



IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CMPMO No.58 of 2013

Reserved on: 4th March, 2021

Decided on: 10th March, 2021

Hari Dev Diwedi and others

.....Petitioners

Versus

Gauri

.....Respondent

Coram

Ms. Jyotsna Rewal Dua, Judge

Whether approved for reporting?¹ Yes.

For the Petitioners: Mr. Ajay Kumar, Senior Advocate with
Mr. Dheeraj K. Vashisht, Advocate.

For the Respondent: Mr. N.K. Thakur, Senior Advocate with
Mr. Karan Veer Singh, Advocate.

Jyotsna Rewal Dua, Judge

Defendants moved an application under Order 7 Rule 11 read with Section 151 of the Code of Civil Procedure for rejection of plaint on account of filing less amount of Court fee by the plaintiff. The application was dismissed by the learned Trial Court on 31.01.2013. This order of learned Trial Court has been questioned by the

¹ Whether reporters of print and electronic media may be allowed to see the order?

defendants in the instant petition preferred under Article 227 of the Constitution of India.

2. Facts:-

2(i). Civil Suit was filed by the respondent in the year 2011 with the averments that:-

(a). Suit land measuring 00-76-52 hectares was owned and possessed by her father late Sh. Satdev, who was also holder of account Nos. i.e. A/c No.492934 in Post Office, Una having an amount of Rs.65,922/- and A/c No.367 in Basoli Agricultural Service Co-operative Society having an amount of Rs.7,64,471/-.

(b). Parents of the plaintiff were divorced. Though the custody of the plaintiff remained with her father, however, finding constant watch and care of the little child/plaintiff difficult and owing to his strained relations with other family members, Sh. Satdev had entrusted the wellbeing of the plaintiff with her maternal uncle.

(c). Deceased Satdev had sufficient landed property in his name and funds in his accounts. He developed mental sickness and could not apprehend the things properly. During the period of his mental illness, he was

looked after by the plaintiff and her maternal uncle. Sh. Satdev passed away on 04.07.2010.

(d). After mourning the death of her father, when the plaintiff approached the office of Basoli Agricultural Service Co-operative Society for getting her name incorporated in the account of her father, she became aware of the fact that the amount lying in the account had been transferred to the account of one of the defendants on the basis of a will statedly executed by her late father. Subsequently, a dispute with respect to attestation of mutation also arose between the parties in respect of rights over the landed property of the deceased.

(e). Father of the plaintiff had never executed the alleged will during his lifetime in favour of the defendants. The will is forged, fabricated, invalid, null and void. There was no reason for plaintiff's father to disinherit her from his estate as she was his only daughter and in good relations with him. In any case, the land was Joint Hindu Family Coparcenary property of plaintiff and her deceased father, it could not be alienated in any manner save and except for legal necessity.

2(ii). The plaintiff valued the suit for the purposes of Court Fees and Jurisdiction at Rs.130/- and accordingly affixed the Court Fees. In the relief clause, plaintiff sought a declaration that the land measuring 00-76-52 hectares (comprised in 14 different parcels/khasra numbers) is owned and possessed by her and she is also entitled to operate and receive the amount lying in two accounts of her deceased father, being his daughter and natural heir. The plaintiff also sought the relief of declaring the will dated 09.05.2010 qua the estate of deceased Satdev in favour of the defendants as fake, forged, fabricated, void ab-initio, having no adverse effect upon the right, title and interest of the plaintiff over the suit property as the same was Joint Hindu Family Coparcenary property, which could not be alienated except for legal necessity and without the consent of other Co-parcener/plaintiff.

