

SUIT EVALUATION FOR THE PURPOSE OF COURT FEES IN A SUIT FOR POSSESSION OF LAND : A RESEARCH PAPER

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I. INTRODUCTION

Valuation of a suit is of two types. A suit has to be valued for two purposes: (1) for determining the pecuniary jurisdiction of the court in which it should be filed, and (2) for fixation of court fee to be paid. The Suit Valuation Act 1887 and the Court Fees Act 1870 prescribe the mode of valuation of a suit for the purpose of determining the jurisdiction of Courts and determining the amount of court-fees to be paid in a suit. The valuation for purposes of jurisdiction has to be made under the Suits Valuation Act. The valuation for purposes of court fee has to be made according to the provisions of the Court Fees Act. In many cases the two valuations are likely to be identical, but it is not always that such a situation will happen. It is possible that, the value of a suit for purposes of court fee may be different from its value for purpose of jurisdiction.

II. OBJECTIVE OF THE RESEARCH:

This research work does not work on the premise of a thesis neither is it argumentative in spirit. The objective of this research is to provide a reference-platform to members of legal fraternity, particularly the freshers, in respect of various aspects of suit valuation for the purpose of fixation of court-fees in suits of varied nature. The research has been carried on a one to one basis, i.e., the focus of research has been narrowed down to individual topics and will appear in a series of papers. The first paper in this series will focus on valuation of a suit for possession of land.

III. LEGAL PROVISIONS REGULATING VALUATION OF A SUIT:

The most important issues relating to suit valuation for the purpose of Court fees are covered by Section 4 and Section 8 of the Suit Valuation Act and Section 7 of the Court Fees Act.

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Section 4 of the Suit Valuation Act, in conjugation with Section 7 of the Court-fees Act, covers the entire gamut of the modes for valuing a suit for the purpose of determination of jurisdiction. Leaving out contents not within preview of this paper, Section 4 is reproduced as under-

a) Valuation of relief in certain suits relating to land:- Suits mentioned in paragraph (V) (V-A) and (V-B) of Section 7 of the Court Fees Act, 1870, as in force for the time being in the Uttar Pradesh, shall be valued for the purposes of jurisdiction at the market value of the property involved in or affected by, or the title to which is affected by the relief sought, and such value shall in the case of land be deemed to be the value as determinable in accordance with the rules framed under Sec-3.

(“**The Uttar Pradesh Suits Valuation Rules, 1942**”, have been framed in this respect by the State of Uttar Pradesh and are applicable to the State of Uttarakhand also.)

b) Valuation of a suit for the purpose of fixation of court-fees. Section 7 of the Court Fees Act incorporates the provisions dealing with valuation of suits for the purpose of determining the court fees.

The contents of **paragraph (v) of section 7 of the Court-fees Act** which deal with valuation of suit for possession of lands, buildings or gardens, reflect as follows:

The amount of fee payable under this Act in the suit for possession of lands, building or gardens shall be computed as follows:

According to the value of the subject-matter; and such value shall be deemed to be-

- (i) Where the subject-matter is land, and-
 - (a) Where the land forms an entire estate or a definite share of an estate paying annual revenue to Government, or forms part of such an estate, and is recorded in the Collector’s register as separately assessed with such revenue and such revenue is permanently settled-
thirty times the revenue so payable;
 - (b) Where the land forms an entire estate or a definite share of an estate paying annual revenue to Government, or forms part of

such estate and is recorded as aforesaid and such revenue is settled but not permanently-

ten times the revenue so payable;

- (c) Where the lands pays no such revenue or has been partially exempted from such payment, or is charged with any fixed payment in lieu of such revenue, and net profits have arisen from the land during the three years immediately preceding the date of presenting the plaint-

twenty times the annual average of such net profits; but when no such net profits have arisen therefrom, the market value shall be determined by multiplying twenty the annual average net profits of similar land for the three years immediately preceding the date of presenting the plaint;

- (d) Where the land forms part of an estate paying revenue to Government, but is not a definite share of such estate and does not come under Clause (a), (b) or (c) mentioned above-

the market value of the land which shall be determined by multiplying by fifteen the rental value of the land, including assumed rent on proprietary cultivation, if any;

- (ii) Where the subject-matter is a building or garden-
according to the market-value of the building or garden, as the case may be.

