

RAMNANDAN  
SAHAY  
v.  
JAIGOVIND  
PANDEY.

of the defaulting proprietors. The plaintiffs' title, therefore, cannot be improved by the fact that they purchased at revenue sale.

The result is that the appeal will be decreed in part in the terms proposed by my learned brother.

Ross, J.

*Appeal decreed in part.*

## APPELLATE CIVIL.

*Before Jwala Prasad and Ross, J.J.*

NAWABA WAZIRI BEGUM

v.

SHASHI BHUSHAN RAI.\*

1923.

June, 12.  
July, 2.

*Court-Fees Act, 1870 (Act VII of 1870), section 17—“Distinct subjects”—two mortgages, suit on, whether court-fee leviable on aggregate of the two bonds.*

The words “distinct subjects” in section 17 of the Court-Fees Act, 1870, mean distinct causes of action.

Therefore where a person sues on two mortgages hypothecating the same property the court-fee is leviable on the amount due on each bond separately and not on the aggregate of the two bonds.

A person who holds two mortgages on the same property, the due date for payment of the mortgage loans being the same, is entitled to maintain a separate suit on each of the bonds.

*Nattu Krishnama Chantiar v. Amangara Chariar*(1), *Keshavram v. Rancerrod*(2), *Parshatam Lal v. Lashman Das*(3), *Subramania Ayyar v. Balasubramania Ayyar*(4), *Keshavram Duravram v. Chhod Fakira*(5), *Sundar Singh v. Bholu*(6), *Nilu Ray v. Asiroad Mandal*(7), *Gobrida Prashad v. Lala Harihar Charan*(8), *Jogendra Singh v. Mussamat Mohra Kuwar*(9), *Thakur Singh v. Balabant Singh*(10), *Thakur Jwahir Singh v. Baldeo Prashad*(11), referred to.

\* First Appeal No. 173 of 1920.

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| (1) (1907) I. L. R. 30 Mad. 353. | (2) (1905) 7 Bom. L. R. 811.          |
| (3) (1887) I. L. R. 9 All. 252.  | (4) (1915) I. L. R. 38 Mad. 927, F.B. |
| (5) (1906) I. L. R. 30 Bom. 165. | (6) (1898) I. L. R. 20 All. 322.      |
| (7) (1921) 33 Cal. L. J. 232.    | (8) (1909-10) 14 Cal. W. N. 1053      |
| (9) (1917) 2 Pat. L. J. 118.     | (10) 7 O. C. 152.                     |

(11) 11 O. C. 173 .

Plaintiff sued on two mortgage bonds executed on different dates in his favour by the same mortgagor. Both bonds hypothecated the same property and the due date for payment provided by both bonds was the same. In appeal it was contended that court-fee should have been assessed on each bond separately and not on the aggregate of both bonds.

*Kailaspatti*, for the appellant.

*Saroshi Charan Mitter, S. K. Mitter and A. N. Das*, for the respondents.

20th June, 1923. JWALA PRASAD AND ROSS, J.J.—Order No. 11 of the Register shows that Rs. 845 is due from the plaintiff-respondent No. 1 as deficit court-fee payable by him on the plaint, and that the matter was left to be decided by the Bench at the time of the hearing of the appeal. The deficit was discovered when the question as to the sufficiency of the court-fee payable on the memorandum of appeal was raised by the Stamp Reporter. The Taxing Officer, Mr. James, passed order on the 30th March, 1923, referring the matter to the Taxing Judge because in his opinion the case was of importance and that cases of this nature generally come up for decision. He himself was opinion that there was no deficiency and the court-fee paid on the memorandum of appeal was sufficient. The suit was based upon two mortgage bonds both in favour of the plaintiff-respondent No. 1 Shashi Bhusan Ray. One of them was executed on the 5th July, 1907, by Nawaba Hurmuzi Begam with her sons since deceased for Rs. 20,000. The second was executed on 1st February, 1908, by the same mortgagors in favour of the same creditor in which the same properties were mortgaged for a sum of Rs. 6,995. The due date for the payment of the mortgage loan, was the same in both the mortgage bonds, namely the 3rd July, 1909. The rate of interest in the first bond was Re. 1 per cent *per mensem* compound interest with yearly rests. In the second bond the rate of interest was Re. 1-4-0 per cent. *per month* compound interest with yearly rests. After reciting the necessity of the loan and the fact of a prier mortgage bond having been executed the mortgagors of the second bond recite that they requested him (the plaintiff-respondent to quote the words of the bond) "to advance a further sum of Rs. 6,995 bearing an interest of Re. 1-4-0 per cent. *per mensem* stipulating to pay interest every year as per terms given in the said former bond on the mortgage of the aforesaid properties which are hypothecated in the former bond, by getting a registered bond executed." The two mortgages were however, not consolidated. The total amount claimed by the plaintiff was Rs. 1,07,993 on which the plaintiff paid Rs. 1,450 as court-fee. The view of Mr. James was that the mortgagee was not entitled to realise the money due on the first mortgage until the second mortgage also became due. He could not sue on the second mortgage for the sale of the property subject to the first mortgage and therefore if he brought a suit on the first mortgage he was obliged to set up his second mortgage or he would lose his right to enforce the second mortgage [Nattu Krishnama

