CIVIL REVISION.

Before Henderson and Khundkar JJ.

HARU BEPARI

v.

KSHITEESHBHOOSHAN RAY*.

1935

May 8, 9, 21.

Court-fees—"Subject", Meaning of—Court-fees Act (VII of 1870), s. 17—Code of Civil Procedure (Act V of 1908), O. I., r. 1.

The word "subject" in section 17 of the Court-fees Act covers a multitude of matters which cannot be confined within a precise formula.

"Distinct reliefs" are certainly "subjects" within the meaning of section 17, but the connotation of the word "subjects" is not co-extensive with that of the expression " kinds of relief. "

Distinct "causes of action" can never be one subject within the meaning of section 17. Order I. rule 1 of the Code of Civil Procedure applies to questions of joinder of parties as well as causes of action. Hence it follows that the conditions, which render the joinder of several plaintiffs permissible under Order I, rule 1, do not necessarily imply that there can be only one cause of action in the suit in which the several plaintiffs join.

Where several plaintiffs join in a suit and pray for declarations affecting the title to their respective *jotes* and for the removal of cloud upon their titles occasioned by one compromise decree, the proceedings embraced as many distinct subjects as the titles affected, within the meaning of section 17 of the Court-fees Act and separate court-fees must be paid for each of them.

Kishori Lal Roy v. *Sharut Chunder Mozumdar* (1), *Zinnatunnessa Khatun* v. *Girindra Nath Mukerjee* (2), In re *Parameswara Pattar* (3) and other cases referred to.

Reference under the Court-fees Act (4) dissented from.

CIVIL REVISION.

The material facts and arguments appear from the judgment.

Surajitchandra Lahiri for the petitioners.

Atulchandra Gupta and *Jitendramohan Banerji* for the opposite party.

*Civil Revision, No. 172 of 1935, against the order of B. K. Basu, District Judge of Pabna, dated Jan. 22, 1935, reversing the order of Kshitishchandra Chatterji, Officiating Second Subordinate Judge of Pabna, dated Aug. 30, 1934.

(1) (1882) I. L. R. 8 Cal. 593.
(2) (1903) I. L. R. 30 Cal. 788.
(3) (1930) I. L. R. 54 Mad. 1.
(4) (1894) I. L. R. 16 All. 401.

1935

Haru Bepari v. *Kshiteesh-bhooshan Ray.*

The Senior Government Pleader, Saratchandra Basak, for the Government.

Cur. adv. vult.

KHUNDKAR J. This is a Rule to show cause why an appellate order of the learned District Judge of Pabna and Bogra, dated the 22nd February, 1934, disposing of an objection to the sufficiency of court-fees in connection with the plaint in a suit, and the memorandum of appeal, which arose out of that suit, should not be set aside.

The suit was instituted by 73 persons who averred that they held each a separate *jamâ* as in schedule "*ka*" of the plaint, consisting of 73 items, but that certain lands of each of those *jamâs* as in schedule "*kha*", also containing 73 items, were included within the subject matter of a suit under Bengal Act V of 1920, which was decreed on the basis of a compromise entered into by certain persons, whom the 73 plaintiffs interpleaded as defendants in their suit. It was alleged that, by virtue of the compromise decree to which the plaintiffs were not parties, the defendants were trying to oust the plaintiffs from their holdings, and they prayed for the following reliefs:—

(*i*) A declaration that the plaintiffs had *râiyati jote* interest in the schedule "*kha*" lands as appertaining to the schedule "*ka*" jotes:

(*ii*) A declaration that the compromise decree was illegal, *ultra vires*, void, and inoperative against the plaintiffs.

The court-fee paid on the plaint was Rs. 20 as for a suit for a declaration without consequential relief under Article 17 iii of schedule II of the Court-fees Act, and on the memorandum of appeal also a court-fee of Rs. 20 only was paid.

The learned District Judge held that, as the plaintiffs were in reality praying for 73 different sets of declarations, the suit embraced 73 subjects

within the meaning of section 17 of the Court-fees Act, and 73 separate amounts of Rs. 20 should have been paid both in respect of the plaint and of the memorandum of appeal.

It has been argued that "subject" means distinct kinds of relief and that, therefore, section 17 does not apply to the present case. "Distinct reliefs" are certainly subjects within the meaning of section 17, but we cannot agree that the connotation of the word "subjects" is co-extensive with that of the expression "kinds of relief". No authorities have been cited to show that a suit in which one kind of relief only is asked for cannot be a suit embracing more than one subject within the meaning of section 17.

