(1935) 11 CAL CK 0002

In the Calcutta High Court

Case No : Appeal from Original Decree No. 281 of 1933

Radharanee Dassya APPELLANT

Vs

Kshetra Mohan Chakravorty RESPONDENT

Date of Decision : 20-11-1935

Acts Referred:

Citation : (1935) 11 CAL CK 0002

Judgement

D.N. Mitter, J.—Preliminary to the hearing of this appeal, the question of the amount of court-fees properly payable on the plaint of the suit out of which this appeal arises has to be determined. Under sec. 12 of the Court Fees Act, whenever a suit comes before a Court of appeal, reference or revision, if such Court considers that that question has been wrongly decided, to the detriment of the revenue, it shall require the party by whom such fee has been paid to pay so much additional fee as would have been payable, had the question been rightly decided. The question arises in the following circumstances. The Respondent brought a suit to recover money due on four mortgage bonds by which different properties were hypothecated in favour of the mortgagees. The amount claimed on the first mortgage bond was Rs. 15.000, that claimed on the second bond was Rs. 36,000, that on the third bond was Rs. 20,000 and that on the fourth bond was Rs. 64,632-8as., the aggregate being Rs. 1,35,632-8-0. The Plaintiff contended in the Court below and successfully contended that he was only liable to pay court-fees to the extent of Rs. 2,775 on the aggregate amount of Rs. 1,35,632-8 as. It was contended on behalf of the Government in the Court below that court-fees were payable separately on the sums claimed in respect of each of the bonds and in that view court-fees on the first mortgage bond would be Rs. 975, that on the second bond Rs. 1,680, that on the third bond Rs. 1,200 and that on the fourth bond Rs. 2,212-8as., the aggregate being Rs. 6,067-8 as. This contention did not prevail with the Judge of the trial Court who agreed with the Plaintiff''s contention and accepted the sum of Rs. 2,775 to be the value of the court-fee stamps payable on the plaint in this suit. There having been an appeal on behalf of the Defendants with regard to a part of the claim, namely, with regard to the amount claimed on the basis of the 4th mortgage bond, a question has been raised on behalf of the Government whether the proper court-fees payable in the suit v/ere Rs. 6,067-8 as., having regard to the provisions of sec. 17 of the Court Fees Act which are in these terms:--

When 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.

2. By the mortgages in suit separate properties were hypothecated. Three of these mortgages were executed on the same day in favour of the same mortgage and the fourth mortgage was executed on a different date. The suit embraces claims on the basis of four mortgages which were distinct subjects within the meaning of sec. 17. It has been held in numerous cases, and in our opinion rightly held, that the words " distinct subjects" refer to " distinct causes of action." That has been taken to be the true meaning in a series of cases in this Court, the last of which being Haru Bepari v. Kshitish Bhusan Roy 39 C.W.N. 1146 (1935). Mr. Amarendra Nath Bose, who appears for the Plaintiff-Respondent in this appeal, con-cedes that the expression " distinct subjects" means "distinct causes of action." The words " cause of action " have always been held to mean a bundie of facts on which the Plaintiffs'' right to sue is founded. There can be no question that the transactions covered by the different mortgages depend on different sets of facts, although some of them were executed almost contemporaneously. In our view there is no doubt that sec. 17 applies, as the suit relates to four distinct causes of action.

3. An argument, however, has been advanced with reference to the amended provisions of sec. 67A of the Transfer of Property Act which makes it obligatory on a mortgagee holding several mortgages, to sue on all the mortgages in respect of which the mortgage money has become due. It is argued, assuming sec. 67A applies to the present case, that there is no option in the Plaintiff to bring a suit on one of the four mortgages if all of them have become due at the date of the suit, having regard to sec. 67A of the Transfer Act and as such sec. 17 must be taken to be controlled by sec. 67A of the Transfer of Property Act. We are unable to accede to this contention. All that sec. 67A, the terms of which we will refer to presently, lays down is that in the case of a mortgagee holding four mortgages in respect of which all the mortgage money has become due, he must bring one suit. It is really applying the principle of consolidation to the mortgagee''s suit. The terms of sec. 67 are to the following effect:--

A mortgagee who holds two or more mortgages executed by the same mortgager in respect of each of which he has a right to obtain the same kind of decree u/s 67 and who sues to obtain such decree on any one of the mortgages, shall in the absence of a contract to the contrary, be bound to sue on all the mortgages in respect of which the mortgage money has become due.