Explanation - The words 'estate' as used in this Sub-section, means any land subject to the payment of revenue for which the proprietor or farmer or raiyat shall have executed a separate engagement to Government or which, in the absence of such engagement, shall have been separately assessed with revenue.

Paragraph (v) of the Court-fees Act deals with valuation of suits for possession of land, houses and gardens for the purpose of fixation of court-fees, whatever may be the nature of possession.

An analysis of the above mentioned legal provisions, reveals that, as per the Suit Valuation Act (sec-4), the valuation of a suit for possession of land, building or garden for the purpose of determination of jurisdiction should, be in accordance with the market-value of the property involved

in or affected by, or the title to which is affected by the relief sought, and such value in the case of land shall be deemed to be the value as determinable in accordance with the Uttar Pradesh Suits Valuation Rules, 1942 on the other hand, as per Section 7 para (v) (I) of the Court-fees Act, depending upon the revenue-paying nature of land, the valuation of a suit for possession of the land, for the purpose of determination of court-fees, should be certain multiples of revenue payable, or certain multiples of net profit arising from the land, or market value of the land determinable by multiplying fifteen times the rental value of land as mentioned above in this paper. Additionally, as per para (v) (II) of the Court-fees Act, the valuation of building or garden for the purpose of court-fees should be according to their market value.

As mentioned above the valuation of a suit for purpose of jurisdiction as well as for purpose of fixation of court-fees may be identical in many a cases, and, many a times it can be different for the two purposes. For e.g. 'A' a shareholder with joint possession of a property X with market-value of Rs Twenty Lakh, sues for his 1/10th share in the property. As per the Court Fees Act if the property is in joint possession, the valuation of the property for the purpose of court-fees will be 1/4th of the share from total value (Sec.7[vi-A] Court Fees Act). Thus the valuation of the suit in this case will be Rs Fifty thousand [one-fourth of Rs two lakh (which is 1/10th of his share in the property)] for the purpose of determination of the court-fees. However, since the property involved is a land, the same will be covered by Section 4 of the Suit Valuation Act. Therefore the valuation for the purpose of jurisdiction will be based on market-value of the property which is Rs Twenty Lakh. Hence, even though the Court-fees payable would be Rs Fifty thousand, the valuation for the purpose of jurisdiction would be Rs. Twenty Lakh (at market value). [In this case the suit is to be instituted in Court of Civil Judge (Senior Division)].

The other provisions relating to suit for possession of land are relating to possession of superior proprietary/under-proprietary land and possessory suits between tenants, and are respectively dealt by paragraph (v-A) and paragraph (v-B) of Section 7 of the Court-fees Act.

- c) **(V-A)- For possession of superior proprietary and under-proprietary land.** In suits for possession–

- (1) of superior proprietary rights where under-proprietary or sub-proprietary rights exist in the land-
according to the market-value of the subject-matter and such value shall be determined by multiplying by fifteen the annual net profits of the superior proprietor;
- (2) of under-proprietary or sub-proprietary land as such-
according to the value of the subject-matter and such value shall be determined by multiplying by ten the annual under-proprietary or sub-proprietary rent, as the case may be, recorded in the Collector's register as payable for the land for the year next before the presentation of the plaint. If no such rent is recorded in the Collector's register the value shall be determined in the manner laid down in clause (c) of sub-section (v) of this section save that the multiple will be ten.

Explanation- Land held by any permanent lessees shall be treated for the purposes of this sub-section, as under-proprietary or sub-proprietary land.

- d) (V-B)-Possessory suits between tenants.** In suits for possession of land between rival tenants and by tenants against trespasser according to the value of the subject-matter and such value shall be determined if such land is the land of-
 - (a) a permanent tenure-holder or a fixed rate tenant.-
by multiplying by twenty the annual rent recorded in the Collector's register as payable for the land for the year next before the presentation of the plaint;
 - (b) an ex-proprietary or occupancy tenant.-
by multiplying by two such rent in case of suits for possession of land between rival tenants, and by annual rent in suits by tenants against trespassers;
 - (c) any other tenant-by annual rent.

If no such rent is recorded in the Collector's register, the value shall be determined in the manner laid down in clause (c) of subsection (v) of this section save that the multiple shall be that entered in clauses (a), (b) and (c) of this sub-section according as the class of tenancy affected is governed by clause (a), (b) or (c) of this subsection.