In the alternative, it has been submitted that the word "subject" in section 17 means cause of action, and that, in so far as the joinder of so many plaintiffs is permissible by the operation of Order I, rule 1 of the Code of Civil Procedure, the suit is based on one cause of action only. It seems to us that one infirmity of this argument is the assumption that the conditions which Order I, rule 1 requires to be fulfilled, amount in their totality to the elements which constitute one cause of action, and that Order I, rule 1 excludes, by its force, the joinder of plaintiffs in a suit based on more causes of action than one.

The learned advocate for the petitioner cited *Haramoni Dassi* v. *Harichurn Chowdhry* (1). That decision was concerned with the construction of section 26 of the Code of 1882 (now Order I, rule 1) and the passage relied upon at page 840 is as follows :—

> Following the ordinary canon of construction that a clause in a statute should be construed so as to give some meaning to every part of it, and bearing in mind that the expression "cause of action" has not been defined anywhere in the Civil Procedure Code, except indirectly for the purpose of section 17, and that so far as that section goes it is used in a restricted as well as in some respects in an elastic sense, we think the proper way to construe section 26, so as to give the words in the alternative some meaning, is to hold that the

(1) (1895) I. L. R. 22 Cal. 833.

1935

Haru Bepari v. *Kshiteesh-bhooshan Ray.*

Khundkar J.

expression "cause of action" occurring in it is used not in its comprehensive, but in its limited sense, so as to include the facts constituting the infringement of the right, but not necessarily also those constituting the right itself, so that the qualification implied in the words "in respect of the same cause of action" will be satisfied if the facts which constitute the infringement of right of the several plaintiffs are the same, though the facts constituting the right upon which they base their claim to that relief in the alternative may not be the same.

Section 26 of the Code of 1882 was thus expressed :—

> All persons may be joined as plaintiffs in whom the right to any relief claimed is alleged to exist, whether jointly, severally or in the alternative, in respect of the same cause of action.

Even under the Code of 1882 the decisions on the meaning of the expression "cause of action" were not uniform. See *Nusserwanji Merwanji Panday* v. *Gordon* (1), *Rámánujá* v. *Devanáyaka* (2), *Salima Bibi* v. *Muhammad* (3), *Rahim Bakhsh* v. *Amiran Bibi* (4) and *Rajjo Kuar* v. *Debi Dial* (5). Order I, rule 1 is much wider and the words "in "respect of the same cause of action" do not occur. In *Ramendra Nath Roy* v. *Brajendra Nath Dass* (6), it was held that Order I, rule 1 applies to questions of joinder of parties as well as causes of action. Hence it follows that the conditions which render the joinder of several plaintiffs permissible under Order I, rule 1, do not necessarily imply that there can be only one cause of action in the suit in which the several plaintiffs join.

The learned advocate for the petitioner contended, however, that the present suit was based on one cause of action alone, in so far as the plaintiffs were seeking for no more than the removal of the cloud upon their titles occasioned by the compromise decree.

In support of this branch of the argument reliance was placed upon a number of authorities now to be considered :—

(1) (1881) I. L. R. 6 Bom. 266, 275.
(2) (1885) I. L. R. 8 Mad. 361.
(3) (1895) I. L. R. 18 All. 131.
(4) (1896) I. L. R. 18 All. 219.
(5) (1896) I. L. R. 18 All. 432.
(6) (1917) I. L. R. 45 Cal. 111.

Kishorilal Roy v. *Sharut Chunder Mozumdar* (1). That was a decision of a Full Bench of this Court, in which it was held that, in a suit for possession and mesne profits, the claim was to be taken as one entire claim for the purpose of determining the stamp fee under section 17 of the Court-fees Act. It was pointed out in this judgment, that section 10 of the Code of Civil Procedure, 1859, enacted that, for the purposes of sections 8 and 9, which provided for joinder of causes of action, a claim for possession and mesne profits should be deemed to be distinct causes of action. This decision has been uniformly followed, inasmuch as for the purposes of section 17 of the Court-fees Act, a claim for possession and mesne profits has come to be regarded as one entire claim.

Reference under the Court-fees Act (2). This decision adopted the considerations set forth in *Kishori Lal Roy* v. *Sharut Chunder Mozumdar* (1). It also, upon a consideration of certain earlier cases of the Allahabad Court, *viz.*, *Chamaili Rani* v. *Ram Dai* (3), *Mul Chand* v. *Shib Charan Lal* (4) and *Chedi Lal* v. *Kirath Chand* (5), formulated the view that two or more distinct subjects in section 17 of the Court-fees Act are equivalent to "two or more distinct causes of action", that section 17 refers to "multifarious suits", and that it is applicable only to suits in which two or more distinct causes of action have been joined.

