

15. For the reasons recorded above, the limitation in the present suit started on 1st December, 1975, when the sale deed was executed as the possession would be deemed to have been delivered under the sale on that day and, therefore, the suit filed on 2nd December, 1976, is clearly beyond the period of one year and as such was barred by limitation. Accordingly, the finding of the Courts below to the contrary is reversed and issue No. 4 is decided in favour of the defendants and against the plaintiff.

16. Since the suit is held to be time barred, the appeal is allowed, the judgments and decrees of the Courts below are set aside and the plaintiff's suit is dismissed. As the suit was filed on the basis of an earlier decision of this Court, we leave the parties to bear their own costs.

S. S. Sandhawalia, C.J.—I agree.

N. K. S.

FULL BENCH

Before S. S. Sandhawalia, C.J., S. P. Goyal and J. V. Gupta JJ.

NIRANJAN KAUR,—*Petitioner.*

versus

NIBIGAN KAUR,—*Respondent.*

Civil Revision No. 1011 of 1980.

June 4, 1981.

Court Fees Act (VII of 1870)—Section 7(iv) (c) and Article 1 Schedule I—Suit for possession of land—Declaration also sought that sale deed executed by the plaintiff was obtained by fraud and therefore not binding on him—Relief for cancellation of the sale deed—Whether substantially involved in the suit—Court-fee payable on the plaint—Whether governed by Article 1, Schedule I.

Held, that it is well settled that the Court in deciding the question of court-fee should look into the allegations made in the plaint to find out what is the substantive relief that is asked for. Mere astuteness in drafting the plaint will not be allowed to stand

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in the way of the court looking at the substance of the relief asked for. There may be cases where the declaration asked for is merely a surplusage and the so-called consequential relief is in reality an independent substantial relief. If a person sues for a declaration that the defendant is liable to pay him money due on a certain bond and also asks for the recovery of the amount or asks for a declaration that he is the owner of a certain property and entitled to its possession and asks for possession of the property, the reliefs for the recovery of the amount or for the possession cannot be properly treated as consequential reliefs which can be valued arbitrarily by the plaintiff under section 7(iv) (c) of the Court Fees Act, 1870. Thus, in each case the Court has to find out the real relief claimed by the plaintiff in the suit. Where the main relief is that of the cancellation of the deed and the declaration, if any, is only a surplusage, the case would not be covered under section 7(iv) (c) of the Act because in a suit under that clause, the main relief is that of a declaration and the consequential relief is just ancillary. A suit filed for possession of land on the ground that the sale-deed executed by the plaintiff was void on the ground of fraud is for all intents and purposes for the cancellation of the sale-deed. The plaintiff cannot claim possession unless the said deed is cancelled by a decree of the court. To say in the plaint that it be declared that that the sale-deed executed as a result of the fraud was void and not binding on the plaintiff, does not convert the suit into one for a declaration with the consequential relief of possession so as to fall within the provisions of section 7(iv) (c) of the Act. To such a suit the only article applicable is Article 1 Schedule I of the Act because the substantive relief is the cancellation of the sale deed. (Paras 6, 7 and 9).

Chhota Singh v. Jit Singh and others, 1975 Punjab Law Reporter 372.

Labh Singh and others v. Puran Singh, 1978 P.L.R. 29.

Mohan Singh vs. Shrimati Balbir Kaur, 1978 Punjab Law Reporter 622. **OVERRULED.**

Case referred by Hon'ble Mr. Justice J. V. Gupta on 9th September, 1980 to a larger Bench for the opinion of the important question of law involved in the case. The larger Bench comprising the Hon'ble the Chief Justice Mr. S. S. Sandhawalia, Hon'ble Mr. Justice S. P. Gopal and the Hon'ble Mr. Justice J. V. Gupta finally decided the case on 4th June, 1981,

M. R. Agnihotri, (V. K Sharma & Anil Seth), for the Petitioner.

K. C. Puri (R. C. Puri, with him), for the Respondent

JUDGMENT

J. V. Gupta, J.

(1) The following question has, on a reference by me sitting singly, come up for decision by this Full Bench:

“Where, the plaintiff, who is a party to a document relating to the agricultural land, files a suit for its cancellation or for declaring it voidable against him, is such a suit governed by section 7(iv) (c) or article 1, Schedule I of the Court-fees Act?”

