

THE DILEMMA OF COURT FEES IN SUITS FOR CANCELLATION OR ADJUDGING VOID INSTRUMENTS AND DECREES

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Determination of Court Fees can be a vexatious issue that rankles the mind of a judge at one time or another during the course of adjudications. The intertwining of Section 4 of the Suit Valuation Act 1887 with certain subsections of Section 7 of Court Fees Act 1870, coupled with further interweaving of subsection (iv-A) with (v) (v-A) and (v-B) of the latter Act, appears to create a maze, which may appear a task too daunting to be achieved. This is the second paper in the series of my modest and humble attempt to attend issues relating to court fees, in continuation to the first paper published in the inaugural issue of **UJALA-Judicial and Legal Review**. Speaking metaphorically, I have applied a metabolic approach while dealing with the legal provision in settling down to conclusion in this article with aid of certain precedents, where required.

Court Fees In Suits For or Involving Cancellation of or Adjudging Void Instruments And Decrees

One of the most mind boggling issue can be determining the Court fees in a suit instituted for or involving cancellation of or adjudging void or voidable a decree for money or other property or an instrument securing money or other property having market value. This matter is covered by Subsection (iv-A) of Section 7 of the Court Fees Act 1870 (hereinafter referred to as the Act). The provision enjoins as follows:

Section 7 (iv-A):- *For cancellation or adjudging void instruments and decrees.-* 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:

- i. 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

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- ii. where he or his predecessor-in-title was not a party to the decree or the 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.

Subject Matter of Suit

The subsection deals with computation of court-fee in respect of two types of subject matter of a suit:

- Firstly, a decree for money or other property having market value, and
- Secondly, an instrument securing money or other property having market value.

Further dissecting these two subjects a suit may pertain to:

- Cancellation of the decree, or adjudging the decree as void or voidable.
- Cancellation of the instrument, or adjudging the instrument as void or voidable.

There may usually be less problem, when the subject matter of suit is simpliciter a decree for money or an instrument securing money; as, in such cases, the court fees will be computed ad-valorem on the amount decreed or having been secured by the instrument.

The problem, more often than not arises, when the subject matter of suit is a decree for a property or an instrument securing property. In such a situation, the Court may be in a dilemma as to compute the value of the subject matter (property), and consequently the court-fee payable

thereon. To elucidate further, if the subject matter is an instrument, the dilemma may be whether the Court Fees has to be computed according to the amount for which the instrument was executed or the value of the property in respect of which the instrument was executed.

For example, in case of a suit for or involving cancellation of or adjudging void or voidable a sale deed for a piece of land, it may weigh in the mind of the Court whether the court fees has to be computed on the sale consideration or is it the value (market value) of the property, that has to be taken into consideration. The root of the problem being different interpretations as to the phrase- "property having such a value", and mostly, intertwining the term "sale consideration" with "value (market value)" of the property subjected to sale. The enormity of the problem aggravates due to the general disposition to determine the market value of the property in consonance with the sale consideration in such a case. It may be noted that the problem may assume a different form when the instrument is will, gift deed, release deed, etc where there is massive variability in accepting the parameters for determining the market value.

The general disposition to determine the "value" of the property to be the sale consideration as per the instrument, if the instrument is a sale deed or an agreement to sell, should not be actually pose a colossal problem, as it seems to do. A head-scratching and daunting approach isn't something that is required to crack the maze created by interrelated provisions of subsections (iv-A) and (v) of Section 7 of the Act. A very easy way out of the apparent maze is a meticulous, calculated and stepwise approach to break the different parts of subsections and assigning the interpretation meant for them. The other side of this approach calls for application of judicial faculties and not to take a short cut to evade the logically intertwined sections involved. While the Courts need to be vigilant about loss of revenue to the State, there is also a need to avoid over zealous approach and then pick up a wrong interpretation.

