

SUPREME COURT OF INDIA

Shailendra Bhardwaj

Vs.

Chandra Pal

C.A.No.8196 of 2012

(K.S.Radhakrishnan and Dipak Misra JJ.)

21.11.2012

JUDGMENT

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

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.

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.

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) “7. Computation of fees

“7. Computation of fees payable in certain suits: payable in certain suits for The amount of fee payable money: under this Act in the suits The amount of fee payable next hereinafter mentioned under this Act in the suits shall be computed as follows: next hereinafter mentioned shall be computed as follows: (iv) In Suits – For declaratory decree with consequential relief – (iv) For declaratory decree and in Suits- consequent relief- to obtain a declaratory decree or order, where consequential relief other For a declaratory decree and than relief specified in consequential relief (c) to sub-section (iv-A) is prayed; obtain a declaratory decree or order, where consequential For cancellation or adjudging relief is prayed, void instruments and decrees – (iv-A) in suit for or involving cancellation of or According to the amount at adjudging void or voidable a which the relief sought is decree for money or other valued in the plaint or property having a market memorandum of appeal. value, or an instrument securing money or other property having such value: 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 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- 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 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. 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.” Schedule II Article 17
Plaint or memorandum of appeal in each of the following suits: (iii) To obtain a declaratory decree where no

consequential relief is prayed in any suit, “Schedule II not otherwise provided for by Article 17 Plaintiff or this act; memorandum of appeal in each of the following suits: (iii) To obtain a declaratory decree where no consequential relief is prayed.

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:

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

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 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.