

**In Re: Gunda Narasimham**

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**Court :** Chennai

**Decided On :** Jul-03-1942

**Reported in :** AIR1942Mad744; (1942)2MLJ418

**Appellant :** In Re: Gunda Narasimham

**Judgement :**

ORDER

**Krishnaswami Ayyangar, J.**

1. The matter relates to a question of court-fee. The plaintiff who is the appellant purchased the property in suit under a sale-deed in his favour, dated 26th June, 1936. The seller was the 1st defendant and he is the 1st respondent here; and the sale-deed was executed pursuant to a written agreement between the parties, dated 22nd June, 1936. On the next day namely 23rd June, 1936, the 1st defendant along with certain others entered into a similar written agreement with respondents 5 and 6 to sell the same land to them. This agreement also was followed by a regular sale-deed, dated 30th June, 1936. The appellant founding himself on the earlier agreement and the sale-deed in his favour instituted the suit out of which this second appeal has arisen for possession of the property sold to him and in the alternative for the recovery of the consideration money paid by him. He valued the suit at Rs. 955 made up of Rs. 925 representing the value of the property, and Rs. 30, the mesne profits claimed and paid court-fee on that amount. The same figure of Rs. 955 is the value of the alternative relief and it is made up of

Rs. 925 the amount of the consideration for the sale-deed, and Rs. 30 for the incidental expenses. He failed in the first Court and in the appeal which he preferred, he paid the same court-fee. Having again failed, he has preferred the present second appeal.

2. The question is whether his claim embraces two distinct subjects within the meaning of Section 17 of the Court-Fees Act. It is perfectly plain that he is seeking in the first instance to obtain a single relief by way of possession with which he will be completely satisfied. But if for some reason or other, the Court is unable to give him this relief, he prays in the alternative for the return of the consideration amount paid by him. It appears to me that the question of what is the proper court-fee in such a case is really governed by the principle of the decision reported in *Rangaswamy Reddiar v. Venkataperumal Reddiar* : (1938)1MLJ139 . In that case as in the present there was only one cause of action, on which two reliefs were claimed. A settlement deed had been executed for a consideration of Rs. 22,000. The first relief was for setting aside the deed of settlement. The second and alternative relief was for the recovery of the consideration on the footing that though the deed might be good, the consideration money had not been paid. In other words, one of the reliefs was claimed on the footing of the validity of the deed and the other on the footing of its invalidity. The Court held that a single court-fee based on a valuation of Rs. 22,000 would be sufficient for both the reliefs, as they did not constitute two distinct subject-matters.

3. An earlier decision by a Bench of this Court in *Neelakandhan v. Ananthakrishna Aiyar* : (1906)16MLJ462 . was also referred to. At page 64 the following observations occur:

The phrase 'two or more distinct subjects' in Section 17 may not admit of precise definition applicable to all cases, and it may be that where reliefs are claimed in the alternative with reference to the same cause of action, Section 17 would not govern the case.

Although the decision in the particular case was that the alternative claims were distinct matters within the meaning of Section 17 it was due to different considerations from those present in this case. I am clearly of opinion that the

present case does not fall under Section 17 of the Court-Fees Act and one single court-fee based on the valuation of the second appeal at Rs. 955 is all that can be levied in the present case.

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