

(1949) 07 MAD CK 0029

In the Madras High Court

Case No : Civil Revision Petition No. 327 of 1949

Thangaswami Pillai by Agent, Ganapathi Nadar

APPELLANT

Vs

Dhanabagymmal and Others

RESPONDENT

Date of Decision : 29-07-1949

Acts Referred:

Citation : AIR 1950 Mad 155

Hon'ble Judges : Krishnaswami Nayudu, J

Bench : Single Bench

Advocate : M.S. Venkatarama Iyar, for the Appellant; Government Pleader and K. Srinivasan, for the Respondent

Final Decision : Allowed

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 defendant 1 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 defendant 1 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 defendant 11 against defendant 1 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 Schedule B of the plaint, were brought to sale, and defendant 11 purchased them on 4th Juno 1930. It is stated in the plaint that

the properties attached were trust properties, in which defendant 1 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 defendant 11 to be validly conveyed by him to others. Item 5 of schedule B is a

property of the extent of 3 acres and 16 cents. Defendant 12 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 defendant 11 who is the court auction purchaser of the

entire property. The plaintiff values the suit u/s 7(v), 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, 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, Court-

fees Act. Section 17, 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 plaint or the 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, Court fees Act. In support of this contention, the learned

advocate for the petitioner relies on the decision in Ram Narain Gir Vs. Gauri Shanker Lal and Others, . 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 entry 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. 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 determines it and the court-fee-has to be paid upon the

determination and scope of it.... Under Section. 17, 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 zerait.

In Re Paramaswara Pattar, 54 Mad. 1: AIR 1930 Mad. 833, the question as to the application of Section 17, 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, 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 di-connected, 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, Madras Estates Land Act.

It was held by the learned Judge that having regard to the decision of the Full Bench in *Re Parameswaran Pattar*, 54 Mad. 1: AIR 1930 Mad.

833, it was no sufficient answer that the landholder could file separate suits against each of the ryots and that the cause 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*, 54 Mad. 1: A I.R. 1930 Mad. 833, the test whether a suit

embraces two or more distinct subjects does not depend upon the cause of action on which 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 defendant 11, in execution of a

decree that was passed against defendant 1, 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 defendant 11, would not change

the position. If once the plaintiff establishes that the sale in favour of defendant 11 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 defendant 11, 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 defendant 11, is void, 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 Venkatarama Mohandas v. Kamini Kondiah, 1945 2 M. L. J. 57 : A. I. R. 1946 Mad. 162. 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 settlor. Some of the tenants refused or neglected to attorn to the 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, Court-fees Act and the plaint would be chargeable with the aggregate amount of the fees to which the plaintiffs 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 interconnection 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*, 54 Mad. 1: A. I. R. 1930 Mad. 833 and the decision in the *Rajah of Vizianagaram Vs. 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, 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, 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.