
(1956) 03 AP CK 0038
In the Andhra Pradesh High Court
Case No : C.R.P. No. 1440 of 1954

Veluri Lakshminarasimha Venkatramayya and Another	APPELLANT
Vs	
Dommeti Nagaratnam and Another	RESPONDENT

Date of Decision : 02-03-1956

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 43

Citation : (1956) 03 AP CK 0038

Hon'ble Judges : Subba Rao, C.J

Bench : Single Bench

Advocate : T. Anantha Babu and M. Kondala Rao, for the Appellant; M. Seshachalapathi, Government Pleader, for the Respondent

Judgement

Subba Rao, C.J.—The revision raises a question of court-fee. The facts are simple. The first Defendant, who was a tenant under the Plaintiffs in respect of the plaint schedule property executed a fresh lease for himself and on behalf of the other Defendants for the year 1953-54, for a rental of Rs. 7,000 payable to the Plaintiffs by the end of February, 1954. Under the lease deed, the Defendants also agreed to vacate the land and deliver possession to the Plaintiffs by 31st March 1954. The Plaintiffs issued notice to the Defendants on 31st December, 1953, requesting them to pay rent before the due date and vacate the land by 31st March, 1954. The Plaintiffs alleged in the plaint that notwithstanding the notice, the Defendants did not vacate the suit land nor did they pay them the rent due under the document. On these allegations, they filed the suit for evicting the Defendants and for recovery of the rent due to them. The cause of action, in para. 12 was described thus:

Cause of action for the suit arose on 1st " July, 1953, the date of the suit kadapa, on 28-6-1954, the last due date for payment of rent, on 31st March, 1954, the date on which the Defendants are bound to vacate and deliver possession to the Plaintiffs, in Bommuru within the jurisdiction of this Hon'ble Court where the plaint schedule lands are situated.

2. The suit was valued thus: This being a suit for ejectment of tenants holding over, the amount of yearly rent accrued in the year prior to suit u/s 1 (xi) (CO of the Court-fees Act ... Rs. 7,000 0 0 Rent due on 28th February, 1954 Rs. 7,000 0 0 Interest thereon from 28th February, 1954 to 6th July, 1954 at Re. 0-7-4 % per mensem ... Rs. 133 11 0 Rs. 14,133

3. On the total amount, ad valorem court-fee of Rs. 914-15-0 was Paid under Article 1, Sch. I of the Court-fees Act..... On an objection raised by the office, the learned District Judge held that the claim for arrears was distinct from the claim for possession and therefore, a court-fee should be paid as on distinct subjects. The Plaintiff preferred this revision against that order

4. Section 17 of the Court-fees Act, which governs the situation, reads:

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 plaintiffs or memoranda of appeal in suits embracing separately each of such subjects would be liable under this Act.

5. In view of the sharp cleavage of judicial opinion on the construction of the said provision, the question was decided by a Full Bench of the Madras High Court in In Re: D. Lakshminarayana Chettiar and Another, (A). The Full Bench held that distinct subjects in Section 17 of the Court-fees Act mean distinct causes of action in respect of which separate suits should be filed but for the enabling provisions allowing them to be clubbed in one suit and that the distinctness or identity of the cause of action is the only criterion for the application of the section. After the question referred to the Full Bench was answered, the Division Bench had to consider the incidental question in regard to the meaning the words "distinct causes of action". The Division Bench observed at P. 323 (of ILR): (p. 604 of AIR):

It would be seen from the aforesaid decisions that, though under Act, VIII of 1859 this Court was inclined to take the view that unity of title was synonymous with cause of action, the later decision clearly laid down that cause of action was something more than unity of title and that would include not only the right of the Plaintiff but also the facts disclosing the infringements of that right.

