

(1934) 11 MAD CK 0016
In the Madras High Court

The Pollachi Town Bank, Limited by Secretary, T.K.
Muthuswami Chettiar

APPELLANT

Vs

A.S. Krishna Aiyar and Others

RESPONDENT

Date of Decision : 01-11-1934

Acts Referred:

Court Fees Act, 1870 — Section 17

Citation : AIR 1935 Mad 262(1) : (1935) 41 LW 327 : (1935) 68 MLJ 316

Hon'ble Judges : Venkatasubba Rao, J

Bench : Division Bench

Judgement

Venkatasubba Rao, J.—The lower Court's view is wrong and cannot be upheld. The fact that there were five promissory notes, is irrelevant

for, the two mortgages sued on were granted for the amounts due under those notes. The lower Court forgets that the suit was not filed on the

basis of the promissory notes, but to enforce the mortgages. That being so, in the words of Section 17 of the Court Fees Act, the suit embraces

not five but two distinct subjects. It is on this footing that the court-fee payable on the plaint should be computed. The Secretary of State for India

in Council v. Ayyaswami Chettiar (1932) 65 M.L.J. 252.

2. Nor is the view contended for by the petitioner correct. What is argued is that as u/s 67-A of the Transfer of Property Act a person is bound to

include in the same suit different mortgages held by him, it follows from this, that the suit relates to one subject only and does not comprise as many

subjects as there are mortgages. I am not prepared to accept this contention. The principle of consolidation applied by Section 67-A of the

Transfer of Property Act has no bearing upon the interpretation of Section 17 of the Court Fees Act. The very basis of Section 67-A is that there

is more than one subject. The mortgages sued 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 Section 67-A enacts is, that the mortgagee is bound to sue on all the mortgages in respect of which the mortgage money has by the time of the suit become due. In this case the two mortgages are over the same set of properties, but I may point out, though I am not called on to construe Section 67-A, that Mulla Commenting on that section observes:

If the mortgagee holds different mortgages of different properties or successive mortgages of the same property from the same mortgagor, he must enforce all or none, unless there is a contract to the contrary.

3. If this interpretation of Section 67-A be correct (I am not to be supposed as accepting it), the petitioner's argument would amount to this: even where there are different mortgages over different properties, the suit must be deemed to relate to one subject only for the purposes of the Court-

Fees Act. This could hardly have been intended.

4. For the payment of the additional court-fees, 3 weeks are allowed from the date of the receipt by the lower Court of this order. I make no order as to costs.