Alongwith the above declaratory reliefs, plaintiff also sought consequential relief of permanent injunction for restraining the defendants from getting the revenue entries recorded in their names on the basis of alleged will, for ousting the plaintiff from the joint possession, changing the nature and character of the suit land till its partition and

for releasing the amount lying in the accounts of her father in favour of the defendants. In the alternative, decree for joint possession was also prayed for. It will be appropriate to extract the relief clause:-

“It is therefore, prayed that a decree for declaration to the effect that the land measuring 00- 76-52 Hects detailed below:-

(i) to (xiv)

(xv) is owned and possessed by the plaintiff and she is also entitled to operate and receive the amount of about Rs.65922/- laying in A/C No.492934 in the post office Una, Div. Una (H.P.) as well as an amount of about Rs.7,64,471/- laying in A/C No.367 in Basoli Agricultural Service Co-operative Society, VPO Basoli Tehsil & Distt. Una (H.P.), along with interest being the only daughter as well as natural heir/successor-in-interest of deceased Satdev S/O Jagan Nath and the alleged WILL dated 09-05-2010 qua the estate of deceased Satdev in favour of depts is fake, forged, fabricated, invalid document and which is wrong, illegal, void ab-initio, ineffective, inoperative, having no adverse effect upon the right, title and interest of pelff over suit property, as the same was joint Hindu family co-parcenary property of pelff and her father which cannot be alienated in any manner by the manager of joint Hindu family except for legal necessity and without the consent of other co-parcener i.e. pelff, with consequential relief of permanent injunction restraining the depts from getting mutation/revenue entries in their names on the basis of alleged will, ousting the pelff forcibly from joint possession, changing nature and character in any manner until final partition of suit land or making any kind of alienation of specific khasra nos., getting release the amount laying in aforesaid accounts and in the alternative decree for joint possession and any other relief which this Hon’ble court may deems fit and just in the facts and circumstances of the case may kindly be passed in favour of plaintiff and against the defendants with costs in the interest of justice U/Ss 34 to 38 of Specific Relief Act.”

2(iii). Defendants No.1, 3 and 2, 4 filed their separate written statements. In both the written statements, a preliminary objection was taken that the suit had not been

valued properly for the purposes of Court Fee and Jurisdiction. The reason assigned for taking this objection was that the plaintiff had sought relief regarding Account No.367, which had an amount of Rs.7,64,471/-, upon which she was required to affix the Court Fee of Rs.10,210/-, whereas she had valued the suit at Rs.130/- and affixed court fee of Rs.23/-. It was asserted that the Court below had no jurisdiction to try and entertain the present suit.

2(iv). A separate application under Order 7 Rule 11 of the Code of Civil Procedure was moved by the defendants seeking rejection of plaint on following grounds:-

“2 That the plaintiff has filed the suit for declaration vide which she is claiming herself to be owner in possession of the suit land. The further relief claimed by the plaintiff is that she is entitled to receive an amount of Rs.65922/- as well as Rs.7,64,471/-.

3 That the plaintiff-applicant wrongly valued the suit to the tune of Rs.130/- and has affixed the court fee of Rs.23/- whereas as per the pleadings particularly keeping in view the relief claimed by the plaintiff she is require to affix the court fee on the value of Rs.7,64,471/- which comes to Rs.10210/-.”

The application was dismissed by the learned Trial Court vide order dated 31.01.2013. Aggrieved, the defendants/petitioners have moved this Court by way of the present petition.

3. Heard learned counsel for the parties and gone through the record.

The **contention** raised on behalf of the petitioners/defendants is that the suit filed by the plaintiff was governed by Section 7(iv)(c) of the Himachal Pradesh Court Fees Act, 1968 and ad valorem Court Fees on the amount claimed was liable to be paid for the purpose of Court Fee and Jurisdiction. It is further contended that the learned Court below had no jurisdiction to try the suit on account of lack of pecuniary jurisdiction to deal with the matter. In support of his contention, learned Senior Counsel has relied upon the judgments rendered in **2006(3) Shim. LC 92**, titled **Devta Satya Narain and another Versus Lal Chand and others** and **CMPMO No.2012 & CMP No.1396 of 2012**, titled **Khawaja Khallilullah Versus Mrs. Shamem Butt and others**, decided on 01.04.2013.