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*Chariar v. Anangara Chariar* (1) *Koshavram v. Rancho* (2)]. Therefore the mortgage was bound to bring one action on both the bonds at one and the same time, and the cause of action having arisen on the same date Mr. James was of opinion that there was a single cause of action and one and the same subject matter and therefore section 17 of the Court-Fees Act did not apply. Coutts, J., the Taxing Judge, on the other hand, was of opinion that the word "Subjects" used in section 17 means "Causes of action" and therefore the question was whether the plaintiff's suit embraces one cause of action or two distinct causes of action and therefore two distinct subjects. He was of opinion that there were two distinct causes of action based upon two mortgage bonds and therefore there were two distinct subjects and hence under section 17 the court-fees payable on the sums due on the two mortgages must be separately levied. Mr. S. M. Mullick disputes the view taken by Coutts, J., and says that the view taken by Mr. James was correct. In this he is supported by an unreported case of the Madras High Court (3) and by two decisions of the Oudh Judicial Commissioner's Court *Thakur Singh v. Bdabant Singh* (4) and *Thakur Jwahir Singh v. Baldeo Prasad* (5). The view taken by Coutts, J., is supported by the decision in the case of *Parshotam Lal v. Lachman Das* (6). In that case the suit of the plaintiff was based upon three different *hundis* executed on the same date and payable at the same time. The argument was that the three *hundis* only made one cause of action. Sir John Edge, C. J., answered this argument thus: "it was admitted that the plaintiff might bring three separate actions on these *hundis* and each *hundi* would afford a separate cause of action. The suit embraces three separate and distinct subjects". Accordingly he held that the memorandum of appeal was chargeable with the aggregate amount of court-fees to which the memorandum of appeal in suits embracing separately each of such subjects would be liable under the Court-Fees Act. It is urged that the present case is distinguishable from the aforesaid case inasmuch as the plaintiff in this case could not bring separate actions on the two mortgages. The question is of importance and therefore we direct that the learned Government Advocate be requested to appear on behalf of the Revenue.

If the decision of the case will be against the appellant his suit will be dismissed, unless the court-fee is paid, under section 12 of the Court-Fees Act and therefore no decree can be passed in terms of the compromise at this stage.

*H. L. Nandkeolyar* (Assistant Government Advocate), for the Crown.

*S. K. Mitter*, for the respondents.

JWALA PRASAD AND ROSS, J.J.—We have heard the learned Assistant Government Advocate and Mr. Mitter at great length and we have considered the authorities cited by them, namely, *Subramania*

(1) (1907) I. L. R. 30 Mad. 353.

(3) Appeal No. 70 of 1902.

(5) 11 Oudh. Cas. 173

(2) (1905) 7 Bom. L. R. 811.

(4) 7 Oudh. Cas. 152.

(6) (1887) I. L. R. 9 All. 252.

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*Ayyar v. Balasubramania Ayyar* (1), *Nattu Krishnama Chariar v. Anangara Chariar* (2), *Keshavram Dulavram v. Chhod Fakira* (3), *Sundar Singh v. Bholu* (4), *Nilu Ray v. Asirvad Mandal* (5), *Gobinda Prashad v. Lala Harihar Charan* (6) and *Jacarnath Singh v. Mussammatt Mohra Kubar* (7), besides the cases referred to in our earlier order of the 20th June, 1923, namely, *Thakur Singh v. Balabant Singh* (8), *Thakur Jawahir Singh v. Baldeo Prashad* (9) and the Madras High Court Unreported Appeal No. 70 of 1902. The Oudh cases and the Madras unreported case are not available. They have, however, been referred to in Desai's Annotated Edition of the Court-Fees Act. The trend of the decisions in Madras, Allahabad and Calcutta seems to be that a person holding two mortgages from the same mortgagor hypothecating the same properties—and even when the due date in both is the same—can bring suits separately on both bonds. In other words, there is nothing to prevent a mortgagee from suing on the first mortgage without joining the second mortgage and *vice versa*. In *Nilu Ray v. Asirvad Mandal* (10), Mukharji, J., elaborately went into the case, considered all the authorities on the subject and came to the conclusion that the causes of action on both the bonds were separate. If that is so, there can be no question that the mortgages were separate subjects and not one under section 17 of the Court-Fees Act. True, these cases relied upon by the learned Assistant Government Advocate are not under section 17 of the Court-Fees Act, but the principles laid down therein are helpful in coming to a conclusion as to whether the two mortgages, in the circumstances stated above, are two subjects or one subject. The ordinary meaning of the word "subject" when used

