

MANU/BH/0017/1987

Equivalent Citation: AIR1987Pat156, 1987(35)BLJR451, 1987PLJR370

**IN THE HIGH COURT OF PATNA
FULL BENCH**

Civil Revn. Nos. 851 and 1439 of 1982 and 357, 1366 and 1385 of 1985

Decided On: 14.01.1987

Appellants:**Md. Alam and Ors.**

Vs.

Respondent:**Gopal Singh and Ors.**

Hon'ble Judges/Coram:

S.S. Sandhawalia , C.J., B.P. Jha and Birendra Prasad Verma , JJ.

Counsel:

For Appellant/Petitioner/Plaintiff: S.S. Asghar Hussain, R.K. Verma, S. Raghiv Ahsan, F. Moazzam, Keshav Srivastava, Devendra Pd. Sinha, Roy Shivajee Nath, Shantanu Kr. and Chittaranjan Sinha, Adv.

For Respondents/Defendant: Shreenath Singh, Guru Sharan Sharma, Ramanand Pd. Yadav, Nagendra Pd. Singh, Ganpati Trivedi and B.P. Yadav, Adv.

JUDGMENT

S.S. Sandhawalia, C.J.

1 .The ticklish questions bristling with a conflict of precedent, which have necessitated this reference to the larger Bench, may well be framed in the terms following : --

(i) Whether the plaintiff has an absolute right or option to place any valuation whatever on the relief claimed in a suit governed by Clause (iv) of Section 7 of the Court-fees Act?

(ii) Whether the court has no jurisdiction to examine the correctness of the valuation given by the plaintiff in view of the provisions of Section 7(iv) of the aforesaid Act?

(iii) Whether any difference or line of distinction can be drawn qua the individual Sub-clauses (a) to (f) of Clause (iv) of Section 7 of the said Act?

(iv) Whether the headlong conflict of single Bench judgments in MANU/BH/0019/1983 : AIR 1983 Pat 67 Kesho Mahton v. Ayodhya Mahton and MANU/BH/0064/1983 : AIR 1983 Pat 272 Mannu Was v. Kisto Das can be reconciled?

2. A representative matrix of facts giving rise to the issues aforesaid may be noticed from Civil Revision No. 851 of 1982. The plaintiff petitioner filed Title Suit No. 31 of 1978 in the court of the 3rd Munsif, Chapra, in respect of 19 kathas and 18 dhurs of land in village Tehti and valued his relief at Rs. 2,000/-for purposes of court-fee and jurisdiction. This was based on the unrebutted stand that he had purchased the suit

land under a registered deed dt. 7th May, 1971 for the aforesaid consideration. Defendants 1 to 4 and 7 to 10 filed a joint written statement, inter alia, taking a plea therein that the value of the disputed property was Rs. 15,000/-which was beyond the pecuniary jurisdiction of the Munsif and unless the petitioner pays the Court-fee for the said amount, the suit could not proceed. The defendants further filed an application on the 2nd Dec. 1982 praying that an issue with regard to valuation and jurisdiction may be decided as the preliminary one. By the impugned order dt. 6th May, 1982 the learned Munsif framed a preliminary issue on the question of valuation and fixed the case for 17th May, 1982 for evidence thereon. In holding so, he noticed a conflict of precedent betwixt MANU/BH/0012/1982 : AIR 1982 Pat 47, Smt. Prem Kishori Devi v. State of Bihar and MANU/BH/0011/1945 : AIR 1945 Pat 421, Salahuddin Hyder Khan v. hanoo Lal and preferred to follow the later judgment because it was by a Division Bench whilst the former was by a learned single Judge.

3. At the threshold stage of admission itself, the learned single Judge noticed the conflict of views and, expressing some doubt in the matter, admitted and referred the case to a Division Bench. Meanwhile identical and similar issues came up in Civil Revn. No. 462 of 1982 Bachi Devi v. State of Bihar and other cases before a Division Bench which, by its detailed order of reference dated the 26th of Mar. 1985, referred them for an authoritative decision by a Full Bench. The present case along with the other set of four cases was consequently directed to be heard together and that is how the matter is now-before us.