As the decision of this question will conclude both Civil Revision Petitions Nos. 1011 and 1012 of 1980, which have been referred on a common question of law, this judgment will dispose of both of them.

2. The brief facts, giving rise to this reference, are that the plaintiff-petitioner filed a suit for possession of agricultural land measuring 25 *bighas* and 6 *biswas* on the allegations that she was the owner thereof. She owned land and due to old age, she could not manage her property and, therefore, she appointed the father of the defendant — respondent, who is her nephew, as her general attorney,—*vide* deed dated July 25, 1969, with a right to him to manage, sell or mortgage her property. The father of the defendant — respondent used to get various documents signed by her as she was dependent, upon him. On account of this fiduciary relationship, Pavittar Singh got certain papers signed from her on the plea of their submission to the Income-tax Authorities. In June, 1974, from the papers lying in her custody, it was found that they were sale deeds, one in favour of Pavittar Singh himself, and another in favour of the defendant, that is, his minor daughter. The plaintiff—petitioner never sold the land to the defendant—respondent, nor received any amount from her, nor she ever parted with the possession of the disputed property. Thus, a fraud was committed on her and consequently, the said sale deed was vitiated. It is further averred that the land revenue of the suit land was Rs. 11, and for the purpose of jurisdiction, the suit was valued at Rs 330. The Court-fee stamp fixed thereon was of Rs. 11. In the plaint, it has been prayed that the suit of the plaintiff—petitioner may be decreed with costs against the defendant—respondent and it be

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declared that the sale deed, dated March 12, 1970, 'got executed from her as a result of the fraud was void and not binding on her and that a decree for possession of the suit land be passed. Much to the same effect are the allegations in Civil Revision Petition No. 1012 of 1980, where the sale deed was by the plaintiff-petitioner in favour of Pavittar Singh, defendant-respondent himself.

3. In the written statement, it was *inter alia* pleaded that the suit had not been properly valued for the purposes of the Court-fee and jurisdiction, and proper Court-fee had not been paid. On January 9, 1978, the trial Court framed the following preliminary issue:

"Whether the suit is not properly valued for purposes of Court-fee and jurisdiction? If so, its effect?"

The trial Court, after going through the plaint and the various judgments of this Court, came to the conclusion that the case fell within article 1, Schedule I and not under section 7(iv) (c) of the Court-fees Act (hereinafter called the Act), as claimed by the plaintiff-petitioner. Consequently, the suit was assessed for more than Rs. 50,000, being the sale consideration for the suit property. Feeling aggrieved against the same, the plaintiff-petitioner has filed this revision petition in this Court in which the present reference has been made.

4. The learned counsel for the plaintiff-petitioner contended that the suit was virtually for a declaration and the relief of possession was consequential thereto and was, therefore, covered under section 7(iv) (c) of the Act. In support of this contention, main reliance has been placed on *Shamsher Singh v. Rajinder Prashad and others* (1), followed subsequently in *Labh Singh and others v. Puran Singh* (2), and *Mohan Singh v. Shrimati Balbir Kaur* (3). The other judgments relied upon on behalf of the plaintiff-petitioner are, *Narain Singh v. Sher Singh* (4), *Man Singh v. Shiv Karan Singh* (5), *Ajmer Singh v. Behl Singh* (6), *Surat Singh v.*

(1) A.I.R. 1973 S.C. 2384.

(2) 1978 P.L.R. 29.

(3) 1978 P.L.R. 622.