4. This enactment really sets at rest the conflict of opinion that existed between the different High Courts in India with regard to the principle of consolidation of suits in respect of several mortgages held by the same mortgagee. This section is not intended to affect in any way the provisions of sec. 17 of the Court Fees Act, for if it was so intended, there was nothing to prevent the legislature from so enacting. We have, therefore, to turn to the question of the proper construction of sec. 17 of the Court Fees Act. As we have already indicated, on a proper reading of that section, it is clear that where, as in the present case, the mortgagee institutes a suit embracing four distinct subjects, he must pay court-fees separately on each mortgage. In support of the contention that section as 67A makes it obligatory on the Plaintiff mortgagee to institute one suit on all the four mortgages, sec. 17 of the Court Fees Act has to be read, not independently of the said provision but along with it, reliance has been placed on certain observations made in a decision of the High Court at Patna. Those observations are to be found in the case of Nawaba, Waziri Begum v. Sashi Bhusan Rai ILR 2 Pat. 874 at p. 878 (1923). That was a case where a person sued on two mortgages hypothecating certain properties and it was held by Jwala Prasad and Ross, JJ., that court-fee is leviable not on the aggregate of the sum claimed on two bonds, but on the sum claimed on each bond separately. The actual decision is against the contention of the Plaintiff-Respondent. But the Respondent relies on the passage at 878 which gives the reason on which the decision of the Patna High Court is founded. The learned Judges observed thus:--

The question is simply as to whether there was any bar to the mortgagee (Plaintiff in the present case) in bringing his action separately. There was no such bar, and, therefore, there were two causes of action arising out of two transactions which were not merged into one and remained as distinct as before. Therefore the two mortgages in the suit were two different subjects. Hence the snit to en-force the two mortgages is covered by sec. 17 of the Court Fees Act.

5. The actual decision is against the Appellant and although we do not agree with the reasoning on which this decision is founded, it seems to us that the view which we have taken is the correct view and receives support from the decision of the Madras High Court which is not quoted in any authorised report but which is published in A. I. R. 1935 Mad., at page 262. That decision is in the case of Pallachi Town Bank, Limited v. A. S. Krishna Ayyar 68 Mad. L. J. 46 (1931). In that case the precise question which is now before us was before the learned Judge in the Madras Court. There the question also turned on the effect of sec. 67A of the Transfer of Property Act on sec. 17 of the Court Fees Act, and Mr. Justice Venkatasubba Rao pointed out rightly:--

The very basis of sec. 67A is that there is more than one subject. The mortgages used on may be different from one another in their terms and incidents; even the causes of action may have accrued on different dates. All that sec. 67A enacts is that the mortgagee is bound to suo on all the mortgages in respect of which the mortgage money has by the time of the suit become due.

6. Even in that case before the Madras High Court this was the view taken notwithstanding the fact that the two mortgages covered the same properties. The Plaintiff in the present case was, therefore, liable to pay the sum of Rs. 6,067-8 as. and he having paid Rs. 2,775 in the Court below is bound to pay a further court-fee of Rs. 3,292-8. After the decision of the appeal we shall indicate the mode by which this sum is to be realized from the Plaintiff. It is right that we should notice the contention raised by Mr. Bose that sec. 12 has no application to the present case, because the whole decree has not been appealed against. The language of sec. 12 (ii) in so far as is material is,

Whenever any such suit comes before a Court of appeal, reference or revision,....

7. It is argued that as the Defendants have lodged their appeal with regard to a portion of the claim in the suit, sec. 12 (ii) in terms does not apply. We are unable to so restrict the meaning of the words " any such suit " and hold that they refer to the entire suit and not to a part of the suit. That would be putting a narrow construction on the provisions of cl. (ii) of sec. 12 and this contention must be overruled.

Patterson, J.

I agree.