Suit Evaluation for the purpose of Court Fees in a Suit for possession of Land

As discussed above, valuation of a suit for purpose of jurisdiction as well as for purpose of fixation of court-fees may, in many a case can be identical, and, many a times can be different for the two purposes. Valuation in both, i.e. for purpose of jurisdiction as well as for purpose of fixation of court-fees, will be always be identical when the land involved in the suit falls under category of:

- a) later part of para (i) (c) of Section 7 of the Court-fees Act, i.e. when net profits are not arising from the land mentioned therein.
- b) para (i) (d) of Section 7 of the Court-fees Act, and
- c) para (ii) of Section 7 of the Court-fees Act.

In other cases, i.e. covered by clauses (a), (b) and (c) of para (I) of Section 7 of the Court-fees Act, valuation of a suit for purpose of jurisdiction and for purpose of fixation of court-fees may likely be identical or different.

However, it is to be kept in mind that the value of land for the purposes of jurisdiction in no case, can ever be less than the value as determinable for the purpose of computation of court-fees (Proviso to Section 3 (1) of the Suit Valuation Act)

- e) **Valuation for purpose of jurisdiction and court-fees being same. Section 8 of the Suit Valuations Act**, on the other hand deals with a situation where valuation for the purpose of jurisdiction and valuation as determinable for computation of Court-fees is same. Section 4 of the Suit Valuation Act covers specific matters of valuation, while Section 8 of the Act is a kind of residuary clause and deals with valuation in all matters, other than those covered by Section 4 of the said Act.

It will be a good exercise to correlate Section 4 of the Suit Valuation Act 1887 and para (v) of Section 7 of the Court-fees Act. As per section 4 of the Suit Valuation Act, suits for land shall be valued for the purpose of the jurisdiction at the market-value of the property involved or affected. This market-value has to be determined as per procedure laid in Rule 3 of The Uttar Pradesh Suits Valuation Rules, 1942 as per mandate of Section 4 of the Suit Valuation Act. Likewise, para (v) of Section 7 of the Court-fees Act provides that the amount of fees payable

in suits for the possession of land, building or gardens shall be according to value of subject-matter, which is to be calculated as per the provisions enumerated in the para itself. Thus, just like the Suit Valuation Act, which provides for valuation of suit as per the market value, in the same vein, para (v) of Section 7 of the Court-fees Act provides for valuation of suit as per the value of the land etc. This valuation under para (v) of Section 7 of the Court-fees Act is either as per multiples of annual revenue-payable on the land, or multiples of net profit arising from the land, or the market-value of the land etc. It is to be noted that the method of determination of valuation of land, building and gardens, as provided in Rule 3 of The Uttar Pradesh Suits Valuation Rules, 1942 is virtually the same (barring the multiples for annual revenue or net profits) as is contained in Section 7(v) of the Court Fees Act, 1870 (as applicable in State of Uttarakhand).

IV. PROCEDURE WHEN COURT FEES IS REPORTED TO BE DEFICIENT:

The question of determination of Court Fees is a test that a court may have to face at the very onset of litigation. It is one issue that needs to be addressed by the Court at earliest opportunity in hand.

i. Prohibition on filing, exhibition or recording of a document deficient in court-fees. The mandate of law in this regard is laid in Section 6 of the Court-fees Act, 1870. The subsection (1) of Section 6 reads as follows:

Fees on documents filed etc., in Mufassil Courts or in Public Offices.-

Except in the Courts hereinbefore mentioned, no document of any kinds specified as chargeable in the first or second Schedule this Act annexed shall filed, exhibited or recorded in any court of Justice, or shall be received or furnished by any public officer, unless in respect of such document there be paid a fee of an amount not less than that indicated by either of the said Schedules as the proper fee for such document. (Schedule I enumerates the documents on which ad valorem court fee [i.e. court fee calculated in accordance with the value of the subject matter in dispute] is payable and lays down the scale for calculating such fees, and Schedule-II deals the document on which, (irrespective of the value of the subject

matter in dispute) fixed amount of court fees as mentioned therein is payable).

ii. Forum for challenging valuation:

There are two forums where valuation of Court Fees can be challenged in a court of first instance. The first forum is, when the Munsiram of the Court reports deficiency in the court-fees on receiving the plaint. The procedure to be adopted in such a case has been discussed below.