4. As would appear hereinafter, the issues before us are so replete with precedents (both binding and persuasive) that it would be a patent exercise in futility to now launch on a dissertation on principle. Nevertheless, the manner in which the questions herein have come to the fore necessarily deserve to be recalled. Without delving further deep, it may be noticed that in Mt. Rupia v. Bhatu Mahton MANU/BH/0106/1943 : AIR 1944 Pat 17, a Full Bench of this Court after consideration of the existing principle and precedent took the view that under Clause (iv) of Section 7 of the Court-fees Act (hereinafter called the 'Act') the plaintiff has no absolute right or option to place any valuation whatever on the relief claimed. Inevitably thereafter the said view held the field and was consistently followed within this jurisdiction by the Division Benches and single Benches. However, a frontal note of dissent against this long line of precedent was struck by the learned single Judge in Kesho Mahton v. Ayodhya Mahton (MANU/BH/0019/1983 : AIR 1983 Pat 67) (supra) holding that the earlier Full Bench view in Mt. Rupia's case (MANU/BH/0106/1943 : AIR 1944 Pat 17) was incorrect and the cases following the same view were not correctly decided because of the supposed ratio to the contrary in Sathappa Chettiar v. Ramnathan Chettiar MANU/SC/0003/1957 : AIR 1958 SC 245. Resting himself on the said judgment, it was held that the valuation given by the plaintiff under Section 7(iv) of the Act is final and conclusive and the Court had no jurisdiction whatsoever to interfere with such estimation and in essence he had an absolute right and option to do so. This view was, however, strongly dissented from shortly thereafter in Mannu Das v. Kisto Das MANU/BH/0064/1983 : AIR 1983 Pat 272 which, in no uncertain terms, took the view that the earlier Full Bench in Most. Rupia's case (supra) as also the long line of precedents following it was correct and still held the field and was in no way whittled down by the Supreme Court judgment in Sathappa Chettiar's case (supra). Inevitably the conflicting judgments created a hornet's nest of controversy both within the Court and the more so for the subordinate courts below which, indeed, has necessitated the present reference.

5. Ere one adverts to the rival contentions of the parties and the cleavage of judicial

opinion, it seems apt to refer to the rational premise underlying the question. One must first highlight the meaningful distinction betwixt the valuation of the property in dispute and the valuation of the relief claimed by the plaintiff therein. Though there may be some similarity, yet these are not synonyms. Whilst the property in respect whereof the claim is raised may be of high valuation, the plaintiffs claim of relief with regard thereto may not necessarily be identical. It is for this reason that the Legislature gave considerable liberty to the plaintiff to state the amount at which he values the relief claimed because of the absence of any precise yardstick for its determination. Whilst the value of property may be concretized , e.g., like market value etc., the value of relief claimed therein by the plaintiff may not be easily capable of precise measurement. It is significant to notice that whilst the other clauses of Section 7 provide for a yardstick or a norm on the basis of which the court fee may have to be ultimately computed by the Court, under Clause (iv) this is conspicuous by the absence of any such criteria. Thus the rationale underlying the provision is both the difficulty of first valuing the property as such and the greater one of valuing the relief therein which is sought to be claimed by the plaintiff.

6. In the light of the above, Mr. Asghar Hussain strongly advocated the stand that the plaintiff had an absolute right or option to place any valuation whatever on his relief. It was pointed out that apart from the provisions of Clause (iv) of Section 7 no statutory rules have been framed in this regard under the Court-fees Act. Counsel, therefore, contended that this being so, if ultimately the Court is authorised to go into the question of the valuation of the relief, it would itself be riding the high seas rudderless without any compass provided by the Act or the Rules for arriving at the destination of the true value of the relief claimed by the plaintiff. In sum, the contention was that whereas in other clauses of Section 7 of the Act the modus of computing the court-fee is provided, it is not so in Clause (iv) and, therefore, the court itself cannot enter the thicket of the valuation of the relief claimed. It was submitted that it is thus safer to leave the matter in the absolute option of the plaintiff to place any value on his relief which according to the learned counsel the Legislature had already done. As regards precedents, Mr. Hussain fell back on the older cases in *Gauri Lal v. Raja Babu* x: (MANU/BH/0044/1929 : (1986 Pat LJR 373) : AIR 1929 Pat 626), *Arunachalam Chetty v. Rangasamy Pillai* MANU/TN/0205/1914 : AIR 1915 Mad 948 (FB), *Chelaswami Ramiah v. Chelasami Ramiah* MANU/TN/0034/1912 and *Arunachalam Chetty v. Rangaswamy Pillai* (MANU/TN/0205/1914 : (1986 Pat LJR 373) : AIR 1915 Mad 948) (FB):ILR 38 Ma 922 .

7. Inevitably Mr. Hussain was compelled to challenge the correctness of the Full Bench view in *Most. Rupia's* case (MANU/BH/0106/1943 : AIR 1944 Pat 17) (FB) (supra). It was submitted that without itself examining the question at all, the Full Bench merely hearkened back to the earlier precedent of this Court in *Gauri Lal's* case (supra). Equally it was submitted that not a single reason was given for differing and dissenting With the considered Full Bench decisions of the Madras High Court in *Chelasani Ramiah's* case (supra) and *Arunachalam Chetty's* case (supra). It was, therefore, sought to be contended that *Mst. Rupia's* case could not hold the field in face of the later authoritative pronouncement in *Sathappa Chettiar's* case (MANU/SC/0003/1957 : AIR 1958 SC 245) . (supra).

