

REVISIONAL CIVIL

Before Harbans Lal, J.

D. M. KAUSHIK,—Petitioner.

versus

GRADUATE GAS SERVICE and others,—Respondents.

Civil Revision No. 1517 of 1974

November 18, 1977.

Court Fees Act (VII of 1870)—Section 17—Applicability of—Words “distinct subjects” occurring therein—Whether pre-suppose different causes of action—Claim of damages by different sets of persons arising out of the same cause of action—Section 17—Whether applicable.

Held, that a close perusal of section 17 of the Court Fees Act 1870 shows that if in a particular case two or more ‘distinct subjects’ are included, then court fees has to be assessed and paid on each subject separately and the total amount of court fee will be equivalent to the aggregate of the amount of fees for each such subject. The expression “subjects” in this provision has not been defined in the Act. However as the right to file a suit is intimately connected with the accrual of the cause of action, obviously the word “subjects” in section 17 has to be interpreted in the background of the cause of action.

In cases where the relief claimed whether in the form of a single item or separate items arises out of the same cause of action and the prayer is for an aggregate amount, section 17 of the Act cannot be applicable. “Distinct subjects” in section 17 is intimately connected with the cause of action. Where in a suit more than one causes of action are combined, section 17 will be clearly attracted but it will be stretching the language of the section a little too far to bring suits based on one cause of action within the ambit of this provision. The use of the qualifying adjective ‘distinct’ with the word ‘subjects’ in section 17 is with a purpose and is quite significant and material. Distinct subjects clearly mean such subjects which are quite independent of each other and do not arise out of or relate to the same set of facts or circumstances. The subjects arising out of the same cause of action that is, the same bundle of facts will be obviously interconnected and intimately allied. ‘Distinct subjects’ must arise out of different causes of action. Section 17 of the Act, therefore, does not apply to claims for damages by different sets of persons arising out of the same cause of action.

(Paras 3, 10 and 11).

Petition under Section 115 of Act V of 1908 for revision of the order of the Court of Shri A. B. Singh Wasu, Subordinate Judge 1st Class, Amritsar dated 10th October, 1974.

D. V. Sehgal, Advocate with Vinod Kataria, Advocate; for the Petitioners.

S. P. Jain, Advocate; for the Respondents.

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JUDGMENT

Harbans Lal, J.

(1) The controversy is centred on the true scope and ambit of section 17 of the Court Fees Act, 1870 (hereinafter called the Act). The said provision is reproduced below :

“Multifarious suits :—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.

Nothing in the former part of this section shall be deemed to affect the power conferred by the Code of Civil Procedure, section 9.”

It is conceded by the learned counsel for the petitioner that if the suit filed by the petitioner is covered by section 17, the impugned order by the learned Subordinate Judge dated October 10, 1974, has to be upheld. In order to appreciate the contention, the facts, in brief, may be adverted to.

(2) D. M. Kaushik, petitioner and his wife, respondent No. 6, Shrimati Samyukta Kaushik, his mother (now deceased) and Shrimati Ram Piari, respondent No. 7, his aunt, were living in his house at Amritsar. On May 6, 1972, respondent No. 1, supplied them a gas cylinder carried by one Ajit Ram. The said cylinder was defective and was leaking before the same was installed by Ajit Ram. As a result of mishandling by Ajit Ram, gas from the same got leaked and caught fire and set the whole room ablaze. As a consequence, the petitioner, his wife, mother and the aunt suffered serious burns and the mother Samyukta Kaushik died in the hospital as a result of those burns. The suit for damages out of which this revision petition has arisen, was filed for a total sum of Rs. 55,200. The petitioner himself claimed Rs. 22,000, his wife, respondent No. 6, claimed Rs. 10,700, and his aunt, Ram Piari, respondent No. 7, claimed Rs. 12,000. Two sons and four daughters of Samyukta Kaushik the mother of the petitioner, claimed Rs. 10,500 on account of expenses incurred for the deceased and mental injury and torture suffered by her. The suit was filed against the gas distributor, defendant No. 1, defendants Nos. 2 to 4 as partners and defendant No. 5 as the gas

manufacturer. The defendants—respondents in their written statements raised a number of preliminary objections. On the pleadings of the parties, the following issues were framed :

1. Whether the suit is properly valued for purposes of Court fee and jurisdiction ?
2. Whether the suit is bad for misjoinder of parties and causes of action ?
3. Whether the plaint does not show any cause of action ?

