MANU/BH/0106/1943

Equivalent Citation: AIR1944Pat17

IN THE HIGH COURT OF PATNA
FULL BENCH

Decided On: 30.09.1943

Appellants: **Rupia**
Vs.
Respondent: **Bhatu Mahton and Ors.**

Hon'ble Judges/Coram:
Saiyid Fazl Ali, C.J., Sinha and Chatterji, JJ.

Overruled / Reversed by:
Kesha Mahton and Ors. vs. Ayodhya Mahton and Ors., MANU/BH/0103/1982

JUDGMENT

Sinha, J.

1. The question referred to this Bench is what is the proper court-fee payable on the plaint and on the memoranda of appeal in the lower appellate Court and in this Court. The suit was instituted by Mt. Rupia, widow of Sanichar Mahto, on the following allegations: She has been in possession of the properties in question, holding a widow's estate after her husband's death. Loka Mahto is the next reversioner to her husband, and defendants 7 to 10 were not the reversioners as falsely alleged in the documents hereinafter mentioned. The cause of action alleged in the plaint was that defendants 1, 3 and 5 brought her to Patna on false pretexts and fraudulently got her to affix her thumb mark to two documents and to admit execution of the same without letting her know the contents thereof and that the recitals in the documents (copies of which were obtained subsequently) as regards the passing of consideration and the existence of certain necessities and as to the relationship between her husband and defendants 7 to 10 were wholly false. Paragraphs 7 and 8 of the plaint, set out below, disclose the facts on which the plaintiff claimed the principal relief:

> **7.** That it is clear from the facts mentioned above, that the defendants first party having practised fraud and forcibly taking advantage of the helpless condition of the plaintiff got executed the deeds dated 5th February 1940, one in the names of Bhatu Mahto son of Aklu Mahto and Parmesar Mahto son of Modi Mahto by mentioning a false and imaginary consideration of Rs. 3000 in respect of the properties mentioned in Schedule 2, and the other in the name of Mahadoo Mahto son of Somar Mahto by mentioning a false arid imaginary consideration of Rs. 1500 in respect of Schedule 3. Although the said sale deeds have not become operative nor have the defendants first party acquired possession and occupation by virtue of the same, yet without getting a declaration to that effect, the plaintiff's right may be prejudiced in future and as by means thereof an evidence has been created in favour of the title of the defendants first party of which there is no existence, the plaintiff cannot get her grievances redressed without recourse to Court.
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> **8.** The value of this suit for the purposes of the jurisdiction of the Court is

> fixed at Rs. 1500 and Rs. 3000 in all at lis. 4500 which are mentioned in the sale deeds, but as the plaintiff continues in possession and occupation as before she begs to institute this suit for declaration of her title and Rs. 15 is paid as court-fee for the same.

The principal relief is as follows:

> (1) On adjudication of the facts referred to above it may be declared by the Court that both the sale deeds, one dated 5th February 1940 for Rs. 1500 in favour of Mahadeo Mahto and the other dated 5th February 1940 for Rs. 3000 in favour of Bhatu Mahto and Parmesar Mahto are got up and fraudulent, that they were got executed by the plaintiff by practising fraud on her and without letting her know the contents thereof, that the defendants have acquired no title by virtue of the same and that the defendants second party had no right to join in the said deeds.

2. To the plaint, a court-fee of Rs. 15 for a declaration only was affixed. This was held to be sufficient by the trial Court which, decreed the suit, allowing the declaration, asked for, and ordering a copy of its decree to be sent to the Registration Office so that a note of cancellation would be made in the registers of the Registration Office. This was apparently done under the provisions of Section 39, Specific Relief Act. On appeal by the defendants first party, the lower appellate Court reversed the decision of the trial Court and held that the sale deeds in question were genuine, valid and for consideration. There upon the plaintiff filed her memorandum of second appeal to this Court, paying a court-fee of Rs. 15 only on the basis that the suit was merely for a declaration. The Stamp Reporter was of the opinion that the plaint as well as the memoranda of appeal both in the lower appellate Court and in this Court are governed by the provisions of Section 7(iv)(c), Court-fees Act, and that, consequently, ad valorem court-fees should be levied. He relied, principally, upon the decision in this Court of the taxing Judge reported in Mt. Noowooagar Ojain v. Shidhar Jha A.I.R. 1918 Pat. 482. He also noticed that there was some conflict of judicial opinion in this Court and made reference to the cases in Khiri Chand Mahton v. Mt. Meghni A.I.R. 1926 Pat. 453, Kamala Prasad v. Jagarnath Prasad A.I.R. 1931 Pat. 78 and Ramautar Sao v. Ram Gobind Sao A.I.R. 1942 Pat. 60. This Bench has been constituted to determine which provision of the Court-fees Act governs the present case so as to lay down a uniform rule in the matter of court-fees in a case like the present which is of frequent occurrence.