8. On the other hand, Mr. R.K. Verma strongly advocating the contrary view took a rock-like stand that the issue is now concluded by the judgment in *Meenakshisundaram Chettiar v. Venkatachalam Chettiar* MANU/SC/0016/1979 : AIR 1979 SC 989, and all further discussion is thus rendered academic. Nevertheless, on

principle he highlighted the fact that the crucial question of the valuation of the suit was no mean issue which could be left in the absolute right or option of one of the interested litigants like the plaintiff. It was pointed out that apart from the mere payment of court-fee the issue of jurisdiction of the court is linked and directly connected with the valuation of the court-fee and the same is of such significance that it cannot be glossed or slurred over. Section 8 of the Suits Valuation Act virtually equates the issue of jurisdiction with that of the valuation of the relief. The end result, therefore, is that such valuation does not merely govern the payment of the amount of court-fee but more so of the forum where the suit will be tried. Mr. Verma highlighted that if the door of the court's power to look into the issue of valuation is absolutely barred, then it would be open for the plaintiff to place the valuation of his relief in properties worth lacs at a few hundreds of rupees and file the suit in the court of a Munsif. By such device he may reduce the forum of the trial to the bottom rung and the right of first appeal would go to the subordinate judge, thus depriving the defendant of such a valuable right in the High Court itself if the relief was properly valued. Thus, in a way, the issue is strictly interlinked with the forum of the trial and the consequent valuable vested rights of appeal and second appeal. This, according to counsel, cannot be left entirely in the interested hands of the plaintiff litigant and leave the court as a silent and impotent spectator of gross, deliberate and designed undervaluation of the relief. Counsel relied on Order VII Rule 11 of the Civil P.C. and also highlighted that their Lordships of the Supreme Court had relied thereon in MANU/SC/0159/1979 : AIR 1979 SC 898.

9 . It is manifest from the well-matched divergent stands aforesaid that two competing principles vie for acceptance here. The first one stems from the fact that Clause (iv) of Section 7 does give liberty to the plaintiff to evaluate his relief and the rationale for this has been authoritatively elaborated in MANU/SC/0003/1957 : AIR 1958 SC 245 and thus needs no repetition or recapitulation. Yet another aspect which has been highlighted is that procedurally the petty and contentious disputes raised on the issue of valuation by the defendants tend to defeat the substance of the litigation by preliminary wrangles on the fiscal issue of valuation. One cannot be unmindful of the fact that unscrupulous defendants may pointlessly raise issues of valuation in order to delay the matter at the very threshold and thereby obstruct the pace of the suit, by resorting thereafter to the revisional jurisdiction. There is no gainsaying the fact that procedural misuse in this context is somewhat rampant and this aspect should not be entirely out of ken. Equally hallowed, however, is the rule that a provision of law is not to be construed on the assumption that the same may be misused or abused. One cannot, in the thin guise of interpretation, amend or override a provision to prevent the alleged misuse and prolongation of litigation by a recalcitrant defendant.

10. Nor can one lose sight of the fact that holding that the plaintiff has an absolute right to place any valuation whatever on his relief and the court has no jurisdiction in the matter at all would equally be capable of gross abuse and even public mischief. Once it is so held, it may and is most likely to lead to a gross and deliberate undervaluing of the relief claimed. Indeed such a finding can only result in a headlong conflict of interest against duty for the plaintiffs. As their Lordships have said, it is the plaintiffs duty to fairly attempt to estimate the value of the relief claimed even where it is not easy to compute it in money terms. Once it is held that the plaintiff had an absolute right to value his relief then his financial interest would demand that he undervalues it to pay the minimal court-fee against a duty to fairly estimate the valuation in order to pay the proper one. Such a holding may also lead to frivolous litigation. As it fell from one of my learned Brothers, it would follow from

such a holding that the unscrupulous plaintiffs may well sue for properties worth crores of rupees and place their, own valuation at a token of one hundred and raise a cloud over the title of the defendant. If the court is left powerless to interfere in such a situation, it would be rendered impotent to counter such frivolous litigation, even though the same may be writ large on the face of the proceeding.

11. It is somewhat plain that both extremes are, not devoid of their pitfalls and the capability of being abused. The law has to steer clear of what has been rightly labelled as the falsehood of extremes. The provisions have to be construed on the language and the spirit of the statute with an eye to a synthesis of the competing and rival rationales.

12. Having briefly considered the issue on principle as above and the rationale underlying the provisions of Clause (iv) of Section 7 of the Act, one may now advert to the basic stand of Mr. R.K. Verma that all other considerations are now rendered somewhat academic by the enunciation of law on the point by the final Court in *Meenakshisundaram Chettiar v. Venkatachalam Chettiar* MANU/SC/0016/1979 : AIR 1979 SC 989. This stand of the learned counsel is not devoid of merit. Indeed, it seems somewhat surprising that the learned counsel for the parties were so remiss as not to bring this binding judgment to the notice of either of the learned single Judges in *Kesho Mahton v. Ayodhya Mahton*, (MANU/BH/0019/1983 : AIR 1983 Pat 67) (supra) and *Mannu Das v. Kisto Das*, (MANU/BH/0064/1983 : AIR 1983 Pat 272) (supra). Had that been done probably the needless controversy and conflict raised would have had no occasion to arise. In *Meenakshisundaram Chettiar's* case (supra) an identical issue arose directly and frontally before their Lordships under Clause (iv) of Section 7 of the Act. After quoting the relevant part of the statute aforesaid and equally referring and relying on Order VII Rule 11 of the Code it was concluded as under:

