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tail. But what we have in this case is a clear indication in paragraph 2 of an absolute estate. Then in paragraph 8 another absolute estate to the issue of the prior holder. Can it be said in these circumstances that there is any indication that there was a grant of an independent gift to the issue of Musammat Peary Kuer after her death or that the testator was attempting to impress upon the property a descendable quality of a particular character? I see nothing in the words of paragraph 8 to cut down the absolute estate which was given to the grand-daughter. In the recent case of *Madhavrao Ganpatrao Desai v. Balabhai Raghunath Agaskar* (1) it was decided that a gift which was not dissimilar in its terms took effect so far as the beneficiaries who were alive at the date of the instrument were concerned (that was a case of a settlement and not a will). But it is to be noted that in that case there was no doubt the prior estate was that of one for life. I would decide therefore that the gift to Musammat Peary Kuer was that of an absolute estate and that the petitioner fails to show that the estate has not been fully administered in the sense in which he endeavours to show that fact.

I would, therefore, dismiss the appeal.

S. A. K.

Appeal dismissed.

REFERENCE UNDER THE COURT-FEES ACT, 1870.

Before Jwala Prasad, J.

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Feb., 9.

Court-fees Act, 1870 (Act VII of 1870), section 17—suit in respect of land consisting of various plots and in possession of defendants separately—claim common and constituting one subject—collusion among defendants, allegation of—section 17, whether applicable.

(1) (1927) P. C. A. 90 of 1926. Unreported.

Where the plaintiff brought a suit for recovery of possession of the disputed land consisting of various plots in separate possession of the defendants and also for mesne profits on an adjudication that it was his zeraif land and that the entries in the record-of-rights showing it as the defendants' kasht was ineffectual, null and void, on the allegation that the defendants had in collusion with one another caused wrong entries to be made in the survey records and had dispossessed him,

Held, that although there were a number of plots comprised in the suit, the plaintiff's claim to all of them was common and constituted one subject-matter, all the defendants having been joined together by a common link of conspiracy and collusion, and that, therefore, the court-fee was payable on the total valuation of the land and the mesne profits and not under section 17, Court-fees Act, 1870, which contemplates two or more distinct subjects embraced in one suit.

Lokenath Surma v. Keshab Ram Doss (1) and *Nundo Kumar Naskar v. Banomali Gayan* (2), followed.

Chetru Mahto v. Khaja Muhammad Karim Nawab (3) and *Lachuman Sahu v. Sheikh Abdul Karim* (4), distinguished.

Nauratan Lal v. Wilford Joseph Stephenson (5), referred to.

This was a reference to the Taxing Judge under section 5 of the Court-fees Act.

The plaintiff brought a suit in the Court of the Subordinate Judge of Chapra for recovery of possession of certain lands with mesne profits detailed and specified in the plaint. He valued the lands at Rs. 66,600-10-0 and mesne profits at Rs. 8,399-6-0, total Rs. 75,000. Upon this valuation he paid a court-fee of Rs. 1,955. The additional Sharistadar reported that there was a deficiency of Rs. 4,958 in the court-fees paid by the plaintiff valuing the lands

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(1) (1886) I. L. R. 13 Cal. 147.

(3) (1919) 4 Pat. L. J. 297.

(2) (1902) I. L. R. 29 Cal. 871.

(4) (1919) 4 Pat. L. J. 299.

(5) (1919) 4 Pat. L. J. 195.

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and the mesne profits claimed against the different defendants separately.

The trial Court disagreed with the view taken by the additional Sharistadar and held that the court-fee payable was sufficient, there being only one cause of action, and that section 17 relied upon by the Sharistadar which relates to distinct subjects embraced in a suit did not apply. The suit was therefore tried by the Court below upon the afore-said court-fee paid on the plaint.

The suit was dismissed and the plaintiff preferred an appeal to the High Court and paid the same court-fee of Rs. 1,955 as he had paid in the Court below.