The second forum is in the written statement by the defendant, as a consequence of which the matter has to be decided as a preliminary issue.

iii. Deciding the question of court fees:

As mentioned above, the first point of contact with question of Court Fees is the Munsiram report which is presented by the Munsiram to the Court when plaint is put up to him for presentation before Court concerned. On examination of the Munsiram's report, if the Court finds that the relief claimed is undervalued, the Court can ask the plaintiff to make good the deficiency, i.e. correct the valuation within a time to be fixed by the Court and on the plaintiffs failure to do so, the plaint becomes liable to be rejected under Order 7, Rule 11 (b) of Code of Civil Procedure.

At this stage, another situation may arise wherein the plaintiff may seek to contest the Munsiram's report. In such a situation the plaintiff may be allowed to file objections against the Munsiram's report as to deficiency in the court-fees. The plaintiff needs to be heard on his objections against the Munsiram's report and is to be given an opportunity to justify the evaluation done by him. It is not necessary for plaintiff to file written objection against Munsiram's report about deficiency of Court Fees. The Court can, suo motto, discuss and overrule the report of Munsiram even if the plaintiff has not filed his objections to report.

Once the objections of plaintiff against the Munsiram's report are accepted by the Court and the report of Munsiram is overruled, or if Court Fees is found to be deficient and the plaintiff has made good the deficiency, the case shall be called to be registered as original suit and notice shall be issued to be defendant.

It is to be noticed that whenever at the stage of filing of plaint a deficiency in Court Fees is reported, that needs to be addressed, the case is to registered as a Miscellaneous Case and not as an Original Suit.

The deficiency in court fees can be also challenged by the defendant in his written statement, as a consequence of which the matter has to be decided as a preliminary issue within the spirit of Sub-section (4) of Section 6 of the Court Fees Act, 1870. **Section 6 (4) of the Court-fees Act** provides that- Whenever a question of the proper amount of Court-fee payable is raised otherwise than under Sub-section (3), the court shall decide such question before proceeding with any other issue.

iv. Option available when plaint etc in respect of which insufficient fees has been paid:

It must be remembered that a plaint or memorandum of appeal in respect of which insufficient fees has been paid can be received by Court. The same does not merit an outright rejection. However, no such plaint or memorandum of appeal shall be acted upon unless the plaintiff or the appellant, as the case may be, makes good the deficiency in court fees within such time as may be fixed by court from time to time. In this regard, Section 6 (2) of Court Fees Act provides that “Notwithstanding the provision of sub-section (1), a Court may receive plaint or memorandum of appeal in respect of which an insufficient fee has been paid, but no such plaint or memorandum of appeal shall be acted upon unless the plaintiff or the appellant, as the case may be, makes good the deficiency in court-fee within such time as may from time to time to fixed by the court”.

A situation is contemplated in the proviso to subsection (3) of Sec.-6 of the Court Fees Act, 1870, wherever a Court may proceed with a suit or appeal despite deficiency of Court Fees therein. Subsection (3) of Sec.-6 of Court Fees Act reads as follows:

“If a question of deficiency in court-fee in respect of any plaint or memorandum of appeal is raised by an officer mentioned in Section 24-A the court shall, before proceeding further with the suit or appeal, record a finding whether the court-fee paid is sufficient or not. If the court finds that the court fee paid is insufficient, it shall call upon the plaintiff or the appellant, as the case may be, to make good the deficiency

within such times as it may fix, and in case of default shall reject plaint or memorandum of appeal.

Provided that the Court may, for sufficient reasons to be recorded, proceed with the suit or appeal if the plaintiff or the appellant, as the case may be, give security, to the satisfaction of the Court, for payment of the deficiency in Court-fee within such further times as the court may allow. In no case however, shall judgment be delivered unless the deficiency in Court-fee has been made good, and if the deficiency is not made good within such time as the court may from time to time allow, the court may dismiss the suit or appeal.”

Thus even though a plain or memorandum of appeal may be deficient in court fees, yet the Court may proceed thereupon. However the Court’s decision to proceed in such circumstance must be visited with recording of sufficient reasons and a security by the plaintiff or appellant, as the case may be, for payment of the deficiency in Court Fees.

V. VALUATION IN A SUIT FOR POSSESSION OF LAND ETC IN LIGHT OF VARIOUS CASE-LAWS:

The paper has so far discussed the bare provisions of law relating to the valuation of a suit for possession of land. Let us now focus on the specific issues that may arise in the Court relating to valuation of land, building or gardens for purpose of fixation of court-fees.