With great respect to the learned Judge who decided that case, we are not in agreement with this proposition.

Nauratan Lal v. *Wilford Joseph Stephenson* (6). In this case it was held that in a suit for recovery of possession of immoveable property, for mesne-profits, and for *malikânâ*, the plaintiff was not liable to pay a court-fee assessed separately on each claim, but was

(1) (1882) I. L. R. 8 Cal. 593.
(2) (1894) I. L. R. 16 All. 401.
(3) (1878) I. L. R. 1 All. 552.
(4) (1880) I. L. R. 2 All. 676.
(5) (1880) I. L. R. 2 All. 682.
(6) (1918) 4 Pat. L. J. 195.

1935

Haru Bepari v. *Kshiteesh-bhooshan Ray.*

Khundkar J.

entitled to add them together and regard them as one claim for the purposes of assessment. In this judgment it was observed that one possible view as to the meaning of the word "subject" in section 17 of the Court-fees Act was that it related back to section 7 of the Act, where the various subjects of suits are divided under various heads. This observation is entitled to respect in view of the difficulties which so constantly present themselves when a precise definition of the word "subject" is sought. The decision followed, however, *Mul Chand* v. *Shib Charan Lal* (1), in which "subject" was interpreted as meaning "cause of action". In so far as it did so, we are constrained as already indicated to respectfully dissent.

Durga Prasad v. *Purandar Singh* (2). This case related to a suit for pre-emption of shares in two villages, included along with others, in one sale, to vendees who were strangers to the co-parcenary body of co-sharers of the village. The court-fee paid by the plaintiffs was calculated on the basis of the aggregate amount of the Government revenue assessable on the two villages, and the question was whether they were not liable to pay court-fees calculated separately on the basis of the revenue of each village. It was held that the plaintiffs had only one cause of action made up of their right to pre-empt and on the sale by the other co-sharers to persons who were strangers. This decision followed the view with which we are not in agreement, in the earlier Allahabad cases that "distinct" subjects in section 17 must be taken to mean "distinct causes of action".

Zinnatunnessa Khatun v. *Girindra Nath Mukerjee* (3) was a case in which the only prayer made was for a declaration that a certain decree was ineffectual and inoperative against the plaintiff. It was held that all that the plaintiff was asking for was a declaratory decree without any consequential relief.

(1) (1880) I. L. R. 2 All. 676. (2) (1904) I. L. R. 27 All. 186.
(3) (1903) I. L. R. 30 Cal. 788.

1935

Haru Bepari v. *Kshiteesh-bhooshan Ray.*

Khundkar J.

In our judgment these cases have no application. It is contended that what the plaintiffs are asking for in the present case is a declaration which will dissipate the cloud cast upon their titles by the compromise decree from which alone their cause of action flows. Now looking at the plaint, it is apparent that there are at least two prayers, *viz.*, (*i*) for a declaration that each plaintiff has a *râiyati jote* interest in one out of 73 plots of land, (*ii*) for a declaration that the compromise decree is void and inoperative. Each of the plaintiffs in this suit would be under the necessity of establishing a *prima facie* title in respect of one plot, and those who failed would not be entitled to the declaration prayed for. There are in fact 73 plaintiffs praying that 73 titles should be recognised and that the cloud upon them be removed. The facts necessary to establish a particular title are peculiar to the particular plaintiff who alleges it. There are indeed 73 groups of facts to be established, each group forming a distinct and separate subject of the claim advanced.

In *Chethru Mahto* v. *Khaja Muhammad Karim Nawab* (1), where 78 tenants sued in respect of 78 separate holdings for a declaration that the rents recorded in the *khatiyân* were higher than those actually payable, and that 59 rent decrees obtained by the landlord were contrary to law, it was held that there were 78 separate causes of action in respect of the holdings, and 59 separate causes of action in respect of the decrees, and that a court-fee of Rs. 10 was payable in respect of each.

Lachman Sahu v. *Abdul Karim* (2) arose out of suit by a landlord against 25 sets of tenants for a declaration that their lands were held under the *bâtâi* system, and that they were wrongly recorded as paying cash rent, and here it was held following *Chethru Mahto* v. *Khaja Muhammad Karim Nawab* (1) that the rent of each holding was a distinct subject within section 17 of the Court-fees Act, and

(1) (1918) 4 Pat. L. J. 297. (2) (1919) 4 Pat. L. J. 299.

1935

Haru Bepari v. *Kshiteesh-bhooshan Ray.*

Khundkar J.

that a court-fee of Rs. 10 was payable in respect of each of the 25 holdings.

