

In Re: Parameswara Pattar

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Court : Chennai

Decided On : Aug-04-1930

Reported in : AIR1930Mad833; (1930)59MLJ469

Appellant : In Re: Parameswara Pattar

Judgement :

Sundaram Chetty, J.

1. In this reference, the point arising for determination is, whether in a suit for possession of im-moveable property and mesne profits, Court-fee should be paid on the aggregate value of both the reliefs, or on the value of each of the reliefs separately. The question turns upon the applicability of Section 17 of the Court Fees Act to this case. That section says, that where a suit embraces two or more distinct subjects, Court-fee has to be paid separately on the value of each subject, and not on the aggregate value of all the reliefs.

2. The word 'subject' 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 interrelation, as to form distinct subjects, under Section 17 of the aforesaid Act.

3. The Full Bench decision, of the Calcutta High Court, in *Kishori Lal Roy v. Sharut Chunder Mozumdar* I.L.R. (1882) 8 C. 593 is a clear authority for holding that the claim for possession and the claim for mesne profits should be taken as one entire claim, for the computation of the Court-fee, and not as distinct subjects. The question has been viewed by Garth, C.J., in several aspects, and due importance has been attached to the uniform practice prevalent in the whole country in respect of this matter, which a Court of Justice ought to be slow in changing to the prejudice of the suitor, unless it sees clear and weighty reasons for so doing. With this view, we are in agreement. This decision has been followed by the Allahabad High Court in *The Reference under the Court Fees Act, 1870, Section 5* I.L.R. (1894) A. 401.

4. There seems to be no decision of this High Court directly bearing on the present question. In *Ponnammal v. Rantamirda Aiyar* I.L.R. (1914) M. 829 : 28 M.L.J. 127 the Full Bench has held that the claim for possession and the claim for mesne profits are separate causes of action, though they may arise out of one act of dispossession. But that decision is for the purpose of Order II, Rules 2 and 4 of the Code of Civil Procedure. The question remains whether separate causes of action would invariably be the criterion for treating the claims based on them as distinct subjects under Section 17 of the Court Fees Act. In the Full Bench case in *Kishori Lal Roy v. Sharut Chunder Mozumdar* I.L.R. (1882) C. 593 this does not appear to have been taken as the deciding test. In a case dealt with by the Patna High Court, it is stated that two views are possible as to the meaning of the word 'subject' in this section. One is that the word 'subject' relates back to Section 7 where the various subjects of suits are put under different heads. The other view is that the word 'subject' means 'cause of action'. *Nauratan Lal v. Wilford Joseph Stephenson* (1918) 4 Pat. L.J. 195. But, however, it was held, on the strength of the Full Bench decision in *Kishori Lal Roy v. Sharut Chunder Mozumdar* I.L.R. (1882) C. 593 that the long continued practice should not be disturbed and that Court-fee may be paid on the aggregate value of the reliefs, viz., claim for possession and claim for mesne profits. The preponderance of authority is in favour of not treating these two claims as distinct subjects under Section 17 of the Court Fees Act.

5. There being no definition of the word 'subject' in the Act, we think, we need not attempt to define it in the present case, and should only be guided by the long course of practice.

6. We think, that any doubt or obscurity as to the precise meaning of the word 'subject' in this section should be cleared by the Legislature in due course.

7. We answer this reference by stating, that in a suit for possession of immovable property and past mesne profits Court-fee is payable on the aggregate value of both the reliefs.

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