
(1949) 07 MAD CK 0083
In the Madras High Court

Thangasami Pillai by Agent Ganapathi Nadar

APPELLANT

Vs

Dhanabagymmal and Others

RESPONDENT

Date of Decision : 29-07-1949

Acts Referred:

Court Fees Act, 1870 — Section 17, 7(v)

Citation : (1949) 2 MLJ 565

Hon'ble Judges : Krishnaswami Nayudu, J

Bench : Division Bench

Judgement

Krishnaswami Nayudu, J.—The point for decision in this revision petition is whether the Court-fee paid by the plaintiff is correct. The plaintiff is the petitioner. The suit is for recovery of possession and the prayer in the plaint is that the plaintiff be put in possession of the " undermentioned " properties through process of Court and free from the obstruction of the respondents. The suit is in respect of the properties of one Srinivasa Pillai. The plaintiff is the brother's son and the first defendant is the widow. On 26th August, 1911, Srinivasa Pillai executed a will, whereby he created a trust of his properties and, during the minority of the plaintiff, appointed the first defendant and the mother of the plaintiff as joint testamentary guardians to manage the estate and to perform the trust. In execution of two money decrees obtained by the nth defendant against the first defendant one in respect of a personal debt due by her and the other in respect of a debt due under a promissory note executed by the deceased Srinivasa Pillai, the properties, being item 5 of B schedule of the plaint, were brought to sale, and the nth defendant purchased them on 4th June, 1930. It is stated in the plaint that the properties attached were trust properties, in which the first defendant had no interest capable of transfer voluntarily or involuntarily, that the sale is void and the same cannot confer any title much less legal title on the 12th defendant to be validly conveyed by him to others. Item 5 of B schedule is a property of the extent of 3 acres and 16 cents. The 11th defendant is now in possession of the middle portion of one acre and 6 cents. Defendants 15 to 17 are in possession of the northern portion of the extent of 36

cents; and defendants 18 to 20 are in possession of the southern portion of the extent of one acre and 74 cents. These defendants acquired their respective portions from the 11th defendant who is the Court-auction purchaser of the entire property. The plaintiff values the suit u/s 7(v) of the Court-Fees Act and has paid Court-fee on the consolidated market value of the property. On the question of Court-fee, the learned Subordinate Judge held that the Court-fee paid was not the proper Court-fee payable on the plaint and that Section 17 of the Court-Fees Act would be applicable to the suit and that separate Court-fee should be paid on the market value of the separate portions in the possession of the different defendants since they were, according to the learned Subordinate Judge, distinct subjects u/s 17 of the Court-Fees Act. Section 17 of the Court-Fees Act, is 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 the plaints or memoranda of appeal in suits embracing separately each of such subjects would be liable under this Act.

The learned Subordinate Judge has held that the cause of action arising against each of these defendants is separate and independent, that the relief for possession also is separate and independent as against them, that by making a single prayer for possession against all defendants, as is done in the plaint, the plaintiff cannot avoid necessity of payment of Court-fee on the market value on these items which constitute defined shares in the subject matter and in possession of each of these defendants, and therefore that Section 17 would be applicable to the case.

2. It is contended on behalf of the petitioner that the view taken by the lower Court is wrong and that, though the suit may embrace more than one cause of action, it does not embrace two or more distinct subjects within the meaning of Section 17 of the Court-Fees Act. In support of this contention, the learned advocate for the petitioner relies on the decision in *Mahant Ramnarain Gir v. Gauri Shanker Lal* ILR (1928) Pat. 402. That was a case where the plaintiff brought a suit for recovery of possession of a land consisting of various plots in separate possession of the defendants and also for mesne profits on the ground that it was a zerait land and that the entries in the record showing it as the defendants' was ineffectual, null and void, on the allegation that the defendants have in collusion with one another caused wrong entries to be made in the survey records and had dispossessed him. There it was held that all the defendants having been joined together by a common link of conspiracy and collusion, the Court-fee payable was on the total valuation of the land and mesne profits, and not u/s 17 of the Court-Fees Act, which contemplates two or more distinct subjects embraced in one suit. In that decision, the learned Judge observed thus:

The defendants might set up different claims, but the nature of the suit is not to be determined upon the pleas taken by the defendants but upon the frame and

scope and the intention and object of the plaintiff. The plaint and plaint alone will determine it and the court-fee has to be paid upon the determination and scope of it ... u/s 17 of the Court-Fees Act, there must be two or more distinct subjects. In the present case, there is only one subject, though consisting of a large area and a number of plots. They constitute one subject and that is the claim of the plaintiff that all these lands constitute his zeraith.