(4) A.I.R. 1974 Pb. & Hary. 185.

(5) 1971 P.L.R. S.N. (4).

(6) 1975 CL.J. 391.

Jagdish and others (7), *Chhota Singh v. Jit Singh and others* (8), *Naresh Kumar v. Hakam Singh and others* (9), *Jugal Kishore and another v. Dr. Pirbhu Dayal and another* (10), and an unreported judgment of Pattar, J., in (*Samarjit Singh and another v. Hans Raj and others* (11)). Reference has also been made to *Vishwa Nath alias Bholu v. Shrimati Sita Bai and others* (12) and *Parbhu v. Girdhari* (13).

5. On the other hand, the learned counsel for the defendant-respondent, submitted that the suit was for cancellation of the document to which the plaintiff was a party and no decree for possession could be passed unless the said document was cancelled. Thus, the case was not covered under section 7(iv) (c), but was governed by the residuary article 1 Schedule I of the Act. In support of this contention, he relied upon *Kalu Ram v. Babu Lal and onther* (14), *Mt. Keb-ul-Nisa v. Din Mohammad* (15), *Jagat Singh v. Avtar Singh and others* (16), *Man Singh v. Shiv Karan and others* (17), *Mrs Nand Kaur and others v. Gurdev Kaur* (18), *Amar Kaur and others v. Parkash Chand and others* (19), and *Gobind Kaur v. Pritam Singh and another* (20).

6. As stated earlier, main reliance has been placed by the plaintiff-petitioner on the judgment of their Lordships of the Supreme Court in *Shamsher Singh's case* (supra). In the said case, the father of the plaintiff executed a mortgage-deed in favour of the appellants (the mortgagee) of a property of which he claimed to be

(7) 1978 R.L.R. 413.

(8) 1975 P.L.R. 372.

(9) 1979 P.L.R. 137.

(10) 1980 P.L.R. 717.

(11) C.R. 1609/74 decided on 19th November, 1975.

(12) 1952 P.L.R. 331.

(13) A.I.R. 1965 Pb. 1.

(14) A.I.R. 1932 All. 485.

(15) A.I.R. 1941 Lahore 97.

(16) 1970 C.L.J. 80.

(17) 1971 R.L.R. 200.

(18) 1977 P.L.R. 500.

(19) 1974 C.L.J. 71.

(20) 1975 R.L.R. 553.

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the sole owner, for a sum of Rs. 16,000. The mortgagee filed a suit on the foot of that mortgage and obtained a decree. When he tried to take out execution proceedings for the sale of the mortgaged property, the sons of the mortgagor, filed a suit for a declaration that the mortgage executed by their father in favour of the mortgagee was null and void and ineffectual against them as the property was a joint Hindu family property, and the mortgage had been effected without consideration and family necessity. On the plaint, the plaintiffs paid a fixed Court-fee of Rs. 19.50 and the value of the suit for the purpose of jurisdiction was given as Rs. 16,000. A preliminary objection having been raised by the appellant that the suit was not properly valued for the purposes of Court-fee and jurisdiction, the trial Court tried it as a preliminary issue and held that although the case was covered by section 7(iv) (c) of the Act, the proviso added by the Punjab amendment to that section applied and directed the plaintiffs to pay the Court-fee on the value of Rs. 16,000 which was the amount at which the plaintiffs had valued the suit for the purpose of jurisdiction. The Court-fee not having been paid, the plaint was rejected. The plaintiffs, thereupon, carried the matter, in appeal, to the High Court, the decision of which is reported as *Rajinder Prashad v. Shamsher Singh* (21). There, the plaintiffs-appellants' case was that no consequential relief of setting aside the decree within the meaning of section 7(iv) (c) of the Act was involved as the same was inherent in the declaration which was claimed with regard to the decree. But taking the view that the plaintiffs were not at all bound by the mortgage, in dispute, or the decree, the High Court held that there was no consequential relief involved since neither the decree nor the alienation bound the plaintiffs in any manner. One of the defendants in the said suit, then filed an appeal in the Supreme Court. While dealing with that case, in paragraph 4 of the judgment, it has been observed by their Lordships of the Supreme Court,—