I. Suit for possession of land and demolition of unlawfully constructed building. If a question arises that the land of which the plaintiff seeks possession houses building constructed by the defendants, what shall be the valuation and the court-fees chargeable?

Dealing with such a situation, the Hon’ble High Court of Judicature at Allahabad has observed that- “If a plaintiff brings a suit stating that he, owns certain land and also the buildings standing thereon, that he has been dispossessed by the defendant from the land as well as the buildings and he seeks possession over both, the land and the buildings, the subject-matter of dispute will certainly be the land as well as the buildings. But if the plaintiff comes with the allegation that he owns the land and that the defendant has unlawfully taken possession of the land and made constructions thereon without his consent and if he further

prays that the land alone be delivered to him and the buildings be allowed to be removed by the defendant, the buildings standing thereon are not the subject-matter of the suit”.

[S]ection 7(v), which imposes on the plaintiff the obligation to pay court-fee in respect of the subject-matter, **contemplates a suit for ‘possession’ of that subject-matter.** Since **possession is not sought over the buildings** in this case court-fee cannot be levied in respect of the price of the buildings. To hold that in such a case also the buildings would be the subject-matter of the suit would mean placing this class of case on the same level with a suit in which possession is sought over the land as well as the buildings... It is true that the relief in question is to be distinguished from another relief in which the only prayer is for possession of land. The relief in question differs from the relief claiming possession only without demolition in this much that it contains a prayer for demolition also. Therefore, while holding that, in a case like the present, the value of the buildings is to be excluded from consideration, I must record a finding that a separate court-fee must also be paid for the relief of demolition. That court-fee will not be paid under Section 7(v) but under Article 17(vi) of Schedule 2, ‘Court-fees Act’. That Article provides that for “every other suit where it is not possible to estimate at a money value the subject-matter in dispute and which is otherwise provided” for by this Act” a fixed court-fee of Rs. 18-12-0 is chargeable. I am, therefore, of opinion that the relief in question is, in substance, a combination of two reliefs, i.e., a relief for possession of land, which is governed by Section 7(v)(I)(c), and a relief for demolition, in respect of which court-fee is payable under Article 17 (vi), Schedule 2, Court-fees Act. **(Mt. Kulsumun-nisan Vs. Khushnudi Begum and Anr. AIR 1954 All 188, Decided On: 05.08.1953).**

In a similarly placed situation in **Abdul Ghani Vs. Vishunath AIR 1957 All 337, the Hon’ble Court observed-** “The opposite party sues for possession over the land only; he does not want possession over the construction standing on it. As a matter of fact he wants the construction to be demolished. It is open to the applicant to remove it himself before the suit is decreed or even before the possession over the land is delivered to the opposite party in execution of the decree. So long as the applicant is not prevented from removing it, if he so desires, it

cannot be said that it is included within the scope of the suit and that its price should be added to the price of the land to arrive at the valuation for purposes of jurisdiction and court-fee. The opposite party does not claim possession over the construction; he claims possession over the land only. **If something is permanently fixed to the land and when possession is delivered over the land the fixture also goes with it, it is immaterial for purposes of jurisdiction and court-fee; the opposite party cannot be required to add its value to the value of the land.** It was not necessary for it to seek demolition of the construction at all; it might have as well claimed relief of possession over the land saying that the applicant was at liberty to remove the construction before the possession was delivered to it, in which case no question of taking into consideration the price of the construction could have arisen”.

The legal position that emerges from the above adjudications is that if in a case where possession had been sought over the land alone and not over the buildings constructed thereupon, court fee could not be demanded on the price of the buildings and the buildings could not be considered to be the subject matter of the suit. In such a case the relief in question is, in substance, a combination of two reliefs, i.e., a relief for possession of land, which is governed by Section 7(v)(I)(c), and a relief for demolition, in respect of which court-fee is payable under Article 17 (vi), Schedule 2, Court-fees Act.

However it has to be understood that in **Mt. Kulsumunnisan Vs. Khushnudi Begum and Anr. AIR 1954 All 188, and Abdul Ghani Vs. Vishunath AIR 1957 All 337**, the Hon’ble Court appears to have proceeded on the premise that if the plaintiff does not seek possession of any building or garden constructed by the defendant (or the trespasser) on the suit land, then, the building or garden in question, is not to be considered as a subject matter of the suit for possession within the meaning of para (v) of Section 7 of the Court-fees Act.