The Stamp Reporter of the High Court objected to the sufficiency of the court-fee paid and held that section 17 of the Court-fees Act applied to the case and that there was a deficiency of Rs. 6,893 in the court-fee paid by the plaintiff upon the plaint and also upon the Memorandum of Appeal presented to the High Court.

The appellant did not accept the view of the Stamp Reporter, and the matter came up before the Registrar who, as Taxing Officer of the High Court, made this reference to the Taxing Judge upon the ground that the question was one of general importance and likely to come up again.

Hasan Imam and Murari Prasad, for the appellant :

Government Pleader, for the Crown :

JWALA PRASAD, J. (after stating the facts set out above, proceeded as follows): As to whether there were distinct subject-matters embraced in a suit reference has to be made to the plaint. In it the plaintiff states that the lands claimed by him are his zerait lands consisting of 106 bighas odd in village Pachpakaria, 32 bighas odd in village

Chorma, and 7 bighas odd in village Bankajua in Pargana Barai, Tauzi Number 1702. These lands along with others were held in thika by different persons from time to time as stated in paragraphs 4 to 6 of the plaint. Ultimately the lands were let out by a registered pattah, dated the 20th January, 1907, to defendant no. 1 and the father of defendant no. 2. After the expiry of the lease, the plaintiff executed another pattah in their favour on the 25th May, 1912, the term whereof expired in 1326, after which the plaintiff obtained khas possession of the land in Asarh 1326, cultivated the land and remained in possession up to Jeth 1329. In Asarh of that year the plaintiff's case is that the defendants 1 and 2 in collusion with defendants 2nd to 4th parties began to interfere with the plaintiff's possession on the allegation that the disputed lands were their khas lands and had been recorded as such in the survey papers. These defendants in concert and in collusion with each other dispossessed the plaintiff. Continuing the plaintiff says that the defendants 1 and 2 with a view to retain possession of the lands even after the expiry of the term of the thika-pattah, wrongly got the disputed lands recorded during the period of their thika as kaimi kasht at a low rental in the name of the defendant 2nd party during the recent survey operations, of which the plaintiff had no knowledge. The defendants 1 and 2 without any right and competency executed an ostensible pattah with respect to the disputed lands in favour of defendants 2 to 4 and obtained similarly ostensible kabuliyats from them, of which the plaintiff had no knowledge at that time. The plaintiff impugns the said pattahs and kabuliyats as being invalid and collusive and the entries made in the survey record-of-rights as being collusive and in the name of the creatures of the defendants 1 and 2. The plaintiff states that the cause of action arose to him in the month of Asarh 1329 when he was dispossessed, and in the month of Kartick 1330 when the defendants were asked to give up possession of the lands and they refused to do so. The plaintiff gives the reason for

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joining all the defendants together in the suit as follows :

"As all the defendants have, in league and collusion with one another, caused wrong entries to be made in the survey records and have dispossessed the plaintiff, they are all made a party to the suit."

The plaintiff asks for the following reliefs :

(1) An adjudication that the disputed land is zerait; that the defendants have no right or interest in the land and it is not the kasht of defendants, 2nd to 4th parties, and the entry in the record-of-rights is ineffectual, null and void as against the plaintiff.

(2) On an adjudication of the above reliefs the plaintiff may be put in possession removing defendants 2nd to 4th parties from their illegal possession.

(3) Rs. 8,399-6-0 on account of mesne profits from the date of dispossession up to the date of the institution of the suit may be awarded to the plaintiff against the defendants who may be held liable for the same."

