

## REFERENCE UNDER THE COURT-FEES ACT.

Before D. N. Mitter and Patterson J.J.

RADHA RANEE DASEE

v.

KSHETTRA MOHAN CHAKRABARTI.\*

1935  
Nov. 19, 20.

*Court-fee—Suit on several mortgage bonds—Indian Court-fees Act (VII of 1870), ss. 17, 12 ii.*

The proper court-fee to be paid on a plaint in a suit to enforce several mortgage bonds, by which different properties are hypothecated, is not on the aggregate amount of the claim but the total of the fees payable separately on the sums claimed in respect of each of the bonds.

Section 67A of the Transfer of Property Act is not intended to affect in any way the provisions of s. 17 of the Court-fees Act.

*Pollachi Town Bank, Ltd. v. A. S. Krishna Ayyar* (1) followed.

A court of appeal is competent, under s. 12 ii of the Court-fees Act, to require a party, by whom court-fee is payable, to pay the entire deficit court-fees on the plaint, even though the appeal before it is with regard to only a portion of the claim.

*Haru Bepari v. Kshiteeshbhooshan Ray* (2) and *Waziri Begum v. Shashi Bhushan Rai* (3) referred to.

COURT-FEE matter in Appeal from Original Decree on Reference by the Registrar.

The facts of the case and points raised in the arguments are sufficiently stated in the judgment.

*Amarendra Nath Basu* and *Heera Lal Ganguli* for the respondent.

*The Senior Government Pleader, Sarat Chandra Basak*, and *Bijan Kumar Mukherji* for the Secretary of State for India.

\*Reference by the Registrar, Appellate Side, dated Nov. 24, 1933, in Appeal from Original Decree, No. 281 of 1933.

(1) [1935] A. I. R. (Mad.) 262. (2) (1935) I. L. R. 63 Cal. 163.

(3) (1923) I. L. R. 2 Pat. 874.

D. N. MITTER J. Preliminary to the hearing of this appeal the question of the amount of court-fees properly payable on the plaint of the suit, out of which this appeal arises, has to be determined. Under s. 12 of the Court-fees Act, whenever a suit comes before a court of appeal, reference or revision, and such court considers that that question has been wrongly decided, to the detriment of the revenue, it shall require the party by whom such fee has been paid to pay so much additional fee as would have been payable had the question been rightly decided. The question arises in the following circumstances. The respondent brought a suit to recover money due on four mortgage bonds, by which different properties were hypothecated in favour of the mortgagees. The amount claimed on the first mortgage bond was Rs. 15,000, that claimed on the second bond was Rs. 36,000, that on the third bond was Rs. 20,000 and that on the fourth bond was Rs. 64,632-8as., the aggregate being Rs. 1,35,632-8-0. The plaintiff contended in the court below and successfully contended that he was only liable to pay court-fees to the extent of Rs. 2,775 on the aggregate amount of Rs. 1,35,632-8. It was contended on behalf of the Government in the court below that court-fees were payable separately on the sums claimed in respect of each of the bonds and in that view court-fees on the first mortgage bond would be Rs. 975 that on the second bond Rs. 1,680 that on the third bond Rs. 1,200 and that on the fourth bond Rs. 2,212-8as., the aggregate being Rs. 6,067-8as. This contention did not prevail with the judge of the trial court, who agreed with the plaintiff's contention and accepted the sum of Rs. 2,775 to be the value of the court-fee stamps payable on the plaint in this suit. There having been an appeal on behalf of the defendants with regard to a part of the claim, namely, with regard to the amount claimed on the basis of the fourth mortgage-bond, a question has been raised on

1935

*Radha Ranees*  
*Dasee*  
 v.  
*Kshettra Mohan*  
*Chakrabarti.*

1935

*Radha Rane**Dasee*

v.

*Kshettra Mohan  
Chakrabarti.**D. N. Mitter J.*

behalf of the Government whether the proper court-fees payable in the suit was Rs. 6,067-8as., having regard to the provisions of s. 17 of the Court-fees Act, which are in these terms:—

When 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 memorandum of appeal in suits embracing separately each of such subjects would be liable under this Act.

By the mortgages in suit separate properties were hypothecated. Three of these mortgages were executed on the same day in favour of the same mortgagee and the fourth mortgage was executed on a different date. The suit embraces claims on the basis of four mortgages, which were distinct subjects within the meaning of s. 17. It has been held in numerous cases, and, in our opinion, rightly held that the words "distinct subjects" refer to "distinct causes of action". That has been taken to be the true meaning in a series of cases in this Court, the last of which being *Haru Bepari v. Kshiteeshbhooshan Ray* (1). Mr. Amarendra Nath Basu, who appears for the plaintiffs respondents in this appeal, concedes that the expression "distinct subjects" mean "distinct causes of action". The words "causes of action" have always been held to mean a bundle of facts on which the plaintiffs' right to sue is founded. There can be no question that the transactions covered by the different mortgages depend on a different set of facts, although some of them were executed almost contemporaneously. In our view, there is no doubt that s. 17 applies, as the suit relates to four distinct causes of action. An argument, however, has been advanced with reference to the amended provisions of s. 67A of the Transfer of Property Act, which makes it obligatory on a mortgagee, holding several mortgages, to sue on all the mortgages in respect of which the mortgage money has become due. It is argued, assuming s. 67 applies to the present case, that there is no option in the plaintiff to bring a

suit on one of the four mortgages if all of them have become due at the date of the suit, having regard to s. 67A of the Transfer of Property Act and, as such, s. 17 must be taken to be controlled by s. 67A of the Transfer of Property Act. We are unable to accede to this contention. All that s. 67A, to the terms of which we will refer presently, lays down is that, in the case of a mortgagee holding four mortgages, in respect of all of which the mortgage money has become due, he must bring one suit. It is really applying the principle of consolidation to mortgagees' suits. The terms of s. 67A are to the following effect :—