Whereas on behalf of the respondent/plaintiff, it is argued that affixation of Court Fee, in view of the reliefs prayed for by the plaintiff, will be governed by Section 7(iv)(c) first proviso of the Himachal Pradesh Court Fees Act, 1968 and accordingly Court Fee of Rs.23/- has been

affixed. The suit is only for seeking a decree of declaration alongwith consequential relief of permanent injunction.

4. Observations:-

4(i). Affixation of Court Fee in the instant case is governed by the Himachal Pradesh Court Fees Act, 1968, Section 7 whereof computes the fees payable in certain suits. The relevant portion of this section is as follows:-

“7. Computation of fees payable in certain suits- The amount of fee payable under this Act in the suits next hereinafter mentioned shall be computed as follows:-

- (i) to (iii)*
- (iv) in suits-*
- (a)*
- (b)*
- (c) for a declaratory decree and consequential relief; to obtain a declaratory decree or order, where consequential relief is prayed;*
- (d)*
- (e)*
- (f)*

In all such suits the plaintiff shall state the amount at which he values the relief sought;

Provided that the minimum court-fee in each case shall be thirteen rupees:

Provided further that in suit coming under sub-clause (c), in case where the relief sought is with reference to any property such valuation shall not be less than the value of the property calculated in the manner provided for by paragraph (v) of this section;”

It is the case of both the parties that Court Fees in the instant case will be determined in accordance with Section 7(iv)(c) of the Himachal Pradesh Court Fees Act. The only dispute is that according to the plaintiff/respondent, it will be the first proviso of this section, which would govern

the determination of Court Fee, whereas according to the defendants/petitioners, it is the second proviso which would be applicable. In this regard, it will also be appropriate to refer to Section 7(v), which provides for computation of Court Fees for possession of land/houses and gardens:-

- “(v) for possession of land, houses and gardens; In suits for the possession of land houses and gardens-according to the value of the subject matter and such value shall be deemed to be- where the subject matter is land, and –*
- (a) Where the land forms an entire estate, or a definite share of an estate paying annual revenue to Government; or forms part of such an estate and is recorded in the Collector’s register as separately assessed with such revenue, and such revenue is permanently settled-ten times the revenue so payable;*
- (b) where the land forms an entire estate, or a definite share of an estate, paying annual revenue to Government or forms part of such estate and is recorded as aforesaid; and such revenue is settled, but not permanently-ten times the revenue so payable;*
- (c) Where the land pays no such revenue, or has been partially exempted from such payment, or is charged with any fixed payment, in lieu of such revenue; and net profits have arisen from the land during the year next before the date of presenting the plaint fifteen times such net profits, but where no such net profits have arisen therefrom-the amount at which the court shall estimate the land with reference to the value of similar land in the neighbourhood;*
- (d) where the land forms part of an estate paying revenue to Government, but is not a definite share of such estate and is not separately assessed as above mentioned- the market-value of the land;*
- Explanation- The word “estate”, as used, in this paragraph means any land subject to the payment of revenue, for which the proprietor or a farmer or ryot shall have executed as separate engagement to Government, or which, in the absence of such engagement, shall have been separately assessed with revenue;*
- (e) for houses and gardens; Where the subject matter is house or garden-according to the market-value of the house or garden;”*

4(ii). Section 7(iv)(c) of the Himachal Pradesh Court Fees Act is similar to Section 7(iv)(c) as applicable in the State of Punjab. The provision of Section 7(iv)(c) of Court Fees Act, 1870 as amended in Punjab reads as follows:-

“7. *Computation of fees payable in certain suits.- The amount of fee payable under this Act in the suits next hereinafter mentioned shall be computed as follows:*

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|---|---|---|---|
| | * | * | * |
| (iv) <i>in suits-</i> | * | * | * |
| (c) <i>for a declaratory decree and consequential relief.- to obtain a declaratory decree or order, where consequential relief is prayed,</i> | * | * | * |

According to the amount at which the relief sought is valued in the plaint or memorandum of appeal.