It is to be considered that the above mentioned view/legal position is no doubt correct so far as the valuation for the purpose of court-fees is concerned. This is so because the relief of possession of land only is something that a plaintiff seeks in such a situation. If in due course of trial his suit is decreed that would simply establish the fact that the defendant was a trespasser. It does not appear very reasonable to ask

him for adding to his valuation of bare land, the valuation of the building or garden raised on such land by the defendant as a rank trespasser, and asked to pay additional court fees for something he is not responsible. The defendant is always at liberty to remove such additions raised by him before the possession is handed over to the plaintiff, otherwise he must be ready to sacrifice such additions which will have to eventually be passed on to the plaintiff. The plaintiff cannot be made to suffer for the wrongs done by the defendant. However this position cannot be said to be efficaciously applicable to a valuation for purpose of jurisdiction. In matter of valuation for the purpose of court-fees, the plaintiff stands to suffer unreasonably from the value additions made by the opposite party; but in matter of valuation for purpose of jurisdiction, there is nothing to make the plaintiff suffer, for what will be affected by a higher valuation is only the forum (Court) where the suit has to be agitated. In a matter like the one agitated in the above-mentioned case, valuation for the purposes of court-fees and valuation for the purpose of jurisdiction is to be made on two entirely different bases as has been held in **Shanti Prasad and Ors. Vs. Mahabir Singh and Ors. AIR 1957All402.**

II. Question- while determining the valuation of a suit for possession of land, for purpose of jurisdiction and for purpose of court-fees, is it also necessary to take into account the value of garden and building standing on the land that are claimed to have been built by the defendant on the land in question.

In **Shanti Prasad and Ors. Vs. Mahabir Singh and Ors. AIR 1957All402**, adjudicating the question the Hon'ble High Court of Judicature at Allahabad has observed that:-

9. "The main relief claimed in the present suit being for possession over land and a house, for purposes of court fee, the suit was governed by para (V) of section 7 of the Court Fees Act, and court fee had to be paid according to the value of the subject matter. The subject-matter was obviously the property over which the plaintiff claimed possession, i.e., the house mentioned in list 'B' and the land mentioned in list 'A' without the constructions made and the garden planted by the defendants. For purposes of Court fee, therefore the land was to be valued under sub-para (1) of para (V) of Section 7 of the Court-Fees Act and the house mentioned in list 'B' was to be valued under sub-para (ii) of that para. As

Suit Evaluation for the purpose of Court Fees in a Suit for possession of Land

the plaintiff was not claiming the constructions built or the garden planted by the defendants on the land in list 'A' they could not be considered to be the subject-matter of the suit, and the plaintiff was therefore not bound to include their value in the valuation of the suit for the purpose of payment of Court-fee (para-9).

13. It is true that the plaintiff has not claimed any relief in respect of the buildings constructed or the garden planted by the defendants on the land in list 'A'. He has claimed possession over the land alone as it was sold by Srimati Parbati. If, however, the suit of the plaintiff succeeds and he is found entitled to the relief he has claimed the defendants must either remove the buildings and do away with the garden in, question or leave them as they are to be taken by the plaintiff along with the land. In the circumstances we are of opinion that these buildings and garden must he held to be affected by the relief sought within the meaning of the term as used in Section 4 of the Suits Valuation Act. 14.

14. The case of *Kulsum Nisan v. Khushnudi Begum* AIR 1954 All 188, referred to above is really of no help to the plaintiff on the point....

15. There are observations in the case of *Abdul Ghani v. Vishunath* AIR 1957All337, which do lend support to the contention of the learned counsel for the plaintiff. The plaintiff in that case had claimed possession over a piece of land after demolition of a construction made thereon by the defendants. For purposes of jurisdiction as well as court fee he had valued the land according to its market price and had not included in the value of the constructions standing upon the land. An objection was raised about the correctness of the valuation and the sufficiency of the court fee paid. The Munsif held that the value of the constructions sought to be demolished was not be taken into consideration in determining the valuation of the suit for purposes of jurisdiction and court fee, and in revision the learned Judges upheld the view of the Munsif. They based their decision on the considerate that as the plaintiff had not claimed possession over the constructions they could be removed by the defendants at any time they liked. The plaintiff was therefore not bound to include in the valuation of the suit the price of the constructions standing on the land and which he claimed. The attention of the learned Judges was apparently not drawn to the provisions of Section 4 of the Suits Valuation Act as amended by our State or to Rule 3 (e) of the U. P. Suits Valuation Rules, 1942. In a

case like the one with which they were dealing, valuation for the purpose of court fee was to be made on one basis while valuation for the purpose of jurisdiction was to be made on an entirely different basis. **The view taken by the learned Judges is no doubt correct so far as valuation for purposes of court fee** but with respect, it is not possible to uphold it so far as it relates to valuation for purposes of jurisdiction.