“In this case, the relief asked for is on the basis that the property, in dispute, is a joint Hindu family property and there was no legal necessity to execute the mortgage. It is now well settled that under Hindu law if the manager of a joint family is the father and the other members are the sons, the father may, by incurring a debt so long as

it is not for an immoral purpose, lay the joint family estate open to be taken in execution proceedings upon a decree for the payment of the debt not only where it is an unsecured debt and a simple money decree for the debt but also to a mortgage debt which the father is personally liable to pay and to a decree for the recovery of the mortgage debt by the sale of the property even where the mortgage is not for legal necessity or for payment of antecedent debt (*Faqir Chand v. Harnam Kaur* (22). Consequently, when the plaintiffs sued for a declaration that the decree obtained by the appellant against their father was not binding on them, they were really asking either for setting aside the decree or for the consequential relief of injunction restraining the decree-holder from executing the decree against the mortgage property as he was entitled to do."

In the later part of the judgment, *Mt. Zeb-ul-Nisa's case* (supra), has been quoted *in extenso* and the *ratio* of the decision therein has been approved by their lordships of the Supreme Court. Thus, what the Supreme Court has held in *Shamsher Singh's case* (supra) is that in the suit by the plaintiffs for the declaration that the decree obtained by the mortgagee against their father was not binding on them, they were really asking either for setting aside the decree or for the consequential relief of injunction restraining the decree-holder from executing the decree against the mortgage property as he was entitled to do. This case is hardly helpful to the case of the plaintiff-petitioner as it is clearly distinguishable from the facts of the present case for the simple reason that herein the plaintiff-petitioner is a party to the document, which she is required to get cancelled because of the alleged fraud, etc. A suit for declaration by a son or a member of a coparcenary under the Hindu Law will thus be on a different footing. In such a suit, the main relief will be that of a declaration and the consequential relief of injunction restraining the decree-holder from executing the decree against the sons, etc., will be just ancillary. This is further clear when reference has been made in *Shamsher Singh's case* (supra) to *Vinavakrao v. Mankunwaribai* (23), wherein it was held that in

(22) (1967) 1 S.C.R. 68.

(23) A.I.R. 1943 Nagpur 70.

a suit by the son for a declaration that the decree against his father does not effect his interest in the family property, consequential relief was involved *ad valorem* Court-fee was necessary. On the other hand, there may be cases, where the declaration asked for is merely a surplusage, and the so-called consequential relief is in reality an independent substantial relief. For instance, if a person sues for a declaration that the defendant is liable to pay him money due, on a certain bond and also asks for recovery of the amount, or asks for a declaration that he is the owner of certain property and entitled to its possession and asks for possession of the property, the reliefs for the recovery of the amount or for possession cannot properly be treated as consequential reliefs, which can be valued arbitrarily by the plaintiff under section 7 (iv) (c).

7. It is well settled that the Court in deciding the question of Court-fee should look into the allegations made in the plaint to find out what is the substantive relief that is asked for. Mere astuteness in drafting the plaint will not be allowed to stand in the way of the Court looking at the substance of the relief asked for. Thus, in each case, the Court has to find out the real relief claimed by the plaintiff in the suit. Where the main relief is that of the cancellation of the deed, and the declaration if any, is only a surplusage, the case would not be covered under section 7 (iv) (c) of the Act, because in a suit under that clause, the main relief is that of a declaration and the consequential relief is just ancillary. In this respect, reference may again be made to *Mt. Zebul-Nisa's case* (supra), wherein it has been observed as follows :—

