

THE  
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APPELLATE CIVIL—FULL BENCH.

Before Sir Owen Beasley, Kt., Chief Justice,  
Mr. Justice Sundaram Chetti and Mr. Justice Pakenham Walsh.

IN RE PARAMESWARA PATTAR (PLAINTIFF) APPELLANT.\*

1930,  
August, 4.

*Court-fees Act (VII of 1870), sec. 17—Distinct subjects, meaning of—Suit for possession of lands and past mesne profits—Court-fee payable thereon—Court-fee, whether payable on the aggregate value of both reliefs or on each relief separately.*

In a suit for possession of immovable property and past mesne profits, court-fee is payable on the aggregate value of both the reliefs.

The claims for possession of land and for mesne profits are not "distinct subjects" under section 17 of the Court-fees Act.

*Kishori Lal Roy v. Sharut Chunder Mozumdar*, (1882) I.L.R. 8 Calc. 593 (F.B.), followed.

Reference by the Master (Taxing Officer) of the High Court under section 5 of the Court-fees Act as to the proper amount of court-fee payable on the memorandum of appeal in the appeal sought to be preferred in the High Court against the decree of the Court of the Subordinate Judge of South Malabar in Original Suit No. 33 of 1925.

*K. Kutti Krishna Menon* (with him *V. K. Madhavan Nayar*) for appellant.—The question is whether Court-fee payable for a plaintiff or a memorandum of appeal in a suit for possession of immovable property and mesne profits is on the aggregate value of

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both the claims, or on the value of each of the claims separately. Though the two claims may form different causes of action, yet they are not different subjects within the meaning of section 17 of the Court-fees Act. The High Courts of Calcutta, Patna and Allahabad hold that the court-fee payable in such a case is on the aggregate value of both the claims. See *Kishori Lal Roy v. Sharut Chunder Mozumdar* (1), *Nauratan Lal v. Wilford Joseph Stephenson* (2) and *Reference under the Court-fees Act, 1870, s. 5.* (3)

In this High Court also, the course of practice has been to pay court-fee on the aggregate value of both the claims. In a suit for specific performance and possession of lands, court-fee is paid only on the aggregate value of the claims, though they are different causes of action. See *Neelakandhan v. Ananthakrishna Ayyar* (4). The Court-fees Act being a Taxing Act, it should be construed, in a case of ambiguity, in favour of the subject.

Though the cause of action for possession may be different from that for mesne profits, yet possession and mesne profits are so connected as to form one subject of claim.

The OPINION of the Court was delivered by

SUNDARAM  
CHETTI J.

SUNDARAM CHETTI J.—In this reference, the point arising for determination is whether, in a suit for possession of immovable property and mesne profits, court-fee should be paid on the aggregate value of both the reliefs, or on the value of each of the reliefs separately. The question turns upon the applicability of section 17 of the Court-fees Act to this case. That section says that, where a suit embraces two or more *distinct subjects*, court-fee has to be paid separately on the value of each subject, and not on the aggregate value of all the reliefs.

The word "subjects" 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 or title to the land is the basis for the

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

(3) (1894) I.L.R. 16 All. 401.

(2) (1918) 4 Pat. L.J. 195.

(4) (1906) I.L.R. 30 Mad. 61.

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 inter-relation, as to form *distinct subjects*, under section 17 of the aforesaid Act.

The Full Bench decision of the Calcutta High Court in *Kishori Lal Roy v. Sharut Chunder Mozumdar*(1) is a clear authority for holding that the claim for possession and the claim for mesne profits should be taken as one entire claim for the computation of the court-fee and not as distinct subjects. The question has been viewed by GARTH C.J. in several aspects, and due importance has been attached to the uniform practice prevalent in the whole country in respect of this matter, which a Court of Justice ought to be slow in changing to the prejudice of the suitor, unless it sees clear and weighty reasons for so doing. With this view, we are in agreement. This decision has been followed by the Allahabad High Court in *Reference under the Court-fees Act, 1870, s. 5.*(2)

There seems to be no decision of this High Court, directly bearing on the present question. In *Ponnammal v. Ramamirda Aiyar*(3), the Full Bench has held that the claim for possession and the claim for mesne profits are separate causes of action, though they may arise out of one act of dispossession. But that decision is for the purpose of Order II, rules 2 and 4 of the Code of Civil Procedure. The question remains whether separate causes of action would invariably be the criterion for treating the claims based on them as distinct subjects, under section 17 of the Court-fees Act. In the Full Bench Case, *Kishori Lal Roy v. Sharut Chunder Mozumdar*(1), this does not appear to have been taken as the deciding test. In a case dealt with by the Patna High Court, it

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

(2) (1894) I.L.R. 16 AH. 401.

(3) (1914) I.L.R. 38 Mad. 829.

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is stated that two views are possible as to the meaning of the word "subjects" in this section. One is that the word "subject" relates back to section 7 where the various subjects of suits are put under different heads. The other view is that the word "subject" means cause of action; see *Nauratan Lal v. Wilford Joseph Stephenson*(1). But, however, it was held, on the strength of the Full Bench decision in *Kishori Lal Roy v. Sharut Chundar Mozumdar*(2) that the long-continued practice should not be disturbed, and that court-fee may be paid on the aggregate value of the reliefs, viz., claim for possession and claim for mesne profits. The preponderance of authority is in favour of not treating these two claims as distinct subjects under section 17 of the Court-fees Act.

There being no definition of the word "subject" in the Act, we think, we need not attempt to define it in the present case, and should only be guided by the long course of practice.

We think that any doubt or obscurity as to the precise meaning of the "subject" in this section should be cleared by the Legislature in due course.

We answer this reference by stating that, in a suit for possession of immovable property and past mesne profits, court-fee is payable on the aggregate value of both the reliefs.

K.R.

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(1): (1918) 4 Pat. L.J. 195.

(2) (1882) I.L.R. 8 Calc. 593.

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