(1) (1915) I. L. R. 38 Mad. 927, F.B.

(2) (1906) I. L. R. 30 Bom. 156.

(3) (1921) 33 Cal. L. J. 232.

(7) (1907) 2 Pat. L. J. 118.

(9) 11 Oudh. Cas. 173.

(2) (1907) I. L. R. 30 Mad. 353.

(4) (1898) I. L. R. 20 All. 322.

(5) (1909-10) 14 Cal. W. N. 1053.

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in law is 'a thing or matter' over which a right is exercised, and the two mortgages were certainly two distinct matters. They could only be deemed to be one either by a covenant in the mortgage, consolidating the two together, or by some provision in law. It is conceded by Mr. *Mitter* that there is no clause in either of the bonds consolidating the two into one. His argument, therefore, mainly was upon the legal aspect of the question and upon analogy. It was said that there could be only one cause of action inasmuch as the mortgagee was precluded from suing on only one of the bonds and had to include the two mortgages in the suit under the statutory provisions contained in the Transfer of Property Act, Order XXXIV, rule 1, Code of Civil Procedure and the authoritative decisions of Courts. Order XXXIV, rule 1, has considerably amended and modified the law on the subject as it was set forth in section 85 of the Transfer of Property Act (Act IV of 1882). Under the present law, particularly under the *Explanation* to rule 1 of Order XXXIV, a puisne mortgagee is not required to implead the prior mortgagee as a party in a suit for foreclosure or sale. The principle will be the same when the subsequent mortgagee and the prior mortgagee happen to be one and the same person. There is nothing in law to prevent the prior mortgagee from bringing a suit to enforce his mortgage without impleading the subsequent mortgagee. There is, however, some risk, and probably the curtailment of some of the rights of the mortgagee who chooses to sue separately upon his two mortgages—he may not be allowed to sell the properties in the subsequent decree when they were already sold in the prior decree. With these considerations we have no concern. 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 as before. Therefore the two mortgages in the suit were two different subjects. Hence the suit to enforce the two

mortgages is covered by section 17 of the Court-Fees Act, and the report of the Stamp Reporter is correct, and the plaintiff-mortgagee (respondent No. 4) must, therefore, deposit the deficit court-fee on the plaint.

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### REVISIONAL CIVIL.

Before Jwala Prasad and Ross, J.J.

SRIMOTT SAVITRI THAKURAIN

v.

THE SECRETARY OF STATE FOR INDIA IN  
COUNCIL.\*

1923.

June, 26.

*Code of Civil Procedure, 1908 (Act V of 1908), Order XXXIII, rule 9(b)—“means”—Suit in forma pauperis—receipt of ad interim maintenance by plaintiff—application to dispauper plaintiff.*

A plaintiff who has been permitted to sue *in forma pauperis* is not liable to be dispaupered merely on the ground that she has been granted a small *ad interim* maintenance allowance and that she has received various sums on account of such allowance which she had spent in meeting expenses incurred before the grant of maintenance and none of which sums was sufficient to pay the amount of court-fee leviable on the plaint.

*Gadigi Muddappa v. Gadigi Rudramma*(1), not followed.

*Smith v. Atkin*(2), referred to.

The facts of the case material to this report were as follows:—

The defendant having propounded a Will, alleged to have been executed by the plaintiff's husband, and having obtained a grant of letters of administration, the plaintiff instituted the present suit challenging the Will and praying for recovery of possession of her

\* Civil Revision No. 80 of 1923, from an order of M. Ihtisham Ali Khan, Subordinate Judge of Monghyr, dated the 11th February, 1923.

(1) (1921) 61 Ind. Cas. 958.

(2) (1900) 1 Ch. D. 471.