

1921.

JASRAJ
BASTIMAL
v.
SADASHIV
MAHADEV.

(2) whether the plaintiff lent money on the promissory note relying on that representation, and (3) whether the plaintiff had any means of knowing that that representation was false.

We may refer to the case of *Gurushiddswami v. Parawa*⁽¹⁾ in which reference was made to *Dadasaheb Dasrathrao v. Bai Nahani*⁽²⁾. We held that as there was evidence that the defendant was not deceived by what the plaintiff had told him, the plaintiff was not estopped from pleading minority. It may be deduced from that decision that the Court approved of the decision in *Dadasaheb Dasrathrao v. Bai Nahani*⁽²⁾ and that if the defendant had been deceived by what the plaintiff had told him there would have been an estoppel.

Costs costs in the cause.

Decree set aside : case remanded.

R. R.

⁽¹⁾ (1919) 44 Bom. 175.

⁽²⁾ (1917) 41 Bom. 480.

FULL BENCH.

APPELLATE CIVIL.

Before Sir Norman Macleod, Kt., Chief Justice, Mr. Justice Shah, and Mr. Justice Fawcett.

1921.

July 1.

HIRALAL MOTICHAND, PLAINTIFF v. GANPAT LAHANU AND ANOTHER, DEFENDANTS^a.

Court-Fees Act (VII of 1870), section 17—Suit on a Khata—Claim valued at the balance due on the khata—Court fee can be levied on the amount of the balance.

The Court fee payable in a suit to recover a balance due on a Khata, which contains a number of items, is on the aggregate amount and not on each item in the Khata.

^a Civil Reference No. 19 of 1920.

THIS was a Reference made by G. G. Nargund, First Class Subordinate Judge at Ahmednagar, under Order XLVI, Rule 1, of the Civil Procedure Code.

1921.

HIRALAL
MOTICHAND

v.

GANPAT
LAHANU.

The letter of reference ran as follows :—

“ The plaintiff in this suit sues to recover from the defendants nine items which stand debited in the Khata (account) of the defendants in plaintiff's books and which still remain undischarged after giving credit for the amounts paid by the defendants in discharge of previous items of debit.

“ The plaint without making specific mention of these nine items states the total of the items debited on the right hand side and the totals of the items credited on the left from the opening of the account and seeks to recover the balance struck by deducting credit totals from the debit totals, viz., Rs. 178-4-6 with further interest Rs. 6-6-0 from the close of the year Samvat 1976 (dated 24th October 1919). The several dates on which these items were delivered to the defendants and debited in their account are not mentioned in the plaint but in para. five it is roughly stated that the items claimed are from 23rd June 1917 and onwards and the cause of action arose on that and subsequent dates.

“ Paragraphs 3 and 4 of the plaint are drafted as if it is not of very great importance to state the several items and their dates, while para. 5 only roughly indicates that the items are of dates within three years before suit and are not therefore time-barred.

“ The items now sought to be recovered consist mostly of gold, and gold ornaments sold and delivered to defendants on separate dates and the rest consist of amounts of interest at nine per cent. per annum due on the balance against the defendants at the close of

1921.

HIRALAL
MOTICHAND
v.
GANPAT
LAHANU.

the account years of Samvat 1973-74, 1974-75, 1975-76 and the last item, dated 3rd. March 1920, refers to the cost of notice to the defendants asking them to pay the undischarged balance. It is alleged that it is the practice or custom of the trade here to capitalise the interest due at the close of each year and charge interest thereon subsequently.

“The court fees on the plaint Rs. 14-4-0 are paid on the total amount of the claim. They are not ‘the aggregate amount of the fees to which the plaint in suit embracing separately each of the subjects would be liable’ which would be Rs. 16-2-0 (as shown in the appended schedule).

“The order or decree that may be passed in this suit is not subject to appeal, as the suit is triable under Chapter II of the Dekkhan Agriculturists’ Relief Act (section 10).

“The points which require reference are :—

“1. Whether the plaint in such a case should not contain a full statement of the several items claimed, viz., the amount of the item and the date of the delivery of goods to which the item refers or the date of the debit of the amount of interest capitalised or of amount spent for and deemed to be due from the defendants.