".....This section casts a duty on the Court to reject the plaint when the relief claimed is undervalued. If on the materials available before it the Court is satisfied that the value of relief as estimated by the plaintiff in a suit for accounts is undervalued the plaint is liable to be rejected. It is therefore necessary that the plaintiff should take care that the valuation is adequate and reasonable taking into account the circumstances of the case. In coming to the conclusion that the suit is undervalued the court will have to take into account that in a suit for accounts the plaintiff is not obliged to state the exact amount which would result after the taking of the accounts. If he cannot estimate the exact amount he can put a tentative valuation upon the suit for accounts which is adequate and reasonable. The plaintiff cannot arbitrarily and deliberately undervalue the relief. A Full Bench of the Andhra Pradesh High Court in a decision in *Chillakuru Chenchuram Reddy v. Kanupuru Chenchurami Reddy* ILR (1969) A P 1042 after elaborate consideration of the case law on the subject has rightly observed that there must be a genuine effort on the part of the plaintiff to estimate his relief and that the estimate should not be a deliberate under-estimation."

To my mind within this jurisdiction the aforesaid forthright enunciation of the law now governs the issue fairly and squarely. As has been noticed earlier, Clause (iv) of Section 7 of the Act had fallen directly for consideration and the judgment cannot be possibly distinguished by any finical distinctions on the further Sub-clauses (a) to (f) thereof. There is no manner of doubt that earlier there has been a deep-seated cleavage of judicial opinion betwixt even Full Benches of the different High Courts

and inevitably of the different Division Benches and single Judges inter se in some Courts as in our own as well. Indeed, Mr. Verma pointed out that this question had earlier exercised the judicial scrutiny of as many as eleven Full Benches and innumerable Division Benches had also gone into the issue. Whilst the High Courts of Patna, Nagpur, Andhra Pradesh and Hyderabad in *Mt. Rupia v. Bhatu Mahton* MANU/BH/0106/1943 : AIR 1944 Pat 17 (FB), *Motiram v. Daulat* AIR 1939 Nag 50, *Chillakuru Chenchuram Reddy v Kanupuru Chenchurami Reddy* ILR (1969) A P 1042, *Manchinna Shantamma v. Machinna Lachiah* AIR 1955 Hyd 23 had taken a view that the plaintiff had no absolute right or option to place any valuation whatever on the relief claimed under Section 7(iv) of the Act, the contrary view had been subscribed to by the High Courts of Madras, Lahore, Punjab and West Bengal in *Ghisu v. Ram Ballabh* (1912) 13 Ind Cas 363, *Appala Suryanarayana v. Venkatasiva Rao Pantulu* AIR 1915 Mad 945, *Ah Twe v. Ma Mai Sein* AIR 1941 Rang 97, *Emperor v. Ralla Ram* AIR 1946 Lah 94, *Karam Ilahi v. Muhammad Bashir* AIR 1949 Lah 116, *Vishwa Nath v. Smt. Sita Bai Anand* MANU/PH/0139/1952, *Narayangunj Central Co-operative Sale and Supply Society Ltd. v. Mafizuddin Ahmed* MANU/WB/0014/1934 : AIR 1934 Cal 448 (FB). Mr. Verma, however, pointed out that some of the States had amended versions of the Court Fees Act on the point and, therefore, the statutes being not in pari materia some of the judgments may not be directly relevant. However, as I have said earlier, it is now wasteful to enter the thicket or the morass of conflicting precedent aforesaid when the Gordian knot has been finally cut by the final Court itself in *Meenakshisundaram Chettiar's case* (supra).

13. Having held as above, the solitary question that remains is whether there is any conflict in the final Court itself betwixt the ratio of the earlier judgment in MANU/SC/0003/1957 : AIR 1958 SC 245, *Sathappa Chettiar v. Ramanathan Chettiar* and the recent one in *Meenakshisundaram Chettiar's case* (supra). A tenuous attempt was made on the part of the learned counsel for the petitioner to submit that the said two judgments were in headlong conflict, or in the alternative to distinguish the decision in *Meenakshisundaram Chettiar's case* (supra) (MANU/SC/0016/1979 : AIR 1979 SC 989) on the limited ground that it was rendered under Sub-clause (f) of Section 7(iv) whilst that in *Sathappa Chettiar's case* (supra) was rendered under Sub-clause (b) of Section 7(iv).

14. To clear the cobwebs one may forthwith take up the issue whether any distinction can be drawn with regard to the individual Sub-clauses (a) to (f) of Clause (iv) of Section 7 of the Act. For case of reference the relevant part of the statute may first be read which is in the terms following :

"7. Computation of fees payable in certain suits.-- The amount of fee payable under this Act in the suits next hereinafter mentioned shall be computed as follows :

XX XX X

(iv) in suits -

(a) For moveable property of no market value. -- For moveable property where the subject-matter has no market value, as, for instance, in the case of documents relating to title

(b) To enforce a right to share in joint-family property.-- To enforce the right to share in any property on the ground that

it is joint-family property,

(c) For a declaratory decree and consequential relief. -- To obtain a declaratory decree or order, where consequential relief is prayed,