A mortgagee who holds two or more mortgages executed by the same mortgagor in respect of each of which he has a right to obtain the same kind of decree under s. 67, and who sues to obtain such decree on any one of the mortgages, shall, in the absence of a contract to the contrary, be bound to sue on all the mortgages in respect of which the mortgage-money has become due.

This enactment really sets at rest the conflict of opinion that existed between the different High Courts in India with regard to the principle of consolidation of suits in respect of several mortgages held by the same mortgagee. This section is not intended to affect in any way the provisions of s. 17 of the Court-fees Act; if it was so intended, there was nothing to prevent the legislature from so enacting. We have, therefore, to turn to the question of the proper construction of s. 17 of the Court-fees Act. As we have already indicated, on a proper reading of that section, it is clear that where, as in the present case, the mortgagee institutes a suit embracing four distinct subjects, he must pay court-fees separately on each mortgage. In support of the contention that as s. 67A makes it obligatory on the plaintiff mortgagee to institute one suit on all the four mortgages, s. 17 of the Court-fees Act has to be read, not independently of the said provision, but along with it, reliance been placed on certain observations made in a decision of the High Court at Patna. Those observations are to be found in the

1935

*Radha Rane*  
*Dasee*

v.

*Kshetra Mohan*  
*Chakrabarti.**D. N. Mitter J.*

1935

*Radha Rance*  
*Dasee*  
 v.  
*Kshettra Mohan*  
*Chakrabarti.*  
 D. N. Mitter J.

case of *Waziri Begum v. Shashi Bhushan Rai* (1). That was a case where a person sued on two mortgages hypothecating certain properties and it was held by Jwala Prasad and Ross J. J. that court-fee is leviable, not on the aggregate of the sum claimed on two bonds, but on the sum claimed on each bond separately. The actual decision is against the contention of the plaintiff respondent. But the respondent relies on the passage which gives the reason on which the decision of the Patna High Court is founded. The learned Judges observed this :—

The question is simply as to whether there was any bar to the mortgagee (plaintiff in the present case) in bringing his action separately. There was no such bar, and, therefore, there were two causes of action arising out of two transactions which were not merged into one and remained as distinct before. Therefore the two mortgages in the suit were two different subjects. Hence the suit to enforce the two mortgages is covered by s. 17 of the Court-fees Act.

The actual decision is against the appellant and, although we do not agree with the reasoning on which this decision is founded, it seems to us that the view which we have taken is the correct view and receives supports from the decision of the Madras High Court which is not quoted in any authorised report, but which is published in [1935] A. I. R. (Mad.) 262. That decision is in the case of *Pollachi Town Bank, Ltd. v. A. S. Krishna Ayyar* (2). In that case the precise question which is now before us was before the learned Judge in the Madras Court. There the question also turned on the effect of s. 67A of the Transfer of Property Act on s. 17 of the Court-fees Act, and Mr. Justice Venkatasubba Rao pointed out rightly :—

The very basis of s. 67A is that there is more than one subject. The mortgages sued on may be different from one another in their terms and incidents ; even the causes of action may have accrued on different dates. All that s. 67 A enacts is, that the mortgagee is bound to sue on all the mortgages in respect of which the mortgage money has by the time of the suit become due.

(1) (1923) I. L. R. 2 Pat. 874, 878. (2) [1935] A. I. R. (Mad.) 262.

Even in that case before the Madras High Court this was the view taken, notwithstanding the fact that the two mortgages covered the same properties.

The plaintiff, in the present case, was, therefore, liable to pay the sum of Rs. 6,067-8as. and he having paid Rs. 2,775 in the court below, is bound to pay a further court-fee of Rs. 3,292-8. After the decision of the appeal, we shall indicate the mode by which this sum is to be realised from the plaintiff.

It is right that we should notice the contention raised by Mr. Basu that s. 12 has no application to the present case, because the whole decree has not been appealed against. The language of s. 12 ii, in so far as is material, is "Whenever any such suit comes before a court of appeal, reference or revision". It is argued that, as the defendants have lodged their appeal with regard to a portion of the claim in the suit, s. 12 ii in terms does not apply. We are unable to so restrict the meaning of the words "any such suit" and hold that they refer to the entire suit and not to a part of the suit. That would be putting a narrow construction on the provisions of cl. ii of s. 12 and this contention must be overruled.

PATTERSON J. I agree.

A. A.

1935  
*Radha Ranee*  
*Dasee*  
 v.  
*Kshetra Mohun*  
*Chakrabarti.*  
 D. N. Mitter J.