Upon the allegations made in the plaint and the reliefs sought, there is only one cause of action to the plaintiff which is expressly mentioned therein. He claims khas possession of the land upon a single right and that is upon the character of the land, namely, it is the zerait of the plaintiff. Although there are a number of plots comprised in the suit his claim to all of them is common and one and the same, namely, that it is his zerait land. The defendants have been recorded as the kaimi tenants of the different parcels of land in dispute. The plaintiff refutes the entry as wrong and as having been effected through the collusion and conspiracy of the previous thikadars, defendants 1 and 2. Against the defendants the declaration sought by him is one and common that it is not the kasht of the defendants. The fact that the defendants held different parcels of land separate and that the lands have been recorded in the record-of-rights does not change the character of the claim of the plaintiff. His claim, as observed above, is one and one only. The defendants might set up different claims, but the nature of the suit is not to be determined upon the pleas taken by the defendants but upon the frame and scope and the intention and object of the plaintiff. The plaint and plaint alone will determine it and the court-fee has to be paid upon the determination and scope of it.

The plaintiff does not consider the defendants as separate entities. He considers them as one body joined together by the common link of conspiracy and collusion. Under section 17 of the Court-fees Act there must be two or more distinct subjects. In the present case there is only one subject, though consisting of a large area and a number of plots. They constitute one subject and that is the claim of the plaintiff that all these lands constitute his *zerait*.

The word 'subject' in section 17 means cause of action: vide *Nauratan Lal v. Wilford Joseph Stephenson* (1). It also means matters. The decisions in *Chetru Mahto v. Khaja Muhammad Karim Nawab* (2) and *Lachuman Sahu v. Sheikh Abdul Karim* (3) do not apply to the facts of the present case. No collusion or combination was alleged in those cases. In the former a suit was brought by 78 raiyats in respect of 78 different holdings for a declaration that 59 rent decrees which the landlord had obtained at the higher rates were contrary to law. The defendant was one and the plaintiffs were several. They had separate claims against the same defendant. There were, therefore, different causes of action and the subject-matters of the suit clearly brought it within section 17 of the Act. Similarly in the second case, a suit was brought in respect of 25 holdings by the plaintiff against 25 sets of defendants for a declaration that their several lands were held under the *batai* system and that they were wrongly recorded as paying cash rent. No collusion seems to have been alleged in that case also among the defendants. The plaintiff's claim against them was separate. Therefore there were several subjects and causes of action embraced in the suit.

The present case is governed by the principles laid down in *Lokenath Surma v. Keshab Ram Doss* (4) and *Nundo Kumar Naskar v. Banomali Gayan* (5). The schedules in the plaint specifying the

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(3) (1919) 4 P. L. J. 299.

(2) (1919) 4 P. L. J. 297.

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different lands held in possession of the different defendants do not at all alter the nature of the suit. The plaintiff had to specify the details in the plaint. Nor does it in any way alter the nature of the case that the different defendants may be liable for separate mesne profits payable to the plaintiff. That is the liability of the defendants inter se. The plaintiff claims against them a total sum of Rs. 8,399-6-0 as mesne profits. The schedule only gives an account of this total sum claimed.

In the case of *Nundo Kumar Naskar v. Banomali Gayan* (1) it was observed: "In England, as was pointed out in *Ishan Chunder Hazra v. Rameswar Mondol* (2) in an action in ejectment, 'all the parties in possession are joined,' and this includes the lessor as well as the tenants, if the lessor happens to be in possession of part of the land in suit." In support of this reference was made to the English law on the subject.

I, therefore, hold that section 17 of the Court-fees Act does not apply to the case and that the court-fee paid is sufficient.

S. A. K.

CRIMINAL REFERENCE.

Before Adami and Wort, J. J.

MAGUNI PADHAN

v.

KING-EMPEROR.*

1928.
 Feb., 14.

Penal Code, 1860 (Act XLV of 1860), section 211—complaint by police against informant—Court, whether bound to call upon informant to shew cause before issuing summons.

Where, in a cognizable case, the police report an information given by an informant to be false and make a complaint

*Criminal Reference no. 106 of 1927 made by H. R. Meredith, Esq., I.C.S., Sessions Judge of Cuttack, by his letter no. 1796-Cr., dated the 7th November, 1927.

(1) (1902) I. L. R. 29 Cal. 871.

(2) (1897) I. L. R. 24 Cal. 831.