

SHAILENDRA BHARDWAJ & OTHERS

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v.

CHANDRA PAL & ANOTHER
(Civil Appeal No. 8196 of 2012)

NOVEMBER 21, 2012

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[K.S. RADHAKRISHNAN AND DIPAK MISRA, JJ.]

COURT FEES ACT, 1870:

s.7(iv-A) and Articles 17(iii) as amended by U.P. Act, 19 of 1938 – Suit for declaration of a will and a sale deed as null and void and for cancellation thereof – Court fee payable – Held: The suit having been filed after death of testator, suit property covered by the will has to be valued – Since s. 7(iv-A) of the U.P. Amendment Act specifically provides that payment of court fee in case where the suit is for or involving cancellation or adjudging/declaring null and void decree for money or an instrument, Article 17(iii) of Schedule II of the Court Fees Act would not apply – Consequently, in terms of s. 7(iv-A) of the U.P. Amendment Act, the court fees have to be computed according to the value of the subject matter and trial court as well as High Court have correctly held so.

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The appellant filed a suit for declaration of a will and a sale as null and void and to cancel the same. The suit property was valued at Rs. 30,00,000/- but the fixed court fee of Rs. 200/- was paid under Article 17(iii) of Schedule II to the Court Fees Act, 1870. The trial court held that the plaintiff should have paid the court fee as per s.17(iv-A) of the U. P. Amendment Act. The High Court upheld the said order.

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In the instant appeal, the question for consideration before the Court was: whether a suit filed seeking a declaration that a will and a sale deed are void, resulting

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A their cancellation, will fall u/s. 7(iv-A) of the Court Fees Act, 1870, as amended by the U.P. Amendment Act (Act XIX of 1938) or Article 17(iii) of Schedule II of the Court Fees Act, 1870 for the purpose of valuation.

B Dismissing the appeal, the Court

HELD: 1.1. Article 17(iii) of Schedule II of the Court Fees Act, 1870 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. 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. The suit, in the instant case, was filed after the death of the testator and, therefore, the suit property covered by the will has also to be valued. The plaintiff valued the suit at Rs.30 Lakhs for the purpose of pecuniary jurisdiction. However, he paid a fixed court fee of Rs.200/- under Article 17(iii) of Schedule II of the Court Fees Act. He had not noticed the fact that the said Article stood amended by the State, by adding the words “not otherwise provided by this Act”. Since s. 7(iv-A) of the U.P. Amendment Act specifically provides that payment of court fee in case where the suit is for or involving cancellation or adjudging/declaring null and void decree for money or an instrument, Article 17(iii) of Schedule II of the Court Fees Act would not apply. The U.P. Amendment Act, therefore, is applicable, despite the fact that no consequential relief has been claimed. Consequently, in terms of s. 7(iv-A) of the U.P. Amendment Act, the court fees have to be computed according to the value of the subject matter and the trial court as well as the High Court have correctly held so. [Para 10-11] [1133-B-D-E-G; 1134-C-E]

H *Suhrid Singh v. Randhir Singh and Others* (2010) 12 SCC 12 – held inapplicable

Case Law Reference:

(2010) 12 SCC 12 held inapplicable Para 5

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 8196 of 2012.

From the Judgment & Order dated 15.12.2011 of the High Court of Judicature at Allahabad in FA No. 242 of 2011.

Viresh Kumar Yadav, Md. Farman for the Appellant.

M.R. Shamshad, Shashank Singh, Gaurav Agarwal for the Respondents.

The Judgment of the Court was delivered by

K.S. RADHAKRISHNAN, J. 1. Leave granted.

2. The short question that has come up for consideration in this case is whether a suit filed seeking a declaration that a will and a sale deed are void, resulting their cancellation, will fall under Section 7(iv-A) of the Court Fees Act, 1870, as amended by the U.P. Amendment Act (Act XIX of 1938) [for short 'the U.P. Amendment Act'] or Article 17(iii) of Schedule II of the Court Fees Act, 1870 for the purpose of valuation.