(d) For an injunction. -- To obtain an injunction,

(e) For easements.-- For a right to some benefit (not herein otherwise provided for) to arise out of land, and

(f) For accounts.-- For accounts -- according to the amount at which the relief sought is valued in the plaint or memorandum of appeal; In all such suits the plaintiff shall state the amount at which he values the relief sought;

(v) For possession of land, 'houses and gardens. -- In suits for the possession of land, houses and gardens according to the value of the subject-matter; and such Value shall be deemed to be -

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 ten 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 -- five times the revenue so payable;

(c) where the land 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 year next before the date of presenting the plaint - fifteen times such net profits; but where no such net profits have arisen therefrom the amount at which the Court shall estimate the land with reference to the value of similar land in the neighbourhood;

(d) where the land forms part of an estate paying revenue to Government, but is not a definite share of such estate and is not separately assessed as abovementioned --the market value of the land"

Even the plain reading of the statute makes it manifest that under the whole of Clause (iv) the court-fee is to be computed according to the amount at which the relief is valued by the plaintiff. What is, however, significant and deserves highlighting is that the mandate in the last portion of Clause (iv) governs each of the preceding Sub-clauses (a) to (f) equally and without any exception. The Legislature has not minced its words and without any equivocation has laid down a universal principle applicable for each of the Clauses (a), (b), (c), (d), (e) and (f). To my mind, it is both finical and

illogical in this context to draw any distinction on the ground of the nature of the suit mentioned in each of the clauses aforesaid. Whatever be its nature and whatever sub-clause it may fall in, the principle laid down at the end of Clause (iv) is applicable to all of them without reservation. Indeed, Mr. Asghar Hussain, the learned counsel for the petitioner, was fair enough to concede that on the language of the statute and on principle no distinction could thus be drawn with regard to Sub-clauses (a) to (f). Even when forcefully pinpointed, learned counsel conceded their inability to cite any judgment which had held that different considerations would apply by virtue of the different sub-clauses of Clause (iv) of Section 7. Therefore, the vain attempt of one of the learned counsel to wriggle out of the ratio of Meenakshi-suridaram Chettiar's case (supra) (MANU/SC/0016/1979 : AIR 1979 SC 989) by harping on the ground that the same was rendered under Clause (f) whilst the earlier judgment in Sathappa Chettiar's case (supra) (MANU/SC/0003/1957 : AIR 1958 SC 245) was rendered under Sub-clause (b), is wholly unwarranted. To clear the decks it has, therefore, to be observed that the mandate at the end of Clause (iv) of Section 7 applies equally and evenly to each of the Sub-clauses (a) to (f).

15. Before closing the discussion on this aspect it becomes necessary to advert to the recent Division Bench judgment in Commercial Aviation and Travel Co. (Inc.) v. Vimla Panna Lal AIR 1986 Del. 439 which has sought to distinguish the case of Meenakshisundaram Chettiar (supra) (MANU/SC/0016/1979 : AIR 1979 SC 989). In this context it is well to recall that the territories of Delhi were earlier within the jurisdiction of Lahore and later the Punjab Punjab & Haryana High Court. As already noticed, there was a long and consistent line of precedents to the contrary beginning with *Barru v. Lachman* 1914 P L R 23 : (AIR 1914 Lah 214) followed by as many as five Full Benches of the Punjab and Lahore High Courts thereafter. The Division Bench, as noticed in the end, felt itself bound by those decisions and equally by the considerations of *stare decisis* and in their own words -

".....we for one would not like the law to get unsettled suddenly by referring the matter to the larger Bench, particularly when the Act with which the Supreme Court or the Andhra Pradesh High Court was dealing was materially different provision....."

With the greatest respect, however, it would seem erroneous to presume that in Meenakshisundaram's case their Lordships did not deal with provisions of the Court-fees Act of 1870. A reference to para 7 of the Report would make it manifest that they in terms quoted Section 7(iv) of the Court-fees Act and directed their discussion and interpretation thereto dehors the considerations of any other statute. Equally in this context their Lordships placed firm reliance on Order VII, Rule 11 of the Civil P.C. which inevitably is a principle of universal application. They arrived at the ratio on these larger considerations. It is true that the case had arisen under the Tamil Nadu Court-fees and Suits Valuation Act. However, it deserves notice that the significant variation therein under Sub-section (2) of Section 35 of the said Act is with regard to matters arising after the decree has been passed and not at the threshold stage of the payment of court-fee and the valuation of the suit. The difference in the two statutes thus on this point is of little or no relevance. Even otherwise a comparison of the relevant provisions under the Act for the purposes of the determination of court-fee and those under the Tamil Nadu Court-fees and Suits Valuation Act, would show that though not identical they are in no way materially different. It was only in the end by way of an ancillary reference that their Lordships approved the broad rationale in

Chillakuru Chenchuram Reddy's case (supra) ILR (1969) A P 1042 With the deepest reverence the applicability of the ratio in Meenakshisundaram Chettiar's case (supra) to the provisions of Section 7(iv) of the Court-fees Act cannot be avoided or distinguished. Even otherwise the Delhi Division Bench did not advert to Sathappa Chettiar's case (supra) nor did it examine the matter on larger principle and as is evident from its judgment, it considered the view in its narrow parameters of whether or not to refer the matter to a larger Bench in face of a long line of Full Bench precedents by which it was bound. The deep conflict with other jurisdictions was not noticed. It seems to have missed consideration that the previous Full Benches of the Lahore and the Punjab High Courts had been rendered prior to the coming in of the binding judgment in Meenakshisundaram Chettiar's case (supra). With deepest respect and reverence I would wish to recording dissent with M/s. Commercial Aviation and Travel Co. (Inc.)'s case (supra).

