, 1870 — Section 17
Court Fees Act, 1870 — Section 17

Citation : (1998) 94 CompCas 904

Hon'ble Judges : S.K. Phaujdar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

S.K. Phaujdar, J.—At the instance of the plaintiff-opposite party a suit was filed before the Civil Judge, Farrukhabad, vide Original Suit No. 509 of 1987, against the present revisionists and one Gyan Prakash. It was stated that the first two revisionists had taken a loan from the State Bank of India and executed necessary documents therefore. It was further stated that defendants Nos. 3 to 5 (revisionists Nos. 2 and 4 and Gyan Prakash) stood guarantors for the repayment of the said loan by the first two defendants and to secure their guarantee they executed an equitable mortgage of their house in favour of the plaintiff-bank. A total sum of rupees two lakhs odd was due to the plaintiff towards the aforesaid loan and the plaintiff valued the suit for that sum and made a prayer for recovery of the sum from the defendants as also for a mortgage decree against defendants Nos. 3 to 5 and in case of their failure to pay a prayer was made for auction sale of the mortgaged property.

2. The defendants appeared in the court below, contested the suit and took up a plea that the suit was undervalued and proper court fee was not paid because two different reliefs were there in the plaint and the suit should have been valued and court fee should have been paid on the aggregate valuation of the two

reliefs. A preliminary issue was framed by the court below as issue No. 8 touching the above point and the issue was decided against the defendants holding that the suit was properly valued.

3. This order dated July 2, 1996, is impugned in the present revision application. It was contended by learned counsel that the prayers in paragraphs 12A and 12B of the plaint were distinct and so the court fee should have been paid on the aggregate valuation of the two reliefs. Reliance was placed on Section 17 of the Court Fees Act, 1870. Under this section, if in any suit in which two or more separate and distinct causes of action are joined the plaint shall be chargeable with the aggregate amount of the fees with which the plaints would be chargeable if separate suits were instituted in respect of each such cause of action. Clause 2 in this Section spoke of alternative reliefs and it is stated here that when more reliefs than one based on the same cause of action are sought in the alternative the fee shall be paid according to the value of the relief in respect of which the largest fee is payable.

4. A reading of the plaint indicates that the suit was basically for recovery of the sum under loan together with interest. The plaint makes it clear that in the same transaction in which the loan was granted to defendants Nos. 1 and 2, the other defendants stood guarantors for defendants Nos. 1 and 2, and their property was given in equitable mortgage as a security for the loan. The learned court below rightly came to the conclusion that it was in fact only one relief that was sought for and the suit could not have been valued once for realisation of the loan amount from defendants Nos. 1 and 2 and once more for realisation of the sum from the guarantors. It is the established law that if the principal debtors pay the sum under demand then the guarantors will not be asked to pay again. The suit is not based on different causes of action but is for a single one and the reliefs are also not different as the sole relief is to realise the sum due. The approach of the court below cannot be stated to be a wrong one and the decision of issue No. 8 as arrived at by the court below cannot be interfered with.

5. The revision application stands dismissed.