In all such suits the plaintiff shall state the amount at which he values the relief sought:

Provided that the minimum court fee in each case shall be thirteen rupees:

Provided further that in suits coming under sub-clause (c), in cases where the relief sought is with reference to any property such valuation shall not be less than the value of the property calculated in the manner provided for by clause (v) of this section.”

The above provision as existing in the State of Punjab came for consideration of the Hon'ble Apex Court in **(2010) 12 SCC 112**, titled **Suhrid Singh Alias Sardool Singh Versus Randhir Singh and others**. The plaint therein contained following prayers:-

- “(i) for a declaration that two houses and certain agricultural lands purchased by his father, S. Rajinder Singh were coparcenary properties as they were purchased from the sale proceeds of ancestral properties, and that he was entitled to joint possession thereof;*
- (ii) for a declaration that the will dated 14-7-1985 with the codicil dated 17-8-1988 made in favour of the third defendant, and gift deed dated 10-9-2003 made in favour of the fourth defendant were void and non est “qua the coparcenary”;*
- (iii) for a declaration that the sale deeds dated 20-4-2001, 24-4-2001 and 6-7-2001 executed by his father, S. Rajinder Singh in favour of the first defendant and sale deed dated 27-9-2003*

executed by the alleged power-of-attorney holder of S. Rajinder Singh in favour of the second defendant, in regard to certain agricultural lands (described in the prayer), are null and void qua the rights of the "coparcenary", as they were not for legal necessity or for benefit of the family; and
 (iv) *for consequential injunctions restraining Defendants 1 to 4 from alienating the suit properties."*

The question which arose for consideration before the Hon'ble Apex Court was that what should be the Court Fee payable in regard to the prayer for a declaration that sale deeds were void and not binding on the Coparcenary and for the consequential relief of joint possession and injunction. It was observed by the Court that there was no prayer for cancellation of sale deeds. The prayer was for declaration that the deeds do not bind the Coparcenary and for joint possession. The plaintiff in the suit was not the executant of sale deeds. Therefore, the Court Fee was computable under Section 7(iv)(c) of the Act. It was further held that the Trial Court and the High Court were not justified in holding that the effect of prayer was to seek cancellation of sale deeds or that the Court Fees had to be paid on the sale consideration mentioned in the sale deeds. Relevant paras from the judgment are extracted hereinafter:-

"7. *Where the executant of a deed wants it to be annulled, he has to seek cancellation of the deed. But if a non-executant seeks annulment of a deed, he has to seek a declaration that the*

deed is invalid, or non-est, or illegal or that it is not binding on him. The difference between a prayer for cancellation and declaration in regard to a deed of transfer/conveyance, can be brought out by the following illustration relating to 'A' and 'B' - two brothers. 'A' executes a sale deed in favour of 'C'. Subsequently 'A' wants to avoid the sale. 'A' has to sue for cancellation of the deed. On the other hand, if 'B', who is not the executant of the deed, wants to avoid it, he has to sue for a declaration that the deed executed by 'A' is invalid/void and non-est/illegal and he is not bound by it. In essence both may be suing to have the deed set aside or declared as non-binding. But the form is different and court fee is also different. If 'A', the executant of the deed, seeks cancellation of the deed, he has to pay ad-valorem court fee on the consideration stated in the sale deed. If 'B', who is a non-executant, is in possession and sues for a declaration that the deed is null or void and does not bind him or his share, he has to merely pay a fixed court fee of Rs.19.50 under Article 17(iii) of Second Schedule of the Act. But if 'B', a non-executant, is not in possession, and he seeks not only a declaration that the sale deed is invalid, but also the consequential relief of possession, he has to pay an ad-valorem court fee as provided under Section 7(iv)(c) of the Act.

8. Section 7(iv)(c) provides that in suits for a declaratory decree with consequential relief, the court fee shall be computed according to the amount at which the relief sought is valued in the plaint. The proviso thereto makes it clear that where the suit for declaratory decree with consequential relief is with reference to any property, such valuation shall not be less than the value of the property calculated in the manner provided for by clause (v) of Section 7.