3. Civil Suit No. 230 of 2006 was filed before the Court of the Civil Judge, Hathras, U.P. seeking the following reliefs:

“(A) Decree may be passed in favour of the plaintiffs and against the defendants, declare null and void and invalid of the forged will dated 21.3.2003 and sale deed dated 12.1.2005 and cancel and its information sent to the office of Registrar Hathras.

(B) That the cost of the Suit may be decreed in favour of the plaintiff and against the defendants.

(C) That any other cost which may deem fit by the

A Hon'ble Court in favour of the plaintiff and against the defendants in the interest of Justice."

B 4. The suit property was valued and the cost of the property was fixed at Rs.30,00,000/- and the Court fee of Rs.200/- was paid under Article 17(iii) of Schedule II of the Court Fee Act. The question arose before the trial Court whether the plaintiff had properly valued the suit and the court fee paid. The trial Court took the view that the plaintiff should have paid the court fee as per Section 7(iv-A) of the U.P. Amendment Act. The matter was taken up before the High Court. The High Court concurred with the views taken by the trial Court and dismissed the appeal on 15.12.2011, against which this appeal has been preferred.

D 5. Shri Viresh Kumar Yadav, learned counsel appearing on behalf of the appellant, submitted that the Courts below have committed an error in holding that the suit be valued and an *ad valorem* court fee be paid under Section 7(iv-A) of the U.P. Amendment Act. Learned counsel submitted that the plaintiff had correctly valued the suit and proper court fee was paid in accordance with Article 17(iii) of Schedule II of the Court Fees Act. Considerable reliance was also placed on the judgment of this Court in *Suhrid Singh v. Randhir Singh and Others* [(2010) 12 SCC 12] and contended that the Court fee need be paid only on the plaint averments.

F 6. Shri M. R. Shamshad, learned counsel appearing for the respondent, on the other hand, contended that the High Court has come to the correct conclusion that even though no consequential reliefs was prayed for, still as per the U.P. Amendment Act, plaintiff will have to pay the court fee under Section 7(iv-A) of the U.P. Amendment Act. Learned counsel submitted that the plaintiff had valued the suit without noticing the fact that the State of U.P. had amended the Court Fee Act by Act XIX of 1938 and in terms of Section 7(iv-A) of the U.P. Amendment Act, the court fee has to be commuted according to the value of the subject matter and an *ad valorem* court fee

has to be paid. Learned counsel also submitted that the judgment of this Court in *Suhrid Singh* (supra) is not applicable to the facts of the present case and this Court had no occasion to consider the scope of the U.P. State amendment in that judgment.

7. We may, for proper appreciation of the various contentions raised by the parties, refer to the provisions of the Court Fees Act as well as Court Fees Act as amended by the U.P. Amendment Act, which will give a correct picture of the changes made by the U.P. Amendment Act on the Court Fees Act. An operative chart of the Court Fees Act and the U.P. Amendment Act is given below:

Court Fees Act	As per UP Amendment Act (19 of 1938)
<p>"7. Computation of fees payable in certain suits:</p> <p>The amount of fee payable under this Act in the suits next hereinafter mentioned shall be computed as follows:</p> <p>.....</p> <p>.....</p> <p>(iv) In Suits –</p> <p>.....</p> <p>.....</p> <p>For declaratory decree and consequent relief-</p>	<p>"7. Computation of fees payable in certain suits for money:</p> <p>The amount of fee payable under this Act in the suits next hereinafter mentioned shall be computed as follows:</p> <p>.....</p> <p>.....</p> <p>For declaratory decree with consequential relief – (iv) in Suits-</p> <p>(a) to obtain a declaratory decree or order, where consequential relief other than relief</p>