16. The alternative contention of the learned counsel for the defendants also appears to be well founded. Even if the suit, so far as it was a suit for suit for possession over the land mentioned in list 'A' be deemed to be a suit for possession of land alone without involving or affecting the buildings or the garden standing upon it, in view of Clause (e) of Rule 3 of the U. P. Suits Valuation Rules 1942 the market value of the buildings and the garden standing on the land was bound to be added to the value of the land in order to determine the value of the land itself. There appears to be nothing in Clause (e) of Rule 3 to limit its application to suits where possession over the land is claimed along with the buildings or gardens standing upon it and to exclude from its application suits in which possession is claimed over land alone. The clause has been enacted to provide for the valuation of land and clearly lays down that in that in case buildings or garden stand on the land their value must be added to the value of the land determined according to the other clauses of the rule for the purpose of determining the value of the land itself.

17. [T]he proviso to Section 3(1) clearly contemplates that the value of land for the purpose of jurisdiction may be different from the value of the land for the purpose of court fees. The only limitation which is laid down is **that the value for the purpose of jurisdiction should not be less than the value for the purpose of court fee. For purposes of court fee it may not be necessary to include the value of building or garden standing on the land in cases where possession over land is claimed without the building or garden.**

18. We are therefore of opinion... **While valuing his relief for possession over the land in list 'A' for purposes of jurisdiction the plaintiff should have added to the value of the land, the market value of the buildings and garden that stood thereon”...**

In my informed opinion (which is open to corrections), as the author of this paper, the legal position that emerges out of adjudication in

the above discussed case is that **for purposes of court fee it may not be necessary to include the value of building or garden standing on the land in cases where possession over land is claimed without the building or garden.** It can also be safely presumed that at the time of framing of the rules in exercise of the powers conferred by section 3 of Suit Evaluation Act, the State Government could have provided that, while determining the value of land **for the purpose of jurisdiction** in a suit for possession of land, the value of the buildings or gardens standing upon it should be taken into account even though possession is not being claimed over the buildings or gardens along with the land. Since the Rule (Rule 3 of The Uttar Pradesh Suits Valuation Rules, 1942) does not provide such an explicit provision, hence, it would give a meaning that the government intended that in every case where the suit land has building and gardens on it, their value should be added or included in the value of the land for the purposes of jurisdiction, even if no possession is claimed over such building or garden.

III. An important question of law arises in determining the issue of valuation in a situation where a suit is filed for seeking a certain relief and circumstances crop up lis pendens for seeking an additional relief. The question that may arise in such a case is whether on the contentions of the defendant or otherwise, the plaintiff should be made to revalue his relief and made to pay additional court-fees.

For e.g. in a suit for relief of mandatory injunction, ad-interim injunction is allowed but the defendant ultimately trespasses on the suit land in breach of the TI and the plaintiff is compelled to add relief of possession, for, if ultimately his prayer for relief of mandatory injunction is allowed, he may not be able to enjoy the fruits of decree if he is simultaneously not allowed the relief of possession. To say, the situation will be such that, the relief of mandatory injunction will be futile to be granted without simultaneous relief of possession. The question involved in such a case will be whether the plaintiff can be asked to revalue his relief and pay additional court-fees, accordingly.

In such a situation, it has to be analyzed whether the prayer for additional relief, (as made by way of amendment) is a mere incidental relief without incurring liability to pay additional court-fees; or a

substantively consequential relief in respect of land in question so as to be liable to pay the court-fees in accordance with existing law. **If the consequential relief is substantive, the plaintiff should be asked to pay the requisite court-fees.** In the above-mentioned illustration, when the plaintiffs seeks relief of dispossession of the defendants he is accepting a substantive right (possession) of the defendant even if the mode of acquiring that right was unlawful or wrong and he should revalue his relief and pay court-fees accordingly.