9. In this case, there is no prayer for cancellation of the sale deeds. The prayer is for a declaration that the deeds do not bind the "co-parceners" and for joint possession. The plaintiff in the suit was not the executant of the sale deeds. Therefore, the court fee was computable under section 7(iv)(c) of the Act. The trial court and the High Court were therefore not justified in holding that the effect of the prayer was to seek cancellation of the sale deeds or that therefore court fee had to be paid on the sale consideration mentioned in the sale deeds."

4(iii). In **(2017) 11 SCC 852**, titled **J. Vasanthi and Others Versus N. Ramani Kanthammal (Dead) Represented by Legal Representative and Others**, the plaintiff filed the suit for declaration that the sale deeds

were fabricated and therefore, were void. Considering the provisions of Tamil Nadu Court Fees and Suit Valuation Act, it was held that suit for declaration for treating the documents null and void amounts to seeking relief of cancellation of documents. When plaintiff was party to such transactions as in that case, then the Court Fee is to be computed on the value of subject matter. Relevant para of the judgment reads as under:-

“11. The singular issue that gains significance in this case is that the original plaintiff was a party to the transaction. Section 40 of the Act, as we notice, provides that in a suit for cancellation of a document, the court fee has to be computed on the value of the subject-matter of the suit and such value shall be deemed to be the whole decree or other document which is sought to be cancelled, the amount or value of the property for which the decree was passed or other document was executed. It also spelt out that a part of the decree or other document is to be cancelled, such part of the amount or value of the property. On a careful scrutiny of the provision, it is limpid that it refers to the decree or other document and in that context, it uses the word “value”. The stand of the respondents before the High Court as well as before this Court is that the documents were sought to be declared as null and void on the ground of fraud and, therefore, Section 40 of the Act would not be attracted. In this regard, we may notice certain decisions of the High Court of Madras.”

The Apex Court noticed the decision in *Suhrid Singh’s case, supra*, as well as in ***Shailendra Bhardwaj Versus Chandra Pal, (2013) 1 SCC 579*** and observed that these two decisions are in context of different situations and based upon different enactments. Decision in *Suhrid Singh’s case, supra*, was based upon the Court Fees

provisions as they existed in the State of Punjab and the judgment in *Shailendra Bhardwaj's* case was in reference to the provisions as they existed in the State of U.P. Para 24 of the judgment, being relevant in this regard, is extracted hereinafter:-

“24. The decisions in *Suhrid Singh* and *Shailendra Bhardwaj* have to be understood in their proper perspective. There was U.P. Amendment in *Shailendra Bhardwaj*. In *Suhrid Singh* the Court was dealing with a different situation. Be that as it may, the valuation of a suit and payment of court fee shall depend upon the special provision in a State if provided for. The view taken by the Madras High Court in *Chellakannu*, in our considered opinion, is the correct exposition of law.”

In respect of the Court Fee payable under the relevant statute in State of Tamil Nadu, it was observed that the view taken by the Madras High Court in ***Chellakannu Versus Kolanji, 2005 SCC OnLine Mad 390***, was the correct opinion. This view as reproduced in the judgment runs as follows:-

“16. *Chellakannu v. Kolanji*, dealt with a civil revision that was filed by the plaintiff assailing the order of the trial court directing the plaintiff to pay the court fee under Section 6 2007 (1) CTC 300 7 AIR 2005 Mad 405 40 of the Act. The narration of the facts in the plaint was adverted to by the High Court and for proper appreciation of the controversy that has been raised in the instant case, we may reproduce the same:

