

Rajah of Vizianagaram Vs. Government Represented by the Govt. Pleader

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Court : Chennai

Decided On : Mar-10-1932

Reported in : AIR1932Mad667

Appellant : Rajah of Vizianagaram

Respondent : Government Represented by the Govt. Pleader

Judgement :

Anantakrishna Ayyar, J.

1. These revision petitions raise the question as regards the proper court-fee payable in a suit filed by a landholder against the raiyats Under Section 193, Madras Estates Land Act, for enhancement of rent. Each revision petition relates to a suit for enhancement of rent against the raiyats of a particular village, and each of the seven revision petitions relates to each of the seven villages. The grounds for enhancement alleged in the plaints are the same. The suits having been dismissed, appeals were preferred by the landholder, and the question arose whether Section 17, Court-fees Act, applied to the case, and whether the court-fee payable in respect of the appeal was the court-fee payable on the total of the rents of the immovable property to which the suit relates, payable for the year next before the date of presenting the plaint [Section 7(11)(b)], Court-fees Act, or whether the court-fee payable was the aggregate of the court-fees separately payable in respect of the rent of the holding of each particular raiyat calculated in accordance with the provisions of Section 7(11)(b), Court-fees Act. The learned District Judge held that though the practice with all the Divisional Officers of the district and in that District Court was to accept a court-fee paid on the aggregate annual income sought to be enhanced, yet, as I understand his order, having regard to the fact that each individual raiyat has to pay his own individual rent, that Under Section 98 a suit instituted Under Section 193 may in certain circumstances be split up into separate suits for being tried separately, and that it was undeniable that separate causes of action constitute separate subjects within the meaning of Section 17, Court-fees Act, the objection raised by the court-fees examiners was correct, and he directed the landholder--appellant--to pay the excess court-fee calculated separately in respect of rent payable in relation to each holding included in the suit. The landholder has preferred these revision petitions.

2. The question turns on the construction of Section 17, Court-fees. Act, which says:

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

3. Then the section proceeds to enact that;

nothing in the section shall be deemed to affect the power conferred by the Code of Civil Procedure, Section 9,

i.e., Section 9, Act 8 of 1859, corresponding to Order 1, Rule 2 of the present Code of Civil Procedure, which

enables the Court to order separate trials if that be found to be the more convenient course to follow. It should be noticed that the words used in Section 17 are 'two or more distinct subjects' and not 'two or more distinct causes of action.' The distinction is important, because in *Ponnammal v. Ramamurda Ayyar* [1915] 38 Mad. 829, a Full Bench of this Court held that a claim for possession of land and a claim for mesne profits constitute separate causes of action, and separate suits are maintainable in respect of the same, and that the bar Under Order 2, Rule 2, Civil P.C., would not apply to such cases. That was a ruling on the Civil Procedure Code, Order 2, Rule 2.

4. Recently, a Full Bench of this Court in *Parameswara Pattar, In re A.I.R. 1930 Mad. 833* had to consider the meaning of the words 'distinct subjects' in Section 17, Court-fees Act, and, that in connexion with a suit for possession of land and mesne profits, the Full Bench held that the court-fee payable is on the aggregate value of both reliefs. The Full Bench observed at p. 2 of the report as follows:

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 of 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.

5. Later on it was observed with reference to the argument based on *Ponnammal v. Ramamurda Ayyar* [1915] 38 Mad. 829 as follows:

The question remains whether separate causes of actions would invariably be the criterion for treating the claims based on them as distinct subjects, Under Section 17, Court-fees Act. In the Full Bench case: *Kiskori Lal Roy v. Shatril Chunder Mozumdar* [1882] 8 Cal. 593, this does not appear to have been taken as the deciding test.... The preponderance of authority is in favour of not treating these two claims as 'distinct subjects' Under Section 17, Court-fees Act.

6. The Full Bench also remarked that as:

there was no definition of the word 'subject' in the Court-fees Act, one need not attempt to define it, but should only be guided by the long course of practice, and that any doubt or obscurity as to the precise meaning of the word, 'subject' in Section 17 should be cleared by the legislature in due course.

7. The learned District Judge had not the benefit of this Full Bench decision which was delivered some weeks after his orders in the present cases. Section 193 enacts that:

a suit for enhancement may be instituted against any number of raiyats collectively, provided (1) all such raiyats are raiyats of the same landholder, (2) that all the holdings in respect of which the suit is instituted are situate in the same village and (3) that the grounds for enhancement are the same.

8. Though Section 30 of the Act enables the landholder to sue for enhancement of rent on various other grounds mentioned in that section, yet in case he should propose to file a single suit Under Section 193 of the Act, he should restrict his rights so far as the suit is concerned and bring himself within the proviso to Section 193, which restricts his rights to sue for enhancement of rent in particular ways. In that case he has some advantage in the matter of court fee. In my opinion having regard to the decision of the Full Bench in *Parameswar Pattar, In re A.I.R. 1930 Mad. 833* it is not a sufficient answer in respect of the point now under consideration to say that the landholder could file separate suits against each of the raiyats of the village for enhancement and that the causes of action in respect of each raiyat are different. The question is whether the suit filed Under Section 193 embraces 'distinct subjects.' The suit is one for enhancement of rent on common grounds. It is not for enhancement of rent and for some other reliefs. It was mentioned that in the decision in *Parameswara Pattar, In re A.I.R. 1930 Mad. 833*, the appellant only was represented and that neither the respondent nor the Government were represented and that notice had not been given to the Government Pleader; but all that is no ground for my not being bound by the opinion of the Full Bench. The learned

District Judge says that the practice all along has been 'to accept a court-fee paid on the aggregate annual income sought to be enhanced.' The word 'subject' has not been defined, and it is I think not unreasonable to hold that a suit Under Section 198 does not comprise 'distinct subjects,' and that the suit of the landholder to enhance the rent upon the particular conditions mentioned in that section, which should all exist before a suit under that section could be instituted, does not embrace 'distinct subjects' within the meaning of Section 17, Court-fees Act. Even if there is any doubt on the matter, being a taxing statute, the subject is entitled to the benefit of the doubt arising on the words of the taxing statute. I do not propose to go into the several decisions cited before me which refer to causes of action and suits based on different causes of action, since after the decision of the Full Bench in Parmeswara Pattar, In re A.I.R. 1930 Mad. 833, those considerations are not conclusive in considering whether a particular suit embraces 'distinct subjects' within the meaning of Section 17, Court fees Act.

9. I may note here that under the powers conferred by Section 198, the Collector did not order separate trials as against each of the raiyats in this particular case. On the whole, I have come to the conclusion that the court-fees originally paid on the appeals was correct and that the order of the learned District Judge directing payment of additional court-fee by the appellant in the District Court should be set aside. In the peculiar circumstances, I make no orders as to costs of these revision petitions.

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