16. To sum up on this aspect, the answer to question (iii) is rendered in the negative and it is held that no difference or line of distinction can be drawn qua the individual Sub-clauses (a) to (f) of Clause (iv) of Section 7 of the Act.

17. Now once it is so held, it is patent that the alleged conflict betwixt Sathappa Chettiar's case (supra), (MANU/SC/0003/1957 : AIR 1958 SC 245) and that of Meenakshisundaram Chettiar's (supra), (MANU/SC/0016/1979 : AIR 1979 SC 989) is purely imaginary rather than real and, if one may say so, it is a classic example of first raising a ghost and then attempting to kill it. On a closer analysis both the judgments harmoniously blend into complementary ratios and, to my mind, it is wholly unwarranted to read them as if in conflict.

18. Somewhat curiously a tenuous attempt was made by counsel to contend that Sathappa Chettiar's case (supra) had laid down the rule that the plaintiff had an absolute right or option to place any valuation whatever on his relief. It was sought to be contended that this necessarily followed from the observations in para 13 of the Report. To my mind, the lie direct to such a stand is given in the words of the Constitution Bench itself at the end of the said para in the following terms:

"In the circumstances of this case it is unnecessary to consider whether under the provisions of this section the plaintiff has been given an absolute right or option to place any valuation whatever on his relief."

19. Now on the basis of the aforesaid observations Mr. R.K. Verma was forcefully dogmatic that if the judges themselves say in terms that they are not considering and deciding a question, it is wrong and erroneous to read the same judgment as having in fact done so. He rightly argued that the authors of the judgment are the best judges of what they had in mind and no oblique inferential conclusions can be planted against their own dictum that the issue is being left open.

20. The aforesaid stand of the learned counsel appears to me as patently sound in principle. Indeed, it is an impeccable rule that where a considered judgment declares that it is not considering and deciding a particular point, it would be wholly futile to attempt to read the observations therein as holding to the contrary. The barest modicum of respect had to be accorded to hold that the Judges of the Bench know their mind and when they declare it, it has to be accepted as a rule. The aforesaid observations can leave no manner of doubt that their Lordships far from deciding the issue even thought it unnecessary to adjudicate thereupon. Indeed, by so observing they expressly and advisedly left the question open. Despite the aforesaid categoric

observations, to still hold that their Lordships had decided this question one way or the other, is, to my mind, wholly unwarranted. Equally it has to be noticed that they made this observation with regard to the section generally and not with regard to the individual Sub-clauses (a) to (f) of Clause (iv) of Section 7. The specious argument that though they had said so in terms, they did not mean so, is almost an irreverent imputation to be laid at the door of a Constitution Bench. It has to be necessarily presumed that their Lordships meant exactly what they said in no uncertain terms that they did not at all think it necessary to consider the larger question whether the plaintiff has an absolute right or option to place any valuation whatever on his relief.

21. A gloss that is sought to be placed on the earlier observations in para 13 of the Report can be easily removed by a closer and incisive reading thereof. Their Lordships, traced the rationale behind Clause (iv) of Section 7, rightly holding that thereby a departure has been made and liberty has been given to the plaintiff to value his claim for the purposes of court-fee. They briefly examined the theoretical basis of the provision. On all this reasoning the following conclusion was drawn in their own words :

"That is why Legislature has left it to the option of the plaintiff to value his claim for the payment of court-fee. It really means that in suits falling under Section 7(iv)(b) the amount stated by the plaintiff as the value of his claim for partition has 'ordinarily' to be accepted by the court in computing the court-fee payable in respect of the said relief."

22. The key word therein and the clue to the observation is the word 'ordinarily' designedly and incisively employed by their Lordships. 'Ordinarily' cannot possibly be read as 'invariably' or 'inflexibly'. These words are not synonymous and they mean different and distinct things. There is a large gap betwixt what is ordinarily done and what must inflexibly and mandatorily be done. That gap cannot be bridged or glossed over by any sophistry. When their Lordships said 'ordinarily', they did so designedly. This is more than amply clarified and highlighted by the very next observation that in the circumstances they found it wholly unnecessary to even consider -- far from decide, whether the provisions of the section invariably gave the plaintiff an absolute right or option to estimate his relief. Reading something more in the succeeding paras 14 and 15 of the Report as in any way relevant to the true meaning of Section 7(iv), to my mind is again a misnomer. Therein their Lordships were discussing the correlated question of valuation for the purposes of court-fee and that for the purposes of jurisdiction by virtue of Section 8 of the Suits Valuation Act. Nothing in the said paragraphs can possibly deflect from the clear declaration by their Lordships that they were leaving the crucial question open.