“2... the Suit Property belonged to his Father- Pichamuthu. Pichamuthu had two wives, through whom he had Three Sons. Earlier, there was Partition in the family of the Plaintiff on 04.08.1971 wherein the Plaintiff and the Sons through the First Wife have partitioned the family properties. There was further partition between the Plaintiff and his Brothers in 1977. Item 1 of the Suit Property was allotted to one Poomalai. Items 2 and 4 - S.Nos.155/3 and 339/13A were allotted to the Plaintiff. First Defendant is the Wife of Shanmugam. Third Defendant has been keeping the First Defendant as his concubine. The Third Item was allotted to the Plaintiff's Sister. The Third Defendant is the

Third Party. With the help of the First Defendant, the Third Defendant secured the Suit Properties - Item Nos.1 to 3 under a false representation that the Plaintiff is executing a Will in favour of the First Defendant. On that mis-representation, Plaintiff's thumb impression was obtained and two Sale Deeds dated 05.06.1995 and 23.08.1995 are said to have been obtained. Those Sale Deeds obtained from the Plaintiff under false representation is not binding on the Plaintiff. Hence, the Plaintiff has filed the Suit for Declaration that the Sale Deeds are not binding on him and for Permanent Injunction, restraining the Defendants from in any way interfering with the Plaintiff's peaceful possession and enjoyment of the Plaintiff Schedule Items I, II and IV."

17. *The further stand taken by the plaintiff was that the sale deeds were obtained from him under fraud and hence, suit had been filed for declaration that the sale deeds were not binding on the plaintiff and since the suit was not filed for cancellation of the sale deeds, the defendants could not insist the plaintiff to pay the court fee under Section 40 of the Act. The trial court recorded a find that the sale deeds had been executed by the plaintiff himself, and prima facie the sale deeds were binding on the executants and when there is a prayer to declare the sale deeds as invalid, it tantamounts to seeking cancellation of sale deeds and therefore, court fee payable would be governed by Section 40 of the Act.*
18. *The High Court posed two questions, namely, (i) whether in the Suit filed for Declaration that the Sale Deeds are invalid, Court Fee paid under Section 25(d) of the Act is incorrect and (ii) whether the impugned order directing the Plaintiff to pay the Court Fee under Section 40 of the Act suffers from any infirmity warranting interference. Dealing with the factual matrix, the High Court observed:*

"...Thus, the Plaintiff himself is a party to the Sale Deed; when the Party himself seeks to get rid of the Sale Deeds in substance it amounts to Cancellation of Decree. The Plaintiff might seek to avoid the Sale Deeds if he is not a party to the Sale Deeds. But, since the Plaintiff himself is a party to the Sale Deeds before he is suing for any relief, the Plaintiff must first obtain the cancellation of the Sale Deeds."

And again:

"12. The word "Cancellation" implies that the persons suing should be a party to the document. Strangers are not bound by the documents and are not obliged to sue for cancellation. When the party to the document is suing, challenging the document, he must first obtain cancellation before getting any further relief. Whether cancellation is prayed for or not or even it is impliedly sought for in substance, the Suit is one for cancellation. in the present case, when the Plaintiff attacks the Sale Deeds as having been obtained from him under fraud and misrepresentation the Plaintiff cannot seek for any further relief without setting aside the Sale Deeds.

** * **

15. The allegation on the Plaint in substance mounts to cancellation of the document. Though the prayer is couched in the form of seeking declaration that the document is not valid and not binding, the relief in substance indirectly amounts to seeking for cancellation of the Sale Deed. Learned District Munsif was right in ordering payment of Court Fee under Section 40 of the Act. This Revision Petition has no merits and is bound to fail.”

Being of this view, the High Court dismissed the civil revision and directed the plaintiff to pay court fee with further stipulation that unless paid, plaint would stand rejected.”