Moti Singh v. *Kaunsilla* (1) was a Full Bench decision, which arose out of a suit instituted by a person whose claim to certain property attached in execution of a decree, under the provisions of section 278 of the Code of Civil Procedure, 1882, had been disallowed. The decree-holders and the judgment-debtors were both impleaded as defendants in the suit. It was held that inasmuch as the plaintiff was asking for a declaration of his title to the property as against the judgment-debtor, and also for a declaration in denial of the decree-holder's right to bring that property to sale in execution of a decree there were two substantial declarations asked for, in respect of each of which court-fee was payable. At page 311 of the report there occurs the observation :—

> * * * *the rights of the two separate sets of defendants would have to be adjudicated upon, and declarations, if the plaintiff's prayer was acceded to, given in denial of the right of each defendant * * * *

Daivachilaya Pillai v. *Ponnathal* (2) was a case in which the plaintiffs sued as reversionary heirs for a declaration that certain alienations, 42 in number, made by the defendant who was the widow of the last male holder, were invalid as against them. It was held that each alienation was a separate subject within the meaning of section 17 of the Court-fees Act. In the words of the judgment—

> Each alienation creates a distinct right vesting in the alienee, and, therefore, when the reversioner seeks for a declaration that a number of distinct alienations are invalid, he must be held to be suing for that number of declarations.

The last case to which reference need be made is In re *Parameswara Pattar* (3). Here again the question which arose was whether, in a suit for possession of immovable property and for mesne profits, the court-fee should be paid on the aggregate

(1) (1894) I. L. R. 16 All. 308, 311. (2) (1894) I. L. R. 18 Mad. 459, 460.
(3) (1930) I. L. R. 54 Mad. 1.

value of both the reliefs, or on the value of each of the reliefs separately, and it was held, following *Kishori Lal Roy* v. *Sharut Chunder Mozumdar* (1), that the two claims should be treated as one entire claim. As to the question whether separate causes of action would invariably be the criterion for treating the claims based on them as distinct subjects within the meaning of section 17 of the Court-fees Act, Sundaram Chetty J. observed very appositely that this does not appear to have been taken as the deciding test in *Kishori Lal Roy* v. *Sharut Chunder Mozumdar* (1). On the meaning of the word "subject" in section 17 of the Court-fees Act, His Lordship observed that its meaning was somewhat obscure, and that it had been held in some decisions to be not capable of precise definition and that any doubt or obscurity as to its precise meaning should be cleared by the legislature in due course.

With these observations we are in respectful agreement. The expression "causes of action" may be capable of definition. Indeed, definitions have been often formulated in the past, although the terms of one definition have not always been identical with those of another, the elements varying to suit the particular exigency which evoked the attempt. Be that as it may, we are of opinion that the word "subject" in section 17 of the Court-fees Act covers a multitude of matters which cannot be confined within a precise formula. We find it difficult to see how distinct causes of action can ever be one subject within the meaning of section 17. But the converse does not necessarily hold good, for it may well be that a suit, based on one cause of action alone, may nevertheless embrace more than one subject within the meaning of section 17 of the Court-fees Act.

In the result we are of opinion that in the suit and in the appeal to which it gave rise there were in effect prayers for 73 declarations affecting 73 separate titles, and that, therefore, the proceedings embraced

(1) (1882) I. L. R. 8 Cal. 593.

1935

Haru Bepari v. *Kshiteesh-bhooshan Ray.*

73 distinct subjects within the meaning of section 17 of the Court-fees Act.

HENDERSON J. I agree and have little to add. There can be no question that, apart from the provisions of Order I, rule 1 of the Code of Civil Procedure, each of the plaintiffs would have been compelled to institute a separate suit on a properly stamped plaint. Order I, rule 1 merely provides for procedure and has nothing to do with the payment of court-fees and the point for our decision has to be determined with reference to section 17 of the Court-fees Act. Although it is impossible to give any precise or complete definition of the word "subject" as used in that section, I have no doubt that, in the present case, each of the tenancies claimed by the various plaintiffs is a distinct subject and that the decision of the learned District Judge was correct.

In one matter the order is not very clear but it was not disputed by the learned Government Pleader that the petitioners cannot be made jointly and severally liable to pay all the court-fees; any plaintiff who pays the fees necessary for the determination of his own claim will be entitled to prosecute his appeal.

The result is that this Rule must be discharged with costs to the Government Pleader. We assess the hearing fee at two gold mohurs. The petitioners will be given one month from the arrival of the record in the lower court to pay the court-fees. The appeal of any petitioner who complies with this order will be heard.

A. C. R. C.

Rule discharged.