

Anwarul Haq and Others Vs. Ist Additional District Judge, Mau and Others

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Court : Allahabad

Decided On : Aug-26-1997

Reported in : 1998(1)AWC573

Judge : R. K. Mahajan, J.

Acts : Court Fees Act - Sections 7 - Schedule - Article 17

Appeal No. : C.M.W.P. No. 27727 of 1997

Appellant : Anwarul Haq and Others

Respondent : Ist Additional District Judge, Mau and Others

Advocate for Def. : S. C.

Advocate for Pet/Ap. : M. A. Siddiqui, Adv.

Judgement :

R. K. Mahajan, J.

1. This is a writ petition in the nature of certiorari for quashing the order dated 1.3.97 passed by the respondent No. 2 as well as the order dated 9.7.97 by the respondent No. 1.

2. A prayer has also been made to issue writ in the nature of mandamus directing the respondents to accept the court fees paid in respect of the reliefs claimed in

the suit is sufficient.

3. It appears that the plaintiff/petitioner filed suit in the lower court alleging that he is owner of the suit property and the impugned sale deed is a fake document and it has no effect upon his rights. He paid court fee of Rs. 290 according to Article 17 of Schedule 2. The trial court rejected the plaint holding that the court fee should be paid under Section 7 (iv-A). The matter was taken to lower appellate court where too it met the same fate. -

4. I have heard Mr. M. A. Siddiqui, learned counsel for the petitioner. He has raised the following submissions :

Firstly, he submitted that the plaintiff/petitioner has claimed only declaration and nothing more or less. He further submitted that the view of lower courts is wrong. He has invited my attention to Smt. Shefali Roy v. HeroJaswant Dass and others, 1992 (14) AWC 1000. There is no doubt regarding the proposition that the court fee is to be paid upon the averments of the plaint and the relief claimed. I have gone through the averments and in substance the case is covered under Section 7 (iv-A) which is quoted with advantage. '(ivA). For cancellation or adjudging void Instruments and decree. -- in suits for or involving cancellation of OF 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.'

5. In substance the suit is for cancellation of the sale deed and there is allegation in the plaint that it has been obtained by fraud, etc. as he has not signed on it. I find no jurisdictional error or abuse of power on the part of lower courts or any miscarriage of Justice. Thus, there is no force in the writ petition, therefore, it is dismissed at the admission stage.