4(iv). In **AIR 2020 SC 1372**, titled **Agra Diocesan Trust Association v. Anil David and others**, the Hon’ble Apex Court again considered *Suhrid Singh’s* case, *supra*, in respect of the Court Fee provisions in the State of Punjab as well as *Shailendra Bhardwaj’s* case, *supra*, in respect of Court Fee provisions in State of U.P. As *Agra Diocesan* case pertained to State of U.P., therefore, the judgment in *Suhrid Singh’s* case was not applied. Paragraphs 13 to 15 of the judgment, being relevant, are extracted hereinafter:-

“13. In *Shailendra Bhardwaj & Ors. v. Chandra Pal & Anr.* (2012 AIR SCW 6519) (*supra*), this court had to consider whether a suit for declaration that a will and a sale deed are void resulting in their cancellation, fell under Section 7(iv-A) of the Court Fees Act, 1870 as amended by the U.P. Amendment Act (Act 19 of 1938) or Article 17(iii) of Schedule II of the Court Fees Act, 1870 for the purpose of valuation. The trial court had held that the court fee had to be paid under Section 7(iv-A) and the High Court affirmed that view. This court noted the provisions of the Court Fees Act, 1870 as amended by the U.P. Amendment Act (Act 19 of 1938) and held as follows:

“On comparing the above mentioned provisions, it is clear that Article 17(iii) of Schedule II of the Court Fees Act is applicable in cases where the Plaintiff seeks to obtain a declaratory decree without any consequential relief and there is no other provision under the Act for payment of fee relating to relief claimed. Article 17(iii) of Schedule II of the Court Fees Act makes it clear that this Article is applicable in cases where the Plaintiff seeks to obtain a declaratory

decree without consequential reliefs and there is no other provision under the Act for payment of fee relating to relief claimed. If there is no other provision under the Court Fees Act in case of a suit involving cancellation or adjudging/declaring void or voidable a will or sale deed on the question of payment of court fees, then Article 17(iii) of Schedule II shall be applicable. But if such relief is covered by any other provisions of the Court Fees Act, then Article 17(iii) of Schedule II will not be applicable. On a comparison between the Court Fees Act and the U.P. Amendment Act, it is clear that Section 7(iv-A) of the U.P. Amendment Act covers suits for or involving cancellation or adjudging/declaring null and void decree for money or an instrument securing money or other property having such value.”

14. The Court observed that the suit was filed after the death of the testator, and that the suit property covered by the will had to be valued. The court felt that since Section 7(iv-A) of the U.P. Amendment Act specifically provided that payment of court fees in cases where the suit is for, or involving cancellation or adjudging/declaring null and void a decree for money or an instrument, Article 17(iii) of Schedule II of the Court Fees Act was inapplicable. The U.P. Amendment Act, therefore, was applicable despite the fact that no consequential relief had been claimed. Consequently, in terms of Section 7(iv-A) of the U.P. Amendment Act, court fees were to be computed according to the value of the subject-matter. The trial court and the High Court correctly held it to be so. The court distinguished *Suhrid Singh's case (supra)* stating that:

“10. We are of the view that the decision of this Court in *Suhrid Singh (supra)* is not applicable to the facts of the present case. First of all, this Court had no occasion to examine the scope of the U.P. Amendment Act. That was a case in which this Court was dealing with Sections 7(iv)(c), (v) and Schedule II Article 17(iii), as amended in the State of Punjab. The position that we get in the State of Punjab is entirely different from the State of U.P. and the effect of the U.P. Amendment Act was not an issue which arose for consideration in that case. Consequently, in our view, the said judgment would not apply to the present case.

11. The Plaintiff, in the instant case, valued the suit at Rs. 30 lakhs for the purpose of pecuniary jurisdiction. However, for the purpose of court fee, the Plaintiff paid a fixed court fee of Rs.200 Under Article 17(iii) of Schedule II of the Court Fees Act. The Plaintiff had not noticed the fact that the above mentioned Article stood amended by the State, by adding the words "not otherwise provided for by this Act". Since Section 7(iv-A) of the U.P. Amended Act specifically provides for payment of court fee in case where

the suit is for or involving cancellation or adjudging/declaring void or voidable an instrument securing property having money value, Article 17(iii) of Schedule II of the Court Fees Act shall not be applicable.”