“It seems obvious that the consequential relief referred to in section 7 (iv) (c) could not mean a substantive relief, the valuation of which is separately provided for in the Court-fees Act. If it were so held, a plaintiff could easily evade payment of the necessary Court-fee, on the substantive relief by prefacing it with a declaration as to his rights. Every suit involves the establishment of certain rights of the plaintiff as a necessary preliminary to the grant of the relief claimed by him. But the addition of a prayer for a declaration as to such rights cannot convert a suit for a substantive relief into one for a ‘declaratory decree, where consequential relief is prayed for’ within the meaning of section 7 (iv) (c), Court-fees Act. It is

significant that the valuation of the relief in cases falling within the scope of section 7(iv) (c) is left to the plaintiff. This is presumably because the 'consequential relief' contemplated by the section is some ancillary relief to which the plaintiff becomes entitled as a necessary result of the declaration, but for which no separate provision is made in the Act. The essence of the relief in such cases lies in the declaratory part and the consequential relief being merely an auxiliary equitable relief, its valuation seems to have been left to the plaintiff. The meaning of the expression 'consequential relief' as used in section 7(iv) (c), Court-fees Act, was recently considered by a Full Bench of the Allahabad High Court (consisting of five Judges) in *Kalu Ram v. Babu Lal* (supra 14) and it was held that the expression 'consequential relief' means some relief, which would follow directly from the declaration given the valuation of which is not capable of being definitely ascertained and which is not specifically provided for anywhere in the Act and cannot be claimed independently of the declaration as a 'substantial relief'. It follows, therefore, that if the relief claimed in any case is found in reality to be tantamount to a substantial relief and not a mere 'consequential relief' in the above sense, the plaintiff must pay Court-fee on the substantial relief."

8: It is the common case of the parties that in case the main relief in the suit is held to be that of cancellation of the sale deed, then the case is not covered by section 7(iv) (c) and the only provision applicable is article 1, Schedule I of the Act. In order to bring the case under section 7(iv) (c) of the Act, the main and substantive relief should be that of a declaration and the consequential relief should be ancillary thereto. Moreover, if no consequential relief is claimed or could be claimed in the suit, then section 7(iv) (c) will not be attracted. Section 7(iv) (c) clearly contemplates suits to obtain the declaratory decree or order where consequential relief is prayed. It further provides that in all such suits, the plaintiff shall state the amount at which he values the relief sought. A further proviso has been added thereto by the Punjab Act No. 31 of 1955, which reads as follows:

"Provided further that in suits coming under sub-clause (c), in cases where the relief sought is with reference to any

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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.”

9. In a suit to obtain declaratory decree where no consequential relief is prayed, sub-clause (iii) of article 17 of schedule II of the Act, will be applicable, but the suit filed by the plaintiff-petitioner was virtually, to all intents and purpose, for the cancellation of the sale deed, executed by her, in favour of the defendant-respondent. She cannot claim possession unless the said deed is cancelled by a decree of the Court. To say in the plaint, that it be declared that the sale deed, got executed from her as a result of the fraud, was void and not binding on her, does not, convert the suit into one for a declaration with the consequential relief of possession so as to fall within the provisions of section 7(iv) (c) of the Act. To such a suit, the only article applicable is article 1, Schedule I of the Act, and for that proposition, further support can be had from a Full Bench decision of the Allahabad High Court in *Kalu Ram's case* (supra) also wherein as regards the valuation of the relief as to the cancellation of the alienation, it has been held that such a relief falls neither under section 7(iv) (c) nor under Schedule II, article 17(iii), but under the residuary article 1 Schedule I of the Act.

10. In *Jagat Singh's case* (supra), relied upon by the learned counsel for the respondent, it has been rightly held that the plaintiff has to get the alleged gift deed, to which he himself was a party, cancelled, before he could seek possession of the land. The case was, therefore, held to be covered by article 1 Schedule I of the Act, and the plaintiff was required to pay *ad valorem* Court-fee on the value of the property involved. The said case is fully applicable to the facts of the present case.