“2. Whether these items do not constitute ‘two or more distinct subjects’ giving rise to several causes of action united in the same suit and if so,

“3. Whether the plaint is not chargeable as required by section 17 of the Court Fees Act (VII of 1870).

“My opinion on all these points is in the affirmative. The practice in this Court is otherwise. The members of the bar of this Court take their stand in support of the practice on the decision of the High Court in Civil

Reference No. 9 of 1901 (*Vithaldas Damodardas v. Narayan Mahadev*) which was a reference by the Joint Subordinate Judge of this Court. That suit (No. 465 of 1901) was, as I think, exactly of the same nature, as the one in hand. Therein the balance of account claimed represented the aggregate sum payable in respect of cloth purchased on credit on separate dates and included also the cost of notice, and the court fee paid for the plaint was on the aggregate amount claimed while the Sub-Judge was of opinion that it should be the aggregate fees required on the several items. The High Court held that the suit did not embrace two or more subjects but only one and the plaintiff had properly valued the suit.

“It is not clear from the judgment of the High Court how that case was distinguishable from the one reported at page 271 of the printed judgments for 1887 (*Ramchandra bin Dhondiba v. Appaji Narhar*) which was also a suit to recover the balance ‘on a Khata, the amount claimed representing the aggregate sum payable in respect of seven separate transactions which took place on different dates.’ This latter was also a reference. Therein the High Court held that the several items in the Khata constituted ‘distinct causes of action of an entirely different nature and are not connected so as to form one subject.’ Some distinction was sought to be made at the bar by suggesting whether the word Khata in the latter suit made any difference. But ‘Khata’ is a general term used for account and it was conceded that the expression ‘balance’ due on a Khata meant nothing else than a balance due on account as in the present suit. Thus it was very difficult to reconcile the decision in the Civil Reference of 1901 with the one in that of 1887.

“The Civil reference of 1901 is not reported in any authorised reports and it appears to me that all other

1921:

HIRALAL
MOTICHAND
v.
GANPAT
LAHANU.

1921.

HIRALAL
MOTICHAND
v.
GANPAT
LAHANU.

Courts except this Court—at any rate some of the Courts as far as I know—rely on the decision of 1887 and enforce separate court fees on several items in such suits. Had it not been for the decision in the Reference of 1901, which was from this very Court I would have asked the parties to treat such suits as embracing distinct subjects and pay the aggregate of separate fees on several items. The decision of 1887 was brought to the notice of their Lordships who decided the Reference of 1901 and they held otherwise. I therefore entertain reasonable doubt as to whether the present suit is of the nature dealt with in the Reference of 1887 or of the nature dealt with in that of 1901 or whether there is any distinction between the two or between these two and the present one. I for one do not see any difference. So I am at a loss to understand how to proceed in the matter. It may rightly be said that I am bound to follow the later of the two decisions even though not reported. But my difficulty is that, thinking as I do that the nature of the two suits was the same and the decision of 1887 is not expressly overruled, or if they are not of the same nature, it is not clear wherein lies the distinction and if there be any distinction whether the present suit is of the same kind as the suit either of 1887 or as of 1901, I cannot decide which case to follow. Hence the necessity of reference.

“The decision of 1901 has influenced the parties and pleaders of this Court to frame suits of this nature as in the present case. Paragraphs 3 and 4 of the plaint are better suited to a suit of the description mentioned in Article 64 of Limitation Act, without the fact of the account being stated and the recital in para. 5 indicates that the suit is not of the nature described in Article 85 of the Act, as the several dates of the cause of action are stated, but that it falls under

Article 52. Under this last Article 'the date of the delivery of each article is the date of the cause of the action for its price,' (vide page 935 of Mitra on Law of Limitation, 5th Edition). In my opinion the suit falls under Article 52. Hence all the facts necessary to enable the Court to see whether the items are not time-barred are required to be mentioned in the plaint. I would therefore answer point No. 1 in the affirmative.

"As to points Nos. 2 and 3 I am of opinion that the items constitute 'distinct subjects' and therefore the plaint is chargeable as required by section 17 of the Court Fees Act. Each of them represents a separate transaction entered into each on a different date and the fact that these separate transactions are noted down in the one account cannot convert them all into one subject. The account is merely, as I think, a memorandum wherein the several transactions are recorded and the transactions retain their distinctness all through."