15. *It is evident from the above discussion that it is undisputed that the point in issue was with respect to valuation for purposes of court fee; equally, it is not in issue that since the plaintiff (i.e. petitioner herein) sought, in addition to a declaration, in both the suits, decrees of cancellation, the crucial point was what the correct value for purposes of court fee was. Now, market value has been specifically defined, in the context of a litigation like the present one. According to Section 7 (iv-A), in case the plaintiff (or his predecessor-in-title) was not a party to the decree or instrument, the value was to be according to one-fifth of the value of the subject matter, “and such value shall be deemed to be” under Section 7 (iv-A), “if the whole decree or instrument is involved in the suit, the amount for which or value of the property in respect of which the decree is passed or the instrument executed”. Importantly, the explanation to Section 7 (iv-A) created a deeming fiction as to what constitutes the “value of the property” by saying that “in the case of immovable property shall be deemed to be the value as computed in accordance with the sub-section (v), (v-A) or (v-B) as the case may be.”*

4(v). In the instant case, the plaintiff is seeking declaration that she is owner in possession of the suit land and she is entitled to operate and receive the amount lying in the accounts of her deceased father. She has further prayed for declaring the will allegedly executed by her late father in favour of the defendants as fake, forged and not binding upon her. Plaintiff has not claimed any amount from the Court. In fact, the reliefs prayed by her practically flow out from the declaration sought by her in respect of the will allegedly executed by her late father. Plaintiff has also not prayed for decree of possession. She has prayed for

consequential relief of permanent injunction for restraining the defendants from mutating the land on the basis of alleged will in their favour; for ousting her from joint possession till the suit land is partitioned and for restraining the defendants from getting the amount lying in the accounts of her father released in their favour on the basis of the will. The alternative decree prayed by her is also for joint possession. In the instant case, respondent/plaintiff is not even seeking cancellation of any deed executed by her. The judgments cited on behalf of the petitioners are not applicable to the fact situation of instant case. Therefore, in light of the judgment passed by the Hon'ble Supreme Court in **(2010) 12 SCC 112**, titled **Suhrid Singh Alias Sardool Singh Versus Randhir Singh and others**, as considered in **AIR 2020 SC 1372**, titled **Agra Diocesan Trust Association v. Anil David and others**, in my considered view, the learned Trial Court committed no error in rejecting the application moved by the defendants praying for rejection of the plaint on account of affixing less Court Fee. Plaintiff had neither claimed the amount through the Court nor from the defendants or from the Bank. Here it will also be appropriate to take note of

Order 7 Rule 11 of the Code of Civil Procedure, invoking which, the defendants had prayed for rejection of the plaint.

Order 7 Rule 11 CPC reads as under:-

“Rejection of plaint

The plaint shall be rejected in the following cases:-

- (a) where it does not disclose a cause of action;*
- (b) where the relief claimed is undervalued, and the plaintiff, on being required by the court to correct the valuation within a time to be fixed by the court, fails to do so;*
- (c) where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;***
- (d) where the suit appears from the statement in the plaint to be barred by any law;*
- (e) where it is not filed in duplicate;*
- (f) where the plaintiff fails to comply with the provisions of rule 9;*

Provided that the time fixed by the court for the correction of the valuation or supplying of the requisite stamp-papers shall not be extended unless the court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp papers, as the case may be, within the time fixed by the court and that refusal to extend such time would cause grave injustice to the plaintiff.”

A bare reading of the above provision makes it amply clear that even if the plaint is not sufficiently stamped, then also the plaintiff can be required by the Court to supply the requisite stamp papers within a timeline. There would be no occasion for rejection of the plaint straightway on the ground that the same is insufficiently stamped.

For all the aforesaid reasons, there is no merit in the instant petition and the same is dismissed alongwith pending miscellaneous application(s), if any. The parties through their learned counsel are directed to appear before the learned Court below on 08.04.2021.

The Registry is directed to return the records of the case to the learned Trial Court forthwith.

Jyotsna Rewal Dua
Judge

March 10, 2021
Mukesh

High Court of HP