3. After hearing counsel for the appellant, and the Assistant Government Advocate on, behalf of the Revenue, it appears that there are three possible views of the provisions of the Court-fees Act which may be applicable to the facts of the present case: namely, (1) which is contended for on behalf of the appellant, that this case comes within the purview of Article 17(iii) of schedule 2, Court-fees Act; (2) that it comes under the provisions of Section 7(iv)(c) of the Act; and (3) that it is governed by Article 1, Schedule 1 of the Act. The learned Assistant Government Advocate has contended that the case comes either under category 2 or 3 aforesaid. The relevant provisions of the Court-fees Act aforesaid are as follows: (1) Section 7(iv)(c):

> to obtain a declaratory decree, or order, where consequential relief is prayed,: 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.

(2) Article 1, Schedule 1--"Plaint, written statement, pleading a set off or counter-claim or memorandum of appeal (not otherwise provided for in this Act;...."); court-fee has to be paid ad valorem on the amount, or value, of the subject-matter in dispute according to a sliding scale. (3) Article 17(iii), Schedule 2--"to obtain a declaratory decree or order where no consequential relief is prayed;" a fixed fee of Rs. 15 is payable on a plaint or a memorandum of appeal.

4. The question was directly raised in this Court and was decided by Roe J. as the Taxing Judge in the case in Mt. Noowooagar Ojain v. Shidhar Jha A.I.R. 1918 Pat. 482. He took the view that on adjudication that a deed is void the Court is required by law, if the instrument has been registered, to send a copy of its decree to the officer concerned of the Registration Department and that the forwarding of the copy of the decree to the Registrar is a consequential relief upon which ad valorem court-fee must be paid. Hence, according to hits view, whether or not the plaintiff prayed for this relief, as it was a necessary consequence of the adjudication, the case was governed by the provisions of Section 7(iv)(c), Court-fees Act. He held further that such a suit was clearly within the purview of ch. 5, Specific Belief Act, in contradistinction to the provisions of ch. 6 of the Act which deal with declaratory decrees. This case was discussed in another' decision of a Division Bench reported as Khiri Chand Mahton v. Mt. Meghni A.I.R. 1926 Pat. 453 Jwala Prasad and Bucknill JJ. have made the following observations in respect of this case:

> A number of authorities have been cited to us at the Bar, one of which is of our own Court: Mt. Noowooagar Ojain v. Shidhar Jha A.I.R. 1918 Pat. 482, in which Roe J., held that a suit for avoidance of a registered deed of gift was chargeable with ad valorem court-fee upon the ground that the Court was bound, upon deciding the suit in the plaintiff's favour, to send a copy of the decree to the office in whose book the deed was registered.' The report of the case does not show the details of the relief s sought in the case. The decision was entirely based upon certain previous authorities cited therein. One of these cases is Parvatibai v. Vishvanath Ganesh 29 Bom. 207.In that case, however, there was a specific relief sought for sending a copy of the decision noted in the book containing a copy of the document with a view to have the cancellation of the deed noted in the register of documents kept in the Sub-registrar's office. In this case there is no prayer for sending a copy of the decision to the Sub-registrar and we cannot import a relief into the plaint in order to make the relief consequential and thus to charge court-fee thereon. If the Court is bound to send a copy of the decree to the office of the Registrar it is no business of the party to ask for it, but it is the duty of the Court to send it of its own accord.

