

**Suresh and ors. Vs. Chand and ors.**

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**SooperKanoon Citation :** [sooperkanoon.com/473021](http://sooperkanoon.com/473021)

**Court :** Allahabad

**Decided On :** Feb-22-2007

**Reported in :** AIR2007All113; 2007(3)AWC2638

**Judge :** Tarun Agarwala, J.

**Appellant :** Suresh and ors.

**Respondent :** Chand and ors.

**Disposition :** Petition allowed

**Judgement :**

ORDER

**Tarun Agarwala, J.**

1. The petitioners instituted a suit for a declaration that they should be declared to be the half owners of the property in question on the basis of a registered Will left by their mother. During the pendency of the suit, the respondent No. 1, executed a sale deed for the entire house. Accordingly, the plaintiffs filed an amendment application seeking a further relief in the suit, namely, for the cancellation of the sale deed with respect to her share of the property. This amendment was allowed and the said relief was incorporated in the plaint, as relief No. 2.

2. The trial Court framed issue No. 2 with regard to the sufficiency of the court fee. The trial Court, by an order dated 28-5-2004, found that the petitioners had valued the plaint at Rs. 1.00 lac, whereas, the valuation of the property, as per the sale deed, was Rs. 5,20,000=00. The trial Court, also found, that the court fee was required to be paid in accordance with the provisions of Section 7(iv-A) of the Court Fees Act, 1870 as applicable in the State of U.P. The trial Court accordingly directed the plaintiff to file an appropriate amendment application for the amendment of its plaint. The plaintiffs, being aggrieved, by the aforesaid order, preferred an appeal which was rejected,

Notwithstanding the fact that the petitioners had preferred an appeal against the order dated 28-5-2004, the petitioners filed an amendment application praying for the deletion of paragraph No. 8 of the plaint and for substituting it with a fresh paragraph indicating the value of the plaint at Rs. 2,60,000/- and a court fee of Rs. 200/-. The valuation of Rs. 2,60,000/- was shown on the ground that the sale deed indicated the value of the total property at Rs. 5,20,000/- and that since the plaintiffs were claiming to be the half owners, consequently, the valuation was shown at Rs. 2,60,000/-. The court Tee was indicated in accordance with the provisions of Article 17(iii) of the Second Schedule of the Court Fees Act, 1870.

3. The trial Court, by an order dated 10-8-2004, rejected the amendment application on the ground that the amendment was not in consonance with its earlier order dated 28-5-2004 and that, the court fee was not in accordance with the provision of Section 7(iv-A) and that the court fee, payable for the second relief, namely, for the cancellation of the sale deed, was required to be paid in accordance with the provision of Section 7(iv)(a) of the Court Fees Act. The petitioners filed a revision which was also rejected. Consequently, two writ petitions have been filed before this Court and both the petitions are being decided together.

4. Heard Sri C.S. Agnihotri, the learned Counsel for the petitioners and Sri Shyamal Narain, the learned Counsel for the respondent No. 2.

5. The learned Counsel for the petitioners submitted that the two orders of the trial Court are contradictory in nature. The trial Court held that for the first relief, the

court fee was required to be paid in accordance with the provision of Section 7(iv-A) of the Court Fees Act and for the second relief, the court fee was required to be paid under Section 7(iv)(a) of the Court Fees Act, and therefore, the said orders are contradictory in nature. Further, according to the petitioners, the Court fee was only required to be paid under Article 17(iii) of the Second Schedule of the Court Fees Act, since the petitioners had only filed a suit for a declaration,

6. In support of his submission, the learned Counsel for the petitioners placed reliance upon the decision in Smt, Shefali Roy v. Hero Jaswant Pass and Ors. : AIR1992 All254 , in which it was held that in a suit for a declaration that the plaintiff was the owner of the suit property and that the alleged sale deed was null and void, the court fee was payable under Article 17(iii) of the Court Fees Act and that the court fee, under Section 7(iv-A), was not payable,

7. The learned Counsel also placed reliance on a decision in Smt. Sabina alias Farida v. Mohd. Abdul Wasit : AIR 1997 MP25 on the proposition that in a suit for a declaration that the suit property belongs to the plaintiff and for injunction restraining the defendant from interfering with the plaintiff's possession, the court fee payable was under Article 17(iii) of the Court Fees Act. The learned Counsel further placed reliance upon the decision of the Supreme Court in the State of U.P. v. Ramkrishan Burman (dead) : [1970]2SCR588 , in which it was held that a suit, for a mere declaration that the plaintiff is an owner of certain properties, would not fall under Section 7(iv-A) of the Court Fees Act, as applicable in the State of Uttar Pradesh.