In **Sabir Mohammad Yusuf (D.) through L. Rs. Vs. Sabir Abdul Rahman 2008 3 AWC2190 Decided on: 11.04.2008**) the plaintiff had filed a suit for permanent prohibitory injunction. In midway circumstances arose for adding relief of physical and vacant possession of disputed land. The Hon'ble High Court held that relief of possession was the consequential relief and it cannot be said to be bare and mere incidental relief but a substantive relief in respect of the land in question. It is rightly held that 'Benami' means one is accepting anybody's substantive right in the property then seeking to dispossess him. This is not a bare relief to dispossess a licensee as per claim. It may be that the same is hidden course but we have to go by the plaint... and... the plaintiff/appellant has to pay the ad valorem court-fees.

IV. In a case for possession against and other tenant/ trespassers, the plaintiff tenant contended that he is not the owner of the leased building and, he has only tenancy rights therein; and as such the leased building is not to be valued at its ordinary market value but only the tenancy rights of the plaintiff therein should be valued in some just and equitable manner.

The question that arises in such a case is whether, for the purposes of court-fees, is it the market value of the leased property which is the basis for fixation of court-fees; or is it merely the value of plaintiff's tenancy right that should be the basis of fixation of court-fees.

In **Chief Inspector of Stamps, U. P. v. Sewa Sunder Lal, AIR 1949 All560** it was held that the market value of the property for the purposes of court-fees in such cases, in which the plaintiff has only tenancy right, can be fixed at one year's rent by applying the analogy of Clause (v-B) (c).

Clause (v-B)(c) dealing with category of tenants, other than permanent tenure-holder, fixed rate tenant, ex-proprietary or occupancy tenant, provides for determining the value of the subject-matter on the basis of annual rent.

Conclusion

A study of this paper sums up the issues relating to valuation of a suit for possession for the purpose of court-fees as under:

- a) **The valuation of a suit for purpose of jurisdiction as well as for purpose of fixation of court-fees may be identical in many a cases, and, many a times can be different for the two purposes.**
- b) **The value of a suit for the purpose of jurisdiction cannot be less than the value of the suit for the purpose of court fee.**
- c) **The question in respect of deficiency of court-fees arises either on the report of the Munsiram or by means of challenge put by the defendant in the written statement.**
- d) **In case of report of deficiency of court fees by the Munsiram, the case is to be registered as a Miscellaneous case.**
- e) **Where the court fees paid is challenged by the defendant in the written statement, the Court should frame a preliminary issue and decide accordingly.**
- f) **The question of court-fees is dealt exclusively by the Court-Fees Act 1870.**
- g) **The valuation of a suit for possession of land, building or garden for the purpose of court-fees is regulated by clause (v) of Section 7 of the Court-Fees Act.**
- h) **The valuation of suit for possession of superior proprietary and under-proprietary land is dealt by clause (v-A) of Section 7 of the Court-Fees Act.**
- i) **The valuation possessory suits between the tenants interse, or tenants and trespasser is covered by clause (v-B) of Section 7 of the Court-Fees Act.**

- j) A plaintiff does not have to pay court-fees for buildings or gardens not erected by him on the land whose possession is sought by him.**
- k) For purposes of court fee it may not be necessary to include the value of building or garden standing on the land in cases where possession over land is claimed without the building or garden.**
- l) A mere incidental relief does not incur liability to pay additional court-fees; but for a substantively consequential relief in respect of land in question there arises a liability to pay the court-fees in accordance with existing law. Thus if the consequential relief is substantive, the plaintiff should be asked to pay the requisite court-fees.**
- m) For the purposes of court-fees in a possessory suit between tenants interse or tenant and a trespasser, it is merely the value of tenancy right that should be the basis of fixation of court-fees and not the market value of the leased property.**

The objective of this research paper, as stated at the beginning, 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 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. Section 7 of the Court-fees Act is a Code in itself being the repository of various aspects of computation of court fees payable in suits of varied nature. It was neither feasible nor intended to cover up all the aspects of court fees in this research paper. Rather, this paper narrowed down the focus and showcased the issues relating to fees in suits for possession. Yet, this research paper is not intended to arrogate itself to 'be all and end all' of issues relating to fixation of court-fees in suits for possession of land. Hence it is bound to have its limitation. Having said so, it is still expected that this paper will serve its objective to a meaningful end.