It would appear that, their Lordships in that case on its own facts took the view that it was governed by the provisions of Section 7(iv)(e), Court-fees Act. Hence the observations quoted above were not the ratio decidendi adopted by their Lordships in that case. The question came up directly for decision before this Court in Kamala Prasad v. Jagarnath Prasad A.I.R. 1931 Pat. 78. In that case their Lordships considered the question of whether the reliefs claimed in the suit before them attracted the provisions of Section 7(iv)(c) or Article 17, Schedule 2, Court-fees Act. On a consideration of the language of the plaint in that case their Lordships held that the plaintiffs in substance asked for the cancellation of the deed of gift and a declaration, and that, therefore, the prayer for the cancellation of the deed was a consequential relief, bringing the suit within the purview of Section 7(iv)(c), Court-fees Act. They approved of the earlier decision of this Court in Mt. Noowooagar Ojain

v. Shidhar Jha A.I.R. 1918 Pat. 482. It may be observed further that, though the plaintiffs had valued the properties covered by the deed of gift at Rs. 9999, their Lordships gave the opportunity to the plaintiffs to value the relief sought by them, and called upon the plaintiffs to pay an ad valorem court-fee on the valuation so put by them. It may be noted here that the document impugned in the case before their Lordships had not been executed by the plaintiffs, but by the propositus whose reversionary heirs the plaintiffs claimed to be. As the document then impugned would have stood in the way of the plaintiffs, they had got to set it aside before any relief could be granted to them. Their Lordships further distinguished the Division Bench ruling of this Court Khiri Chand Mahton v. Mt. Meghni A.I.R. 1926 Pat. 453, referred to above. The Division Bench of this Court in Kamala Prasad v. Jagarnath Prasad A.I.R. 1931 Pat. 78, followed the observations of their Lordships of the Judicial Committee in Tacoodeen Tewari v. Ali Hossein Khan 1 I.A. 192, to the following effect;

> Their Lordships think that as the plaint had prayed for substantive relief, namely, that the deeds should be set aside, the more correct form of decree is in the terms of that prayer.

5 . In the latest decision of this Court in Ramautar Sao v. Ram Gobind Sao MANU/BH/0122/1941 : AIR1942Pat60 , a Division Bench of this Court (Chatterji anc Meredith JJ.) has elaborately discussed the very question now in controversy in this case. Though the suit in that case was for partition of alleged joint properties, the parties were at issue on the question of whether a previous partion deed, to which the plaintiff was apparently a party, was or was not binding upon him. In that case the plaintiff had alleged that the previous deed of partition impugned in the suit had been executed under influence and fraudulent misrepresentations and during the plaintiffs minority. Their Lordships, in that case made a distinction between a document which, on the allegations in the plaint, was void and one which was only voidable. Hence counsel for the appellant laid great stress on the following passages in that judgment:

> It can never be said that a plaint carries by necessary implication a prayer for a relief which is in fact unnecessary and a clear distinction must be drawn between cases where it is necessary for the plaintiff to get the document declared void and cancelled before he can obtain relief, and cases where the plaintiff can obtain his relief without any such declaration and cancellation, upon a mere finding that the document does not affect him that is to say, we must distinguish between voidable documents and wholly void documents, and between declarations in the true sense and declarations so called, which are merely the findings of fact necessary, to give the plaintiff relief.
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> In short, the prayer for cancellation can only be deemed to be present by necessary implication where upon its true construction the plaint in asking for avoidance of the document asks for reliefs which necessarily involve its cancellation, that is to say, in the case of a document which is voidable as opposed to void.

6 . On the strength of the passages set out above, counsel for the appellant has contended that, according to the allegations in the plaint in the present case, the deeds were not only voidable, but void, and hence the plaintiff cannot be said to have

prayed for cancellation of the deeds even by implication; but, in my opinion, it cannot be said that the allegations in the plaint necessarily render the deeds in question void ab initio. On a proper construction of the plaint as a whole, in my opinion, it must be held that the plaintiff was suing for setting aside these deeds on the grounds of fraud and misrepresentation as also on the ground that there was no consideration for the transactions in question; whereas in Ramautar Sao v. Ram Gobind Sao MANU/BH/0122/1941 : AIR1942Pat60 , if the plaintiff succeeded in making it out that he was a minor when he was made to execute the previous deed of partition, it would be void ab initio. It would further appear from the decision last noticed that their Lordships recognised the position as well established that a suit for cancellation of a document is a suit for a declaration and consequential relief and governed by Section 7(iv)(c), Court-fees Act. In this connexion their Lordships have noticed the conflict of judicial opinion in the Allahabad High Court, and then they make the following observations:

> It is not necessary for our present purposes to decide whether a suit under Section 39, Specific Belief Act, or adjudging a document void or voidable involves anything otherwise than a prayer for a declaration, and we need not examine the correctness of Mt. Noowooagar Ojain v. Shidhar Jha A.I.R. 1918 Pat. 482, and whether it can be reconciled with Khiri Chand Mahton v. Mt. Meghni A.I.R. 1926 Pat. 453. It will be enough to say, as pointed out in Akhlaq Ahmad v. Mt. Karam Ilahi MANU/UP/0395/1934 : AIR1935All207 , that the plaint must be examined and construed to see if it carries by necessary implication a prayer for cancellation of the document.