23. It is thus manifest that far from there being any conflict betwixt Sathappa Chettiar's case, (MANU/SC/0003/1957 : AIR 1958 SC 245) (supra) and Meenakshisundaram Chettiar's case, (MANU/SC/0016/1979 : AIR 1979 SC 989) (supra), they are indeed complementary and blend into a harmonious ratio. The earlier case laid down that in suits under Section 7(iv) of the Act the estimation of the relief by the plaintiff is ordinarily to be accepted, but expressly left the question open whether he has been given an absolute right or option to place any valuation whatever on his relief. The later judgment elaborated the extraordinary situation where the plaintiff has arbitrarily and deliberately undervalued his relief and held that the Court has power and jurisdiction to correct the same. The legal result that thus emerges is that in suits falling under Clause (iv) of Section 7, irrespective of the various sub-clauses thereof, the estimation of the relief by the plaintiff has to be

ordinarily accepted. Nevertheless, the plaintiff has not been given any absolute right or option to place any valuation whatever on such relief and where he manifestly and deliberately undervalues and under-estimates the same the Court is not a silent and impotent spectator thereof and has clear jurisdiction to interfere. In the light of the above, the answer to questions (i) and (ii) are both rendered in the negative with the qualifications aforesaid.

24. Then it remains to advert to the view in *Kesho Mahton v. Ayodhya Mahton*, (MANU/BH/0019/1983 : AIR 1983 Pat 67) (supra). Therein it has been held in dogmatically categorical terms that under Section 7(iv) the plaintiff has an absolute option to state the valuation in the plaint and the Court has no jurisdiction to come to a contrary conclusion even on the ground of valuation being unreasonable or arbitrary or any other ground. This view is now in headlong conflict with and contrary to the ratio in *Meenakshisundaram Chettiar's case*, (MANU/SC/0016/1979 : AIR 1979 SC 989) (supra), and cannot possibly hold the field. With great respect it appears to me that the conclusion was rested on a slight misreading of *Sathappa Chettiar's case*, (MANU/SC/0003/1957 : AIR 1958 SC 245) (supra), and it seems to have been missed that their Lordships had in terms left the question open whether the plaintiff had an absolute right or option to evaluate his relief. The long line of binding precedents beginning with *Mt. Rupia's case*, (MANU/BH/0106/1943 : AIR 1944 Pat 17) (FB) (supra), was thus disregarded. With deepest respect and for the detailed reason enumerated earlier, the law laid down therein is not correct and is hereby overruled. For identical reasons the earlier judgment in *Smt. Prem Kishori Devi's case*, (MANU/BH/0012/1982 : AIR 1982 Pat 47) (supra), is also overruled.

25. As a necessary consequence the broad view of the law in *Mannu Das's case*. (MANU/BH/0064/1983 : AIR 1983 Pat 272) (supra), is accepted. Nevertheless a note of caution must be sounded in this context and a marginal modification of the principle laid down in *Mt. Rupia's case*, (MANU/BH/0106/1943 : AIR 1944 Pat 17) (FB) (supra), has to be made in view of the subsequent Supreme Court judgments in *Sathappa Chettiar's case*, (MANU/SC/0003/1957 : AIR 1958 SC 245) (supra), and that in *Meenakshisundaram Chettiar's case*, (MANU/SC/0016/1979 : AIR 1979 SC 989) (supra).

It is significant to notice that the Full Bench in *Mst. Rupia's case* (MANU/BH/0106/1943 : AIR 1944 Pat 17) did not choose to delve into the matter independently but had preferred to follow the earlier established view in the Court in the following words : --

"Though two Full Bench decisions of the Madras High Court have held that the valuation put on the plaint by the plaintiff under Section 7(iv)(c), Court-fees Act, is conclusive for the purposes of court-fee -- See MANU/TN/0034/1912, *Chelasami Ramiah v. Chelasami Ramasami* and: (MANU/TN/0205/1914 : ILR 38 Mad 922: AIR 1915 Mad 948, *Arunachalam Chetty v. Rangaswamy Pillai* -- a Division Bench of this Court in: (MANU/BH/0057/1931 : ILR 11 Pat 161 : AIR 1932 Pat 9), *Ramcharitar Pandey v. Basgit Rai* has laid down to the contrary, that is to say, in a suit to obtain a declaratory decree with consequential relief the Court is empowered under the law to revise the valuation put by the plaintiff, and, if on such revision it is of opinion that the valuation is insufficient or arbitrary, it has jurisdiction to fix a right value. We naturally prefer to follow the well established rule of this Court in a number of decisions which are all cited in the decision of this Court last mentioned."