In *Re: Parameswara Pattar*, the question as to the application of Section 17 of the Court-fees Act was considered by a Full Bench of the Madras High Court. It was a suit for possession of Immovable property and mesne profits and the question was whether the Court-fee should be paid on the aggregate value of both the reliefs, or on the value of each of the reliefs separately. Though the claim for possession and the claim for mesne profits were separate causes of action, it was held that they were not necessarily distinct subjects u/s 17 of the Court-Fees Act. It was held:

The word " subjects " in this section is somewhat obscure in its meaning, and has been held in some decisions to be not capable of precise definition. Ordinarily, the right or title to the land is the basis for the claim for possession of the land, as also for mesne profits, and it cannot therefore be deemed that the two claims are so disconnected, without any inter-relation, as to form distinct subjects u/s 17 of the aforesaid Act.

The learned advocate for the petitioner also cited the judgment of Ananthakrishna Aiyar, J., in *The Rajah of Vizianagram Vs. The Government of Kerala*, . That was a suit filed by a landholder against the ryots of a village u/s 193, Madras Estates Land Act. There were several ryots in possession of different plots of land and the common ground on which enhancement of rent was asked for was u/s 193 of the Madras Estates Land Act. It was held by the learned Judge that having regard to the decision of the Full Bench in *In Re: Parameswara Pattar*, it was no sufficient answer that the landholder could file separate suits against each of the ryots, and that the causes of action in respect of each ryot was different. The suit being one for enhancement of rent on common grounds, it could not be said that the suit embraced " distinct subjects." Applying the principle laid down in the Full Bench decision in *In Re: Parameswara Pattar*, the test whether a suit embraces two or more distinct subjects does not depend upon the cause of action on which the plaint is based, but depends upon the basis of the claim and the right under which the plaintiff claims. The basis of the claim in this suit is that the sale in favour of the 11th defendant in execution of a decree that was passed against the first defendant is null and void, the sale being of properties which are trust properties. That was the only ground on which the plaint is based and if the plaintiff could succeed in establishing that the property was trust property and that the sale was null and void the plaintiff has to succeed in the case. The fact that portions of the said property had been subsequently alienated by the 11th defendant would not change the position. If once the plaintiff establishes that the sale in favour of the 11th defendant is null

and void, the plaintiff is entitled to get possession from all the defendants. The learned Government Pleader to whom notice was given in this petition, concedes that if the case of the plaintiff is that the Court sale is void and the persons in possession are trespassers, in a suit for possession no separate Court-fee need be paid, but Court-fee on the aggregate value of the properties would be sufficient. But he contends that the cause of action is different in each case, the basis of the claim is not only the void nature of the sale in favour of the 11th defendant since the plaintiff has also stated in the plaint that the defendants in possession of the respective portions are not bona fide transferees for valuable consideration from an ostensible owner. I do not think that the additional allegation made in the plaint, namely, that they were not bona fide transferees for value from an ostensible owner, would change the character of the suit or alter the basis on which the plaintiff sues for recovery of possession of the properties. The plaintiff succeeds if he establishes that the sale in favour of the 11th defendant is valid, unless the defendants can allege and prove that they are bona fide transferees for value from an ostensible owner. That is a defence which is open to the defendants and it is not the basis of the claim of the plaintiff in the suit. The learned advocate for the petitioner has also brought to my notice the decision of Bell, J., in *Sirigini Venkatarama Mohandas being minor, by mother and next friend Sirigini Suganavathi and Another Vs. Kamini Kondiah and Others*, . In that case, a person who became the owner of certain properties by reason of a settlement deed executed by his father, on entering upon them found various lessees in occupation of different parts under tenancies created by the settler. Some of the tenants refused or neglected to attorn to the new owner who thereupon filed a single suit against them for ejectment and mesne profits till date of delivery of possession. It was held that the suit in the circumstances comprised a number of "" subjects " as required by Section 17 of the Court-Fees Act and the plaint would be chargeable with the aggregate amount of the fees to which the plaints in suits embracing separately each of such subjects would be liable. It was observed that the plaintiff was seeking in that suit, not the same relief, but similar reliefs against the various defendants. The learned Judge observed in that case that there appeared to be no legal inter-connection between the defendants, that they had nothing in common with each other and they were joined merely as a matter of convenience, that as against each defendant the plaintiff would have to prove a similar but a separate case, and that the amount claimed was different against each defendant. But the facts of this case are different; and, further, the Full Bench decision in *In Re: Parameswara Pattar*, and the decision in *The Rajah of Vizianagram Vs. The Government of Kerala*, were not brought to the notice of the learned Judge in *Sirigini Venkatarama Mohandas being minor, by mother and next friend Sirigini Suganavathi and Another Vs. Kamini Kondiah and Others*, . On the allegations in the plaint and taking the substance of the plaint also into consideration I am of opinion that the suit does not embrace distinct subjects but only one subject and as such Section 17 of the Court-fees Act would not be made applicable to a suit of this nature. However, even if there is any doubt in the matter, being a taxing

statute, the subject is entitled to the benefit of doubt arising on the meaning of the statute. I therefore find that the lower Court erred in holding that Section 17 of the Court-Fees Act would be applicable to this case. The order of the lower Court is set aside and this revision petition is allowed. The petitioner will get his costs from the party respondent.