7. Hence it is clear that the Division Bench of this Court in Ramautar Sao v. Ram Gobind Sao MANU/BH/0122/1941 : AIR1942Pat60 expressly reserved their opinion on the exact question arising for decision in the present case. It has not been contended before us, and there is not the least doubt, that the actual decision in Ramautar Sao v. Ram Gobind Sao MANU/BH/0122/1941 : AIR1942Pat60 was the right decision. Their Lordships, on a consideration of the entire plaint in that case, came to the conclusion that there was no room for contention that there was a prayer for cancellation of the deed even by necessary implication. I would respectfully associate myself with the following observations of their Lordships in the matter of the caution to be observed in exacting court-fees from a litigant:

> In applying these principles, however, caution must be observed so as not to import into the plaint anything which it does not really contain, either actually or by necessary implication. In construing the plaint we must take it as it is, not as we may think it ought to have been: Mohammad Ismail v. Liyaqat Husain MANU/UP/0276/1931 : AIR1932All316 and Kalu Ram v. Babu Lal MANU/UP/0326/1932 : AIR1932All485 . A relief not asked for cannot be imported so as to charge court-fee thereon; Khiri Chand Mahton v. Mt. Meghni A.I.R. 1926 Pat. 453. It is the plaintiff's own business if he chooses to take the risk of his suit failing on the ground that he has not asked for a necessary relief either declaratory or consequential. As it is put in Narayan Singh v. Dildar Ali Khan A.I.R. 1925 Pat. 210, where a plaintiff who is entitled to consequential relief frames his suit as one for a declaration only,, the Court is not entitled to insist upon his praying for a consequential relief and paying the court-fee proper for such a suit; or as it is put in Sri Krishna Chandra v. Mahabir Prasad MANU/UP/0289/1933 : AIR1933All488 , where the plaintiff deliberately omits to claim a consequential relief and contents himself with claiming a mere declaratory decree, the Court cannot call upon

> him to pay court-fees on the consequential relief which he should have claimed, although he has omitted to do so.

8. Counsel for the appellant has strenuously urged before us that the plaintiff had not made any prayer in her plaint in question for the cancellation of the sale deeds aforesaid either in express terms or by necessary implication. His contention is that the allegations in the plaint made by her amount to no more than this that those deeds were not her deeds inasmuch as she was not cognizant of the contents thereof. He has, besides relying upon the observations oÂ£ the Division Bench in Ramautar Sao v. Ram Gobind Sao MANU/BH/0122/1941 : AIR1942Pat60 , strongly relied upon the decision of the Division Bench of the Calcutta High Court in Umarannessa Bibi v. Jamirannessa Bibi A.I.R. 1923 Cal. 362 to the effect that where a person is induced to execute a document other than that he had undertaken to execute, the document is void ab initio, and not merely voidable. Though the decision related to the question of court-fees payable on the plaint, their Lordships of the Calcutta High Court do not appear to have considered the previous decision of that very Court in the matter of court-fees, which will be referred to presently. They appear to have relied upon the decision in Banku Behari Shaha v. Krishto Gobind Joardar 30 Cal. 433 in which it had been laid down that a document is a nullity, where the executant signed only on the first page, but did not sign on the other pages, having discovered that it was not in accordance with the terms previously agreed upon between the parties and that such a document did not require to be set aside or cancelled. In that case their Lordships of the Calcutta High Court relied on certain English decisions therein cited for the proposition that such a document must be treated as a nullity; but those considerations do not apply to the facts of the present case inasmuch as the documents in question on their very face have been duly executed and properly registered, carrying with them the necessary legal consequence that title passed from the transferor to the transferee. Such a document would necessarily require to be cancelled in order to get rid of the legal consequences attaching to it. That is the very object of the suit in the present case.

