

COURT-FEES ACT REFERENCE.

Before Mr. Justice Ba U.

R.M.P.L.S. CHETTYAR FIRM

v.

KOORMIAH AND ANOTHER.*

1940

June 5.

Court-fees—Suit embracing two or more mortgages—Court fee payable on sum claimed in each mortgage—“Distinct Subjects”—Distinct causes of action—Transfer of Prop. Act, s. 67A—Court-fees Act, s. 17.

In a suit which embraces two or more mortgages the Court fee must be paid, not on the aggregate of the sums claimed, but on the sum claimed in each of the mortgages separately. The words “distinct subjects” in s. 17 of the Court-fees Act mean distinct causes of action.

Chetty, P.L.R.M.N., In re v. Po Kin, 5 L.B.R. 94; *Kissori Lal v. Mozumdar*, I.L.R. 8 Cal. 593; *Mul Chand v. Shib Charan Lal*, I.L.R. 2 All. 676; *Nauratan Lal v. Stephenson*, 4 Pat. L.J. 195, referred to.

S. 67A of the Transfer of Property Act does not control s. 17 of the Court Fees Act.

Barker v. Edges (1898) A.C. 748; *Pollachi Town Bank, Ltd. v. Krishna Ayyar*, A.I.R. (1935) Mad. 262; *Radha Rance v. Chakrabarti*, I.L.R. 63 Cal. 720 referred to.

V. S. Venkatram for the plaintiff. Under s. 67A of the Transfer of Property Act the plaintiff is precluded from bringing two separate suits on the two mortgages he now holds. See also O. 3 rr. 3, 6 of the Civil Procedure Code. S. 17 of the Court Fees Act cannot apply to the case because the plaintiff is precluded from bringing separate suits on the two mortgages. The words “distinct subjects” as used in that section mean distinct causes of action, *Chamaili Rani v. Ram Dai* (1); *Mul Chand v. Shib Charan* (2); *Reference under the Court Fees Act* (3), in respect of which a plaintiff can bring separate suits.

The decision in *Pollachi Town Bank, Ltd. v. A.S. Krishna Ayyar* (4) is against the plaintiff, but, with respect, the reasoning does not appear to be sound.

* Civil Regular Suit No. 52 of 1940.

(1) I.L.R. 1 All. 552.

(2) I.L.R. 2 All. 676.

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

(4) 68 Mad. L.J. 316.

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If there is a doubt as to the application of s. 17 of the Court Fees Act the benefit of the doubt is the right of the subject. Bengal had to amend this section because of this doubt.

Tan Byu (Government Advocate) for the Crown. S. 67A of the Transfer of Property Act has nothing to do with the Court Fees Act. One does not have to look at the provisions of the Transfer of Property to construe the Court Fees Act. The decision in *Radha Ranee Dasee v. Kshettra Mohan* (1) is directly in point. See also *In re P.L.R.M.N. Perchiappa Chetty v. Po Kin* (2); *Nawaba Waziri Begum v. Shashi Bhushan Rai* (3).

Venkatram in reply. The decision in *Radha Ranee's* case is based on the Calcutta law, and *Nawaba Waziri's* case was before the enactment of s. 67A. If s. 67A is not to be applicable the second part of s. 17 of the Court Fees Act would be rendered meaningless. The real test is whether separate suits could be brought.

BA U, J.—In this suit the plaintiff sues for recovery of two sums of money, Rs. 1,310-2-6 and Rs. 1,139-3-6, secured by two separate mortgages but he has paid Court-fees on the aggregate amount of Rs. 2,449-6-0. The question that, therefore, arises now is how Court-fee is to be assessed in a suit which embraces two or more mortgages. In his order of reference, the Taxing Master says that, having regard to the provisions of section 17 of the Court-fees Act, Court-fees should in his opinion be assessed on each mortgage.

Section 17 of the Court-fees Act provides that—

“Where a suit embraces two or more distinct subjects, the plaint or memorandum of appeal shall be chargeable with the

(1) I.L.R. 63 Cal. 720.

(2) 5 L.B.R. 94.

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

aggregate amount of the fees to which the plaints or memoranda of appeal in suits embracing separately each of such subjects would be liable under this Act."

The words "distinct subjects", as used in this section, have been interpreted as meaning distinct causes of action—*Mul Chand v. Shib Charan Lal* (1); *Kissori Lal Ray v. Sharut Chandra Mozumdar* (2); *In re P.L.R.M.N. Perchiappa Chetty v. Po Kin* (3) and *Nauratan Lal v. Stephenson* (4). What section 17, therefore, means is that in a suit which embraces two or more distinct causes of action Court-fee shall be paid on each cause of action. There is no dispute that each mortgage constitutes a distinct cause of action. Consequently, in a suit which embraces two or more mortgages Court-fee shall be paid on each mortgage.

Learned counsel for the plaintiff submits that this would be the logical view to take if section 67A of the Transfer of Property Act were not to come into play. According to him, what section 17 of the Court-fees Act contemplates is a suit which embraces two or more causes of action in respect of which a plaintiff can file separate suits, if he chooses to, but if he does not choose to he can unite them in one suit. He contends that it does not contemplate a suit which embraces two or more causes of action in respect of which a plaintiff cannot file separate suits. He says that under section 67A of the Transfer of Property Act a mortgagee who holds two or more mortgages executed by the same mortgagor must enforce all of them in the same suit and so section 17 of the Court-fees Act does not apply to a mortgage suit which embraces two or more mortgages: in other words, his contention is that section 17 of the Court-fees Act must be read subject

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(1) (1880) I.L.R. 2 All. 676.

(3) 5 L.B.R. 94.

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

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

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to section 67A of the Transfer of Property Act. I cannot accept this contention.

In *Barker v. Edger* (1), their Lordships of the Privy Council observed :

“The general maxim is, ‘Generalia specialibus non derogant.’ When the Legislature has given its attention to a separate subject, and made provision for it, the presumption is that a subsequent general enactment is not intended to interfere with the special provision unless it manifests that intention very clearly. Each enactment must be construed in that respect according to its own subject-matter and its own terms.”

When a subsequent general enactment cannot override or interfere with a special Act, I do not know how one special Act can override, or interfere with, the provisions of another special Act if there is no special provision made to that effect. The Court-fees Act is an Act which deals with the method of collecting a tax ; while the Transfer of Property Act deals with the transmission of property between living persons. They are thus two distinct Codes. Therefore, in my opinion, section 67A of the Transfer of Property Act does not control section 17 of the Court-fees Act. This is also the view held by Venkatasubba Rao J. in *The Pollachi Town Bank, Ltd., by Secretary T.K. Muthuswami Chettyar v. A.S. Krishna Ayyar and others* (2) where the learned Judge says :

“Nor is the view contended for by the petitioner correct. What is argued is that as under S. 67-A, T.P. Act, a person is bound to include in the same suit different mortgages held by him, it follows from this, that the suit relates to one subject only and does not comprise as many subjects as there are mortgages. I am not prepared to accept this contention. The principle of consolidation applied by S. 67-A, T.P. Act, has no bearing upon the interpretation of S. 17, Court-fees Act. The very basis of

(1) (1898) A.C. 748, 754.

(2) A.I.R. (1935) Mad. 262.

Section 67-A 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."

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This was quoted with approval by Mitter and Patterson JJ. of the Calcutta High Court in *Radha Rane Dasee v. Kshetra Mohan Chakrabarti* (1), the headnote of which is in the following terms :

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

For these reasons the order of the Taxing Master is correct and the plaintiff must pay Court-fees on each of the mortgages sued upon in this suit.