<p>A</p> <p>B</p> <p>C</p> <p>D</p> <p>E</p> <p>F</p> <p>G</p> <p>H</p>	<p>.....(a)</p> <p>.....(b).....</p> <p>For a declaratory decree and consequential relief (c) to obtain a declaratory decree or order, where consequential relief is prayed,</p> <p>.....</p> <p>.....</p> <p><u>According to the amount at which the relief sought is valued in the plaint or memorandum of appeal.</u></p>	<p><u>specified in subsection (iv-A) is prayed;</u></p> <p>For cancellation or adjudging void instruments and decrees – (iv-A) in suit for or involving cancellation of or adjudging void or voidable a decree for money or other property having a market value, or an instrument securing money or other property having such value:</p> <p>(1) Where the plaintiff or his predecessor-in-title was a party to the decree or the instrument, according to the value of the subject matter, and</p> <p>(2) Where he or his predecessor-in-title was not party to the decree or instrument, according to one-fifth of the value of the subject-matter, and such value shall be deemed to be-</p> <p>If the whole decree or instrument is involved in the suit, the amount for which or value of the</p>
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	<p>property in respect of which the decree was passed or the instrument executed, and if only a part of the decree or instrument is involved in the suit, the amount or value of the property to which such part relates.</p> <p>Explanation – ‘the value of the property’ for the purposes of this sub section, shall be the market-value, which in the case of immovable property shall be deemed to be the value as computed in accordance with sub-section (v), (v-A) or (v-B), as the case may be.”</p>	<p>A</p> <p>B</p> <p>C</p> <p>D</p> <p>E</p>
<p>_____</p> <p>“Schedule II</p> <p>Article 17 Complaint or memorandum of appeal in each of the following suits:</p> <p>.....</p> <p>.....</p> <p>(iii) To obtain a declaratory decree where no consequential relief is prayed.</p>	<p>_____</p> <p>“Schedule II</p> <p>Article 17 Complaint or memorandum of appeal in each of the following suits:</p> <p>.....</p> <p>.....</p> <p>(iii) To obtain a declaratory decree where no consequential relief is prayed in any suit, <u>not otherwise provided for by this act;</u></p>	<p>F</p> <p>G</p> <p>H</p>

A 8. We may also indicate that the Suits Valuation Act, 1887 in terms of which the suits have to be valued for the purpose of Court Fees Act has also been amended vide U.P. Act 7 of 1939 (w.e.f. 16.7.1939) and the difference in both the Acts are given below:

B Suits Valuation Act, 1887 (Central Act)	<i>Suits Valuation Act, 1887 [Amended provision in the State of U.P.]</i>
<p>C D E F G 4. Valuation of relief in certain suits relating to land not to exceed the value of the land-</p> <p>Where a suit mentioned in the Court Fees Act, 1870 (7 of 1870), Section 7, paragraph IV, or Schedule II, Article 17, relates to land or an interest in land of which the value has been determined by rules under the last foregoing section, the amount at which for purposes of jurisdiction the relief sought in the suit is value shall not exceed the value of the land or interest as determined by those rules.</p>	<p>4. Valuation of certain suits for the purposes of jurisdiction – Suits mentioned in paragraphs IV (a), IVA, IVB, V, VA, VB, VI, VIA; VIII and X(d) of Section 7 and Articles 17, 18 and 19 of the Schedule II of the Court-Fees Act, 1870, as in force for the time being in the Uttar Pradesh, <i>shall be valued for the purposes of jurisdiction at the market value of the property involved in or affected by or the title to which is affected by the reliefs sought, and <u>such value shall, in the case of land, be deemed to be the value as detgerminable in accordance with the rules framed under Section 3</u></i>.</p> <p>[Vide U.P. Act 7 of 1939. Section 3 (w.e.f. 16.07.1939)]</p>

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9. 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 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. The suit, in this case, was filed after the death of the testator and, therefore, the suit property covered by the will has also to be valued. Since Section 7(iv-A) of the U.P. Amendment Act specifically provides that payment of court fee in case where the suit is for or involving cancellation or adjudging/declaring null and void decree for money or an instrument, Article 17(iii) of Schedule II of the Court Fees Act would not apply. The U.P. Amendment Act, therefore, is applicable in the present case, despite the fact that no consequential relief has been claimed. Consequently, in terms of Section 7(iv-A) of the U.P. Amendment Act, the court fees have to be commuted according to the value of the subject matter and the trial Court as well as the High Court have correctly held so.

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

A 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 Section 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. 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. Plaintiff had not noticed the fact that the above mentioned article stood amended by the State, by adding the words “not otherwise provided 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.

12. For the reasons abovementioned, the appeal lacks in merits and the same is dismissed, with no order as to costs.

R.P.

Appeal dismissed.