8. On the other hand, Sri Shyamal Narain, the learned Counsel for the respondent No. 2 submitted that the court fee was required to be paid under Section 7(iv-A) of the Court Fees Act, inasmuch as, the plaintiff was seeking a declaration of an 'instrument' for securing money and other properties having a market value and for such a relief, the court fee payable would be under Section 7(iv-A) of the Court Fees Act, as applicable in the State of U.P.

9. In support of his contention the learned Counsel for the respondents placed reliance upon a decision of this Hon'ble Court in Kailash Chand v. Vth A.C. Judge, Meerut and Ors. 1999(90) Revenue Decisions, 100 : 1999 All LJ 940, in which it

was held that in a suit for a declaration that the Will was null and void, the Will, being an instrument for securing money and other property having a market value, the court fee payable was under Section 7(iv-A) of the Act.

10. In order to appreciate the rival contention of the parties, it is necessary to place the three provisions of the Court Fees Act, which is involved in the present case, namely. Section 7(iv-A), Article 17(iii) of Second Schedule of the Court Fees Act and Section 7(iv)(a) of the Court Fees Act, The said provisions are quoted hereunder;

7(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:

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
2. where he or his predecessor-in-title was not a 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.7(iv)(a) - to obtain a declaratory decree or order, where consequential relief other than reliefs specified in Sub-section (iv-A) is prayed.

Article 17(iii) of Schedule II of the Court Fees Act.To obtain a declaratory decree where no consequential relief is prayed in any suit, not otherwise provided for by this Act.

11. It is well settled law that the payment of court fee is dependent entirely upon the averments made in the plaint and relief claimed. The averments made in the written statement is not required to be examined. In the present case, the plaintiffs have prayed for two reliefs, namely, that they should be declared to be the half

owners of the property in question on the basis of a registered Will left by their mother and the second relief is for the cancellation of the sale deed executed by the defendant in respect of their alleged share of the property.

12. In my view, Section 7(iv-A) of the Court Fees Act, as applicable, in the State of U.P. is not applicable to the present case, for the simple reason, that it is not a suit for the cancellation of an instrument securing money and other property having a market value. The suit is for a declaration to the effect that the plaintiffs should be declared to be the half owners of the property in question on the basis of a registered Will, The suit is not for the cancellation of the Will nor is the suit for a declaration that the Will should be declared null and void, Consequently, the judgment cited by the learned Counsel for the respondents has no application to the present facts and circumstances of the case, Even though, the Will is an instrument securing money, the present suit is not a suit, for a declaration seeking the Will to be null and void nor the suit has been filed for the cancellation of the Will. Consequently, the provision of S,7(iv-A) of the Court Fees Act is not applicable.

13. Similarly, Article 17(iii) of the Court Fees Act relates to a case where no consequential relief is prayed in a suit for a declaration. In the present case, the petitioners have prayed for a declaration that they should be declared to be the half owners of the property in question on the basis of a registered Will and has further prayed for a consequential relief, namely, that the sale deed should be cancelled. Therefore, Article 17(iii) of the Court Fees Act will not be applicable and Section 7(iv)(a) of the Act would be applicable, inasmuch as, the said provision/Section applies to a suit filed for obtaining a declaratory decree with a consequential relief:

14. In view of the aforesaid, the orders of the trial Court dated 28-5-2004 and 10-8-2004 cannot be sustained and are quashed. The appellate order as well as the revisional order cannot be sustained and are also quashed, Both the writ petitions are allowed. The amendment application is allowed and the trial Court is directed to decide issue No. 2 afresh in the light of the observation made above.

15. In the circumstances of the case, there shall be no order as to cost.

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