Now reference to the Division Bench judgment in : (MANU/BH/0057/1931 : ILR 11 Pat 161 : AIR 1932 Pat 9) Ramcharitar Pandey v. Basgit Rai would yet indicate that there was no elaborate independent discussion of the matter on principle and the Division Bench judgment adhered to the earlier precedent even after noticing a conflict of precedent in the Court with that of other High Courts. It seems somewhat manifest that in view of the two aforementioned Supreme Court decisions the ratio in Mst. Rupia's case (supra), (MANU/BH/0106/1943 : AIR 1944 Pat 17) (FB) cannot be upheld in its entirety and has to be necessarily modified in accordance therewith. The sufficiency or otherwise of the relief estimated by the plaintiff is now no longer the question. Final objections about the insufficiency of such estimation should not any longer be permitted to be raised by the trial courts. Their power herein is not to be viewed as an ordinary one to revise the valuation put by the plaintiff. It is indeed an exceptional power to be exercised in rare cases for interference where on the face of the record the valuation is arbitrary and demonstrably wrong and the plaintiff has manifestly and deliberately undervalued and underestimated the same. Ordinarily this should be evident from the pleadings of the parties themselves and only if it is so the need for further consideration or evidence would arise. The broad and basic parameters now laid down by the final Court in the twin judgments aforesaid are that the estimation of the relief by the plaintiff has to be ordinarily accepted and interference therein is permissible only in exceptional and rare cases where such valuation is patently arbitrary and demonstrably undervalued and underestimated deliberately.

26. Now applying the abovesaid acid test, it is clear that the impugned order in Civil Revn. No. 851 of 1982 Md. Alam v. Gopal Singh passed by the learned Munsif cannot be sustained on the anvil thereof. There is not a hint or a finding therein that the valuation placed on his relief by the plaintiff was manifestly arbitrary and deliberately undervalued or underestimated. Consequently such valuation would come under the rule that the same has to be ordinarily accepted. The order of the learned Munsif has, therefore, to be set aside and the objection petition of the defendants dismissed. The civil revision application is accordingly allowed with cost.

27. Again in Civil Revn. No. 1439 of 1982 Yogendra Pd. Roy v. Prithwi Chand Roy the learned Additional Subordinate Judge, Bhagalpur, has not even remotely adverted to the threshold issue whether the estimation given by the plaintiff was totally arbitrary and deliberately underestimated and undervalued. Instead, he has entered into the final questions of the sufficiency of the valuation and allied matters. In view of the ratio laid above no interference on such grounds is warranted. The judgment under revision is consequently set aside and the objections with regard to the valuation raised by the defendants are dismissed. The civil revision petition is accordingly allowed with cost.

28. In Civil Revn. No. 1366 of 1985, Swami Sri Akhandanand Pramhansji Maharaj v. Durganand Choudhary the court below has come to the conclusion that the suit is properly valued and the court-fee paid is sufficient. On the rule that the plaintiffs valuation is ordinarily to be accepted and the fact that the same has been further upheld by the trial court, any interference by the revisional court is wholly unnecessary. The revision is without merit and is consequently dismissed with costs.

29. In Civil Revn. No. 1385 of 1985, Smt. Tara Devi v. Sri Thakur Radha Krishna Maharaj the learned Additional Munsif has come to a clear finding that the valuation given by the plaintiff in the suit was in no way arbitrary and unreasonable, and consequently held that the same was rightly valued. On the proposition enunciated

above, there is not the least scope for interference in the considered order under revision. The revision" is consequently dismissed with costs."

30. Civil Revision No. 357 of 1985 (Abdul Barkar Mohd. Rashid v. Bibi Roshan Jahan) has been preferred by the defendant petitioners. They purported to be aggrieved by the impugned order of the learned Additional Subordinate Judge despite the fact that the valuation of the property in schedule I has already been enhanced. To my mind, this case conies squarely within the rule in Sri Rathnavaramarja v. Smt. Vimal MANU/SC/0361/1961 : AIR 1961 SC 1299 wherein it has been held as under : --

"We fail to appreciate what grievance the defendant can make by seeking to invoke the revisional jurisdiction of the High Court on the question whether the plaintiff has paid adequate court-fee on his plaint. Whether proper court-fee is paid on a plaint is primarily a question between the plaintiff and the State. How by an order relating to the adequacy of the court-fee paid by the plaintiff the defendant may feel aggrieved, it is difficult to appreciate. Again the jurisdiction in revision exercised by the High Court under Section 115 of the Code of Civil Procedure is strictly conditioned by Clauses (a) to (c) thereof and may be invoked on the ground of refusal to exercise jurisdiction vested in the Subordinate Court or assumption of jurisdiction which the court does not possess or on the ground that the court has acted illegally or with material irregularity in the exercise of its jurisdiction. The defendant who may believe and even honestly that proper court-fee has not been paid by the plaintiff has still no right to move the superior courts by appeal or in revision against the order adjudging payment of court-fee payable on the plaint."

Apart from the above, even on merits, the court below has held that as regards the valuation of Schedule II lands the estimation of the relief by the plaintiff was correct and the court-fee paid by the plaintiff over her own share was consequently accepted. On the principle enunciated above, herein not the least cause for interference in the impugned order is made out. The revision petition is consequently dismissed with costs.

B.P. Jha, J.

31. I agree.

Birendra Prasad Verma, J.

32. I agree.

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