Issue Nos. 2 and 3 were decided in favour of the plaintiffs. On issue No. 1, it has been held that the suit is covered by section 17 of the Act inasmuch as the different plaintiffs have claimed different amounts of damages on account of the injuries sustained by some of the plaintiffs themselves as well as on account of the injuries sustained by the mother. It was held that the separate claims were "distinct subjects" as envisaged under section 17 of the Act, and arose out of different causes of action and, therefore, Court fee should have been paid at different amounts of claims as prayed for by the several plaintiffs and not on the total claim of Rs. 55,000. As a consequence, it was held that the plaint had been under valued for the purpose of Court fee and more Court fee was payable. In this revision petition, this finding and the interpretation of section 17, has been challenged.

(3) A close perusal of section 17 shows that if in a particular suit two or more "distinct subjects" are included, then Court fee has to be assessed and paid on each subject separately and the total amount of Court fee will be equivalent to the aggregate of the amount of fees for each such subject. The expression "subjects" in this provision has not been defined in this Act. However, as the right to file a suit is intimately connected with the accrual of the cause of action, obviously, the word "subjects" in section 17 has to be interpreted in the background of the cause of action. In section 7 of the Act, where principles of court fee have been laid for various categories of suits, the expression "subjects" has not been used. Therefore, the contention that section 7 and 17 should be read together will not be a proper approach to interpret the provisions of section 17.

(4) In *Naurathan Lal v. Wilford Joseph Stephenson and others* (1) a suit for the recovery of possession of land, for *malikana* as well as for mesne profits was filed. The plaintiff computed the Court fee

(1) A.I.R. 1922 Patna 359.

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on the total amount of the three items. The trial Court held that section 17 was applicable and Court fee should be paid on three items separately. The Division Bench of the Patna High Court in the said case after considering all the previous decisions held that the word "subjects" in section 17 meant "cause of action" and that the Court fee as paid by the plaintiff had been correctly assessed.

(5) In *Ramadhin Singh and others v. Baijnath Prasad Singh and others*, (2), a contrary view was taken. Therein, a suit was filed by several plaintiffs for the recovery of *malikana* from a number of defendants. According to the averments in the plaint, there was specific mention of shares amongst different plaintiffs. Plaintiffs Nos. 1 to 10 formed one set, plaintiff No. 11 formed another set by himself and plaintiffs Nos. 12 and 13 formed third set, but in the prayer clause, a total amount was claimed on behalf of all the 13 plaintiffs. The learned Single Judge held,—

"I have no doubt the Court of the first instance was correct in accepting the Court fee of Rs. 285 as sufficient."

At a subsequent stage, however, one of the co-sharers in the *malikana* who had been impleaded as a *pro forma* defendant was transposed as plaintiff No. 14, and consequently, the claim was amended and prayer was made for a larger amount. The learned Judge while holding the above view with regard to the claim of the plaintiffs Nos. 1 to 13, held that the claim of Plaintiff No. 14 was a separate and a distinct subject and, therefore, separate Court fee had to be paid. With due respect, it has not been possible for me to appreciate the reasoning adopted in the said decisions.

(6) However, in subsequent decisions in *Salahuddin Hyder Khan v. Dhanoo Lal* (3), *Kaulasan Singh v. Ramdut Singh* (4), and *Bansidhar Aggarwal and others v. Remeshwar Lal Agarwalla and others*, (5), the ratio of the decision in *Nauratan Lal's case* (supra), was agreed to.

(7) In *Bansidhar Aggarwal's case* (supra), Untwalia, J., held that where the main cause of action was partition and the plaintiff asks for displacement of title of different sets of defendants who were transferees from coparceners, the various properties in respect of which the displacement of title is sought cannot be considered as different subject-matter as envisaged under section 17.

(2) A.I.R. 1943 Patna 355.

(3) A.I.R. 1945 Patna 421.