The problem ends the very moment when one is ready to accept the intended proposition of law as to Court fees. This being, that the sale consideration and value of the property are not the same thing, unless, the property is of the kind (building or garden) falling under Clause II of subsection (v) of Section 7 of the Act where the sale consideration may provide a basis for determining the value of such property. It would be

redundant to mention that in such a case the sale consideration may, and only may, provide a basis for such computation where the instrument is a sale deed or instrument of sale.

One issue that no judicial or legal brain would disagree is that the term “value” used in the section relates very expressly to the market value of the property, as stated in the body of subsection (iv-A) of Section 7 and explicitly elucidated by the Explanation appended to it. Once there is a smooth transience from subsection (iv-A) to subsection (v) of Section 7 of the Act, things start falling in place.

In this sequencing, it becomes clear that when the property secured by the instrument (sale deed, will etc) is a land assessed to land revenue or usually an agricultural land, the market value, thus computed as per clauses (I) [a], [b] [c] and [d] of subsection (v) of Section 7, comes out to be certain multiples of revenue payable, net profits accruing on the land or its rental value, respectively. In such a case the party claiming relief under the suit does not bother about the paltry court-fee payable by it.

However, things get complicated when the property secured by the instrument is a building or a garden, wherein the market value is the determining factor in computing the court fees. It is in this case, where the concerned party looks out for a way to sneak out and evade the higher court fees that would be leviable in the suit for or involving cancellation, or adjudging void or voidable an instrument securing property which is a building or a garden. This will be the case where in a suit for cancellation of, or adjudging void or voidable an instrument securing building or garden, the “value of property” contemplated in subsection (iv-A) shall be computed as per the market value of the building or the garden, as the case may be. And for this purpose, the sale consideration may provide a sound basis to determine the value of the property for the purpose of court fees.

The undisputed legal position is that the amount of sale consideration cannot not be the right parameter to compute the value of the property involved when the case falls under any of clauses (I) [a], [b], [c] and [d] of subsection (v) of Section 7 of the Act. The only exception to this legal position is when the case falls under clause II of subsection

(v) of the Act. For, if sale consideration is considered to be the only correct parameter, then a question would arise about the parameter to be considered when the instrument involved is a will, gift deed or a release deed.

That, it is the market value of the property as computable under subsection (v) of Section 7 of the Act and “**not the sale consideration**”, that is the defining factor in determining the value of the property for the purpose of court fees under Section 7 subsection (iv-A), is fortified by the decision of **High Court of Judicature at Allahabad (DB) in Raj Kumar and others(minors) through Mst. Krishna Devi VS Damodhar Das and others 1949 AWR** and in **Rameshwar Dayal V. Harish Chandra and others 1972 AWR 808** and the **Hon’ble High Court of Uttarakhand at Nainital in Smt. Savita Agrawal Vs. Sarda Math Nyas and others 2006(1)UD, 698**. Very recently the Hon’ble Allahabad High Court has reiterated the principal in **Rajendra Prasad Yadav Vs. Ravinder Nath Singh and others in judgment dated 20-12-2013 in Writ-C No 61391 of 2013**.

The above mentioned reasoning also finds support in a similarly placed question in **Satheedevi Vs. Prasanna (2010) 5 SCC 622**, where the question of law before the Hon’ble Supreme Court was “whether on interpretation of Section 40 of the Kerala Court Fees and Suit Valuation Act 1959, the plaintiff in a suit for cancellation of sale deed would be required to pay court fees on the market value of property subjected to sale or on the sale consideration set forth in the instrument. It is pertinent to note here that Section 40 (1) of the Kerala Court Fees and Suit Valuation Act 1959 deal with cancellation of decrees and documents with almost the same intentions as Section 7 (iv-A) of the Court Fees Act 1870 as applicable in State of Uttarakhand. Though the two are differently worded, there is a certain common legal analogy between the two, barring that concept of market value has been forsaken absolutely in the said section of Kerala Act.