6. If the tests laid down by the Full Bench and by the Division Bench are applied to the present case, I have no doubt that the plaint comprises two distinct causes of action and, therefore, two "distinct subjects" within the meaning of Section 17 of the Court-fees Act. The Division Bench defined "cause of action" in the decision at p. 310 (of ILR): (at p. 602 of AIR) thus: "It is not necessary to multiply cases, for it is now fairly well-settled that "cause of action" means the bundle of essential facts which it is necessary for the Plaintiff to prove before he can "succeed in the suit. Or to put it differently it refers "to the media upon which the Court arrives at a conclusion in his favour.

7. The facts necessary to be established for recovery of rent are (i) the terms of

the lease deed, (ii) the rent has become due and (iii) it " not paid. The bundle of facts necessary to be established for recovery of possession are (i) the terms of the lease, (ii) the expiry of the term of the lease, (iii) notice to quit and (iv) refusal on the part of the Defendant to deliver possession. Though there is some overlapping, the essential facts necessary to seek the different reliefs are different. Indeed, the Plaintiffs also conceived the plaint only on that basis and stated that the cause of action for recovery of rent is the kadapa and the last due date for payment of rent and for possession was the date on which the Defendants are bound to vacate and deliver possession. Having regard to the aforesaid Full Bench decision which is binding on me. I must hold that the plaint comprises two distinct subjects.

8. A decision of a Division Bench of the Madras High Court in *Subraya Chetti v. Rathna-velu Chetti*, ILR 32 Mad 330 (B), brings out in bold relief the distinction between the two causes of action, one for possession and the other for rent though they were clubbed together in one suit. There the lessor filed a suit for recovery of possession of the house from his tenant and obtained decree. Thereafter, he filed another suit for arrears of rent due under the lease. It was contended that the suit was barred by" Section 43 of the Code of Civil Procedure, then in force. The learned Judges in dissenting that contention observed at p. 332 as follows:

It is clear that the causes of action in both the suits are not" the same. The cause of action for any portion of the rent is complete when that part of the rent is due and is unpaid; the cause of action for recovery of the property does not arise until the tenancy is determined, the one is founded on the obligation to pay for the occupation of the premises, the other on an obligation to with- ii draw from occupation.

9. I respectfully agree with the above observations.

10. Learned Counsel for the Petitioners con- I f tends that the earlier; decision of the Full Bench in *In Re: Parameswara Pattar*, , is still good law and there is no distinction on principle between a suit for possession and mesne profits and that for possession and rent. The said Full Bench decision was considered by the consequent Full Bench in *In Re: D. Lakshminarayana Chettiar and Another*, , and the Full Bench observed at P. 301 (of ILR): (at p. 598 of AIR) thus:

It may be noticed at the outset that the Respondent in that case was not represented by any counsel and the learned Judges had not the advantage of the assistance of counsel for the party supporting the contrary view. Nonetheless the judgment therein, being that of a Full Bench, deserves all respect. If that judgment had in explicit terms defined the words "distinct subjects" in a manner different from that which finds favour with me, I would have certainly followed It and would not have attempted to express a conflicting opinion, particularly after so many years since that judgment was delivered. In my view, the learned Judges did not lay down in the, judgment & principle of universal application.

11. Then I extracted the relevant passages in the judgment and proceeded to observe: Though in the first passage, the learned Judges were inclined to hold that the words "distinct subjects" are wider in scope than the words "cause of action", they expressly abstained from "expressing their final opinion on the question. After pointing out the two conflicting views on the meaning of the said expression, they were content to base the judgment on the long continued practice and on the preponderance of authority. The judgment therefore, is only an authority for the position that the reliefs for possession and mesne profits are not "distinct subjects" within the meaning of Section 17.

12. The later Full Bench had expressly confined the operation of the earlier Full Bench only to a suit for possession and mesne profits on the basis that that decision was based upon long practice. I cannot, therefore, extend the operation of the scope of that decision to a suit filed after the expiry of the tenancy for recovery of possession and for rent,

13. The order of the lower Court is, therefore, correct. The revision falls and is dismissed. No costs.