(4) A.I.R. 1951 Patna 633.

(5) A.I.R. 1972 Patna 221.

(8) In *Haru Bepari and others v. Roy Kshitish Bhushan Roy Bahadur and others* (6), it was held that one cause of action may embrace more than one subject within the meaning of section 17 of the Act. In the said case, 73 persons had filed a suit for a declaration to the effect that each plaintiff had a raiyati—jot interest in one out of 73 plots of land, and for a declaration that certain compromise decree was void and inoperative and it was held that the prayer in the suit, in fact, was for 73 distinct declarations effecting 73 separate titles which were distinct subjects within the meaning of section 17.

(9) However, in *Kapil Charan Nayak v. Gitanjali and others* (7), *Haru Bepari's* case (supra) was distinguished. In the said case, the plaintiff had filed a suit for declaration of title with regard to several properties which had been purchased by the plaintiff on the basis of different documents. It was held:—

“We are of the opinion, however, that section 17 Court fees Act, does not apply to the present case because apart from anything else, the plaintiff has not asked for separate and distinct reliefs in respect of different causes of action. The relief asked for is only one and that is a declaration of his title in respect of the properties which are the subject-matter of the suit. It may be that the property was purchased by the plaintiff on the basis of different documents of title, but that is no part of the real relief which is asked by the plaintiff.”

In *Rajah of Vizianagaram v. Government* (8), where the landholder had filed a suit for enhancement of rent against a number of raiyats, it was held that section 17 of the Act was not applicable.

(10) On the other hand, the learned counsel for the respondents, has relied upon *Ramadhin Singh's case* (supra), *Hari Bepari's case* (supra), and *T. S. Venkatanarayana Iyer v. The State of Madras* (9). The first two decisions of the Calcutta and Patna High Courts have already been discussed by me above. In *T. S. Venkatanarayana Iyer's case*, the ratio of the aforesaid two decisions was followed.

(11) After carefully perusing the decision of the various High Courts as discussed above, I am of the opinion that in cases where the relief claimed whether in the form of a single item or separate

(6) A.I.R. 1935 Calcutta 573.

(7) A.I.R. 1951 Calcutta 509.

(8) A.I.R. 1932 Madras 667.

(9) A.I.R. 1953 Madras 888.

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items arises out of the same cause of action and the prayer is for an aggregate amount, section 17 of the Act cannot be applicable. "Distinct subjects" in section 17 is intimately connected with the cause of action. Where in a suit more than one causes of action are combined section 17 will be clearly attracted, but it will be stretching the language of the section a little too far to bring suits based on one cause of action within the ambit of this provision. The use of the qualifying adjective "distinct" with the word "subjects" in section 17 is with a purpose and is quite significant and material.

"Distinct subjects" clearly mean such subjects which are quite independent of each other and do not arise out of or relate to the same set of facts or circumstances. The subjects arising out of the same cause of action, that is, the same bundle of facts will be obviously interconnected and intimately allied. Therefore, "distinct subjects" must arise out of different causes of action. In any case, when two interpretations of a provision in a taxing statute are reasonably possible, the salutary and well established principle of interpretation is that the interpretation in favour of the subject has to be adopted and not the one in favour of the Revenue. Reference may be made to *Bhura Mal Dan Dayal v. Imperial Flour Mills Ltd. and others*, (10), wherein it was held that the Courts should put a liberal interpretation on fiscal statutes like the Court fees Act so as to lessen and not add to the burden of litigation.

(12) It has been clearly conceded by the learned counsel for the respondents that the claims of damages by the different sets of plaintiffs in the present case have arisen out of the same cause of action as much as the burn injuries were sustained by different persons resulting in the death of one woman as a result of the mishandling and leakage of the gas cylinder at the same place. Even if the different claimants had filed separate suits, they were likely to be consolidated because the same questions of law and fact would arise.

(13) In view of the aforesaid discussion, the impugned order is set aside, the revision petition is allowed with costs and it is held that section 17 of the Act was not applicable to the facts of the present case and the Court fee was correctly paid by the plaintiffs.

H.S.B.

(9) A.I.R. 1953 Madras 888.

(10) A.I.R. 1959 Punjab 629.