11. Similarly, in *Amar Kaur's case* (supra), the learned Judge rightly distinguished the decision of their Lordships of the Supreme Court in *Shamsher Singh's case* (supra) and correctly held that when a suit is for the cancellation of an instrument with a consequential relief for injunction, it will not fall within the ambit of section 7(iv) (c) of the Act.

12. The contrary view taken in *Chhota Singh's case* (supra), has to be held to be erroneous because in that case, the plaintiff was a party to the gift deed, which was sought to be declared null and

void on the ground of fraud etc. The learned Judge, after noticing the decision of the Supreme Court in *Shamsher Singh's case* (supra), held therein that the said case was covered by section 7(iv) (c), which, in our view, has not been correctly interpreted by the learned Judge.

13. Similarly, the view taken in *Labh Singh's case* (supra) and in *Mohan Singh's case* (supra), has to be held to be erroneous because in both cases, the plaintiff was a party to the deed which was sought to be declared void and ineffective against the plaintiff's right, the same having been got executed by undue influence and fraud etc. However, in *Mohan Singh's case* (supra), in addition to the Supreme Court judgment in *Shamsher Singh's case* (supra), further reliance was also placed on the decision of *Parbhu's case* (supra) and *Vishwa Nath's case* (supra).

Parbhu's case (supra), related to the declaration that the previous decree for partition was null and void because the provisions of order 1 rule 8, Code of Civil Procedure, were not complied with, whereas in *Vishwa Nath's case* (supra), the plaintiff, who was a minor had sought declaration, that the decree be declared null and void because the alienations upon which it was based, were without consideration and necessity. The plaintiff being the son was not bound to sue for setting aside the decree. Thus, the same are distinguishable and are not applicable to the case in hand.

14. Reference to the other cases cited at the bar, is not necessary, Every suit involves the establishment of certain rights of the plaintiff as a necessary preliminary for the grant of the relief claimed by him, but the addition of a prayer for a declaration as to such right cannot convert such a suit for a substantive relief into one for a "declaratory decree where a consequential relief is prayed for" within the meaning of section 7(iv) (c) of the Act. Therefore, it will have to be seen in each case as to what, in effect, is the substantive relief that has been claimed in the suit by the plaintiff and the determination thereof will decide the payment of the Court-fee.

15. As regards the present case, the plaintiff-petitioner claimed possession of the suit land after getting a declaration that the sale deed was null and void because of the alleged fraud etc. It is

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significant to note that the plaintiff-petitioner herself being a party to the sale deed could not sue for a mere declaration that the sale deed was fraudulent and the vendees had not acquired any title thereunder. The sale deed had to be cancelled, otherwise, title in the land had already passed to the vendee under the deed. In the present case, the plaintiff-petitioner had to get the sale deed, to which she was a party, cancelled, before she could seek possession of the land. Thus, the substantive relief being the cancellation of the sale deed, it is article 1, Schedule I of the Act, which was applicable to the suit of the plaintiff-petitioner.

16. In this view of the matter, no other point arises in these revision petitions and the same are therefore, dismissed, with no order as to costs. However, the plaintiff-petitioner is allowed two months' time to make up the deficiency in the Court-fee already paid by her.

S. S. Sandhawalia, C. J.—I agree.

S. P. Goyal, J.—I also agree.

N. K. S.

FULL BENCH

Before S. S. Sandhawalia, C.J., M. R. Sharma and G. C. Mital, JJ.

RATI RAM and another,—Appellants

versus

SHIV CHARAN and others,—Respondents

Regular Second Appeal No. 140 of 1969.

July 23, 1981.

Custom—Rohtak District—Powers of a sonless proprietor in Rohtak tehsil—Such proprietor—Whether competent to make testamentary disposition of ancestral land in favour of a close relation in lieu of services.