The Reference was heard.

S. R. Gokhale, amicus curiæ, in support of Reference.

K. N. Koyajee, amicus, curiæ, to oppose the Reference.

MACLEOD, C. J. :—This is a Reference by the First Class Subordinate Judge of Ahmednagar. The plaintiff sued to recover from the defendants nine items which stood debited in the Khata of the defendants in the plaintiff's books and which still remained undischarged after giving credit for the amounts paid by the defendants in discharge of the previous items of debit. It seems clear that the suit really was for the balance due on an account. The question was raised whether the Court-fees were not chargeable as if each item was a distinct subject, so that the aggregate amount of fees

1921.

HIRALAL
MOTICHANDv.
GANPAT
LAHANU

1921.

HIRALAL
MOTICHAND
v.GANPAT
LAHANU.

should be calculated as if a separate suit had been filed for each item.

In the case of *Ramchandra v. Appaji*⁽¹⁾ the plaintiff sued to recover a sum of Rs. 63-10-6 as the balance due to him by the defendant on a Khata, alleging that the amount claimed represented the aggregate sum payable in respect of seven separate transactions which took place on different dates. The Subordinate Judge referred the following question to the High Court—Whether the plaint was sufficiently stamped when it bore stamps on the aggregate value of the amount sued for, and if not, what additional stamp ought it to bear. The Court decided that the several items in the Khata constituted “distinct subjects” within the contemplation of section 17 of the Court-Fees Act and were not connected so as to form one subject. A similar question arose in a very similar case, *Vithaldas v. Narayan*,⁽²⁾ where the plaintiff sued to recover on a Khata, a principal amount of Rs. 15-1-3 with interest. The Judge said there that the plaintiff had brought a suit upon the transactions noted in Schedules I, II and III. The plaintiff paid Court-fees on the aggregate amount, and not on each transaction sued upon. The case of *Ramchandra v. Appaji*⁽¹⁾ was referred to and must have been before this Court when the Reference was heard. But the Court consisting of Sir Lawrence Jenkins and Mr. Justice Chandavarkar were of opinion that the Subordinate Judge was wrong in thinking that the Court-fees should be charged on each item, as the suit did not embrace two or more subjects, but only one. No reference was made in the judgment to the case of *Ramchandra v. Appaji*⁽¹⁾ as the Court may have considered that they were not differing from the decision in that case.

(1) (1887) P. J. 271.

(2) (1909) Civ. Ref. No. 9 of 1901
(Unrep.)

But it seems that some doubt has arisen in the minds of the Subordinate Judges as to how Court-fees should be calculated in the case of a suit for a balance due on an account; and it is desirable that there should be an authoritative decision on the subject. It seems to me in a suit for a balance due on a Khata, which would ordinarily contain a number of items, each item does not constitute a distinct subject. The subject matter of the suit is the balance due on the account, and, therefore, in this case the Court-fee payable was the Court-fee on the aggregate amount and not on each item in the Khata.

SHAH, J. :—I agree.

FAWCETT, J. :—I agree. I think the general principle applicable is that laid down in *Grimby v. Aykroyd*⁽¹⁾ and *Bonsey v. Wordsworth*⁽²⁾ which was followed in *Anderson, Wright & Co. v. Kalagarla Surjinārain*⁽³⁾ and *Kedar Nath Mitra v. Dinabandhu Saha*⁽⁴⁾. This is that where a tradesman has a bill against a party for any account in which the items are so connected together that it appears that the dealing is not intended to terminate with one contract, but to be continuous, so that one item if not paid shall be united with another and form one continuous demand, the whole together forms but *one cause of action* and cannot be divided. In the present case, separate items, which make up the amount of the balance due, are connected in this way, so that there is one cause of action and it follows that there is only one subject in the suit, which does not, therefore, embrace "two or more distinct subjects" within the meaning of section 17 of the Court-Fees Act.

Answer accordingly.

R. R.

(1) (1847) 1 Exch. 479.

(2) (1856) 18 C. B. 325.

(3) (1885) 12 Cal. 339.

(4) (1915) 42 Cal. 1043.

1921.

HIRALAL
MOTICHAND

v.
GANPAT
LAHANU.