At the end of this paper, I would seek the attentions of concerned that, whenever there is suit for declaration the trial Court must satisfy itself that the consequential relief involved in a notional suit for declaration is not any of the kind contemplated by subsection (iv-A) of the Act. If in a suit where the relief claimed is apparently shown to be one of declaration

(under subsection iv (a) of the Act), the trial Court must be vigilant about the attempts to circumvent the court fees payable for consequential relief falling within the ambit of subsection (iv-A) of the Act. In such cases the concerned courts may appreciate the law laid down in

1. **Shailendra Bhardwaj and Others Vs. Chandrapal and Another (2013)1 Supreme Court Cases 579,**
2. **Mohd. Ibrahim Vs Smt Sadika Begum 2012(116) RD 259,**
3. **Raj Kumar Singh Vs. Ranvir Singh and other 2011 (113) RD 521,**
4. **Arun Kumar Tiwari v. Smt. Deepa Sharma and Ors. MANU/UP/0878/2006 : 2006 (2) ADJ 542 (All-DB): 2006 (3) AWC 2142.**
5. **Kailash Chand v. 5th A.C.J. Meerut and others, AIR 1999 ALL 151.**
6. **Smt. Bibbi and Anr. v. Shugan Chand and Ors. MANU/UP/0055/1968: AIR 1968 All 216, (Full Bench)**

These adjudications deal with cases when the consequential relief to the relief of declaration falls under subsection (iv-A). As held in the adjudications, consequential relief covered by Section 7(iv-A) of the Court Fees Act attract ad valorem court-fees on the entire valuation of the suit; and Article 17 of the Schedule II of the Court Fees Act would not be applicable in such cases, the same being applicable only to suits not otherwise provided in the Court Fees Act.

In this regard **Chief Inspector of Stamps, U.P. Allahabad v. Mahanth Laxmi Narain and Ors AIR 1970 All 488**, merits a special mention for the caution to be applied in avoiding an overzealous approach. Over here, it has been held that for the purpose of court-fee, the Court must look at the relief as prayed for in the plaint. In order to ascertain the real nature of the reliefs claim, the substance of the plaint has to be considered. If a declaratory relief alone has been prayed for, the Court cannot superadd consequential relief which it thinks the plaintiff ought to have prayed for and treat it as a consequential relief. Likewise, if only a substantive relief prayed for, it is not open to a Court to add or read a declaratory relief also into it and treat it as a declaratory relief with a consequential relief.

Conclusion

A study of this paper sums up the core issues relating to court fees payable in a suit instituted for or involving cancellation of or adjudging void or voidable a decree for money or other property or an instrument securing money or other property having market value as under:

1. When the instrument in question is a sale deed or an agreement to sell, the court fees shall be payable on the market value of the property in respect of which the decree was passed or the instrument executed as determinable under subsection (v) of Section 7 of the Act.
2. Where the property is a land falling under clauses (I) (a), (b), (c) and (d) of subsection (v) of Section 7 of the Act, **the market value can never be computed on the basis of sale consideration.**
3. Sale consideration **may be** a basis for market value when the property is a building or garden falling under clause (II) of subsection (v) of Section 7 of the Act.
4. Where in a suit for declaration, any consequential relief of **annulment, cancellation, adjudging void or voidable** a decree or an instrument as mentioned in subsection (iv-A) of Section 7 of Act is involved, the court fees payable will be ad valorem and not as per subsection (iv)(a) of Section 7 or Article 17 of Schedule II of the Act.

As stated in the inaugural paper, the objective of this in-series-research paper is to provide a reference-platform to various aspects of suit valuation for the purpose of fixation of court-fees in suits of varied nature. This paper intends to assist the legal fraternity, in particular, newly appointed judges of subordinate courts and those who are posted in Civil Courts for the first time, in dealing with intricate questions of valuing a suit for possession for the purpose of court-fees, with the help of discussion on legal provisions and case laws relating to the subject. I have sincere hopes that this paper will add to the learning curve of those concerned.

Post Note- The readers may kindly appreciate that, for the sake of brevity the observations of the Hon'ble Supreme Court and the Hon'ble High Courts have not not been reproduced in verbatim.