9. Hence, in my opinion, though the plaintiff did not in terms ask for the cancellation of the deeds in question, that relief is implicit in the adjudication sought for. It has been laid down over and over again by all the High Courts in India that the dexterity of the person drawing up the pleadings avoiding the use of certain words in the plaint, which would make the relief a consequential one, should not determine the amount of court-fee payable on the plaint. The court-fee is dependent not on the form of the pleadings, but on the real substance of the relief claimed. In this connexion the following observations of Sir Lawrence Jenkins in the well-known case in Deokali Koer v. Kedar Nath 39 Cal. 704 may be quoted:

> It is a common fashion to attempt an evasion of court-fee by casting the prayers of the plaint into a declaratory shape. Where the evasion is successful it cannot be touched, but the device does not merit encouragement or favour.

10. In that case the distinguished Chief Justice has decided that Section 42, Specific Relief Act

> does not sanction every form of declaration, but only a declaration that the plaintiff is entitled to any legal character or to any rights as to any property

and that the fixed fee of Rs. 10 is not sufficient for suits that are not "declaratory

suits" in the proper sense of the expression. It has been laid down in a large number of cases, of which the decisions of the Calcutta High Court in Deokali Koer v. Kedar Nath 39 Cal. 704 and Harihar Prasad Shyam Lal Singh 40 Cal. 615 are illustrations, that a suit for a declaration that a certain decree was fraudulent and illusory and unfit for execution and that certain properties were not liable to be sold in execution of that decree was not a mere suit for a declaration, though cast in a declaratory form, but in substance a suit for a declaration and a consequential relief within the meaning of Section 7(iv)(c), Court-fees Act.

11. On reference to the decisions of the various 0 High Courts on this question it would appear that a suit for a declaration that a certain deed purporting to have been executed by the plaintiff was fraudulent and inoperative, especially where the document has been registered was not considered a merely declaratory suit, but as one praying for a declaration and a consequential relief. In the Allahabad High Court a Full Bench of five Judges decided in Karam Khan v. Daryai Singh 5 All. 331 that a suit for the cancellation of an instrument executed by a third party in respect of property, to which the plaintiff claimed to be entitled, was one for a declaratory decree of the kind mentioned in Section 39, Specific Relief Act, and not seeking any consequential relief, and therefore not falling under Section 7(iv)(c), Court-fees Act. It may be that the actual decision in that case was right inasmuch as the plaintiff would not be bound by a document to which he was not a party and therefore the suit may have been treated as merely for the declaration of the plaintiff's title to the property sought to be dealt with by the deed in question. But the ratio decidendi of that case, which is very briefly reported, has not commended itself to that very Court, or to the other High Courts in India. The Full Bench in that case simply concurred in the following opinion expressed by the learned referring Judge:

> I have hitherto held this view, and have decided in accordance with it in several cases; among others in Ram Lall v. Kashi Ram 1 Legal Remembrancer (N.W.P.) 140 and Mahadeo Pershad Singh v. Deo Narain Rai 1 Legal Remembrancer (N.W.P.) 141. In doing so I considered myself bound by the ruling in Tacoodeen Tewari v. Ali Hossein Khan (1974) 1 I.A. 192 which was followed in Joy Narain Giree v. Grish Chander Mytee 22 W.R. 438. As however both these decisions were passed long before the Specific Belief Act came into operation, and as upon careful consideration, the case now referred appears to me to be one exactly of the kind mentioned in Section 39 of that Act, and to be in the nature of a simple declaratory suit, I think it desirable to take the opinion of the Full Bench upon the point.

12. It may be noticed that previous to that decision the Allahabad High Court had been consistently taking the view that a suit for cancellation of a deed would be governed by the provisions of Section 7(iv)(c), Court-fees Act, relying upon the observations quoted above of the Judicial Committee of the Privy Council in Tacoodeen Tewari v. Ali Hossein Khan 1 I.A. 192, but their Lordships appear to have agreed with the conclusion of Straight J. that such a suit was exactly covered by Section 39, Specific Relief Act. This conclusion of their Lordships, with all respect, was entirely correct, but the further observation that such a suit was in the nature of a simple declaratory suit is open to serious question. It is no wonder therefore that it was expressly dissented from by the Madras High Court in Samiya Mavali v. Minammal (1900) 23 Mad. 490. With reference to the Full Bench decision of the Allahabad Hingh Court, their Lordships of the Madras High Court have to say this:

> The report of the case is extremely brief, but, if it was intended to hold that

the law, as understood before the Specific Belief Act came into force, was altered by Section 39 of that Act, we are unable to agree with the decision. On the other question, as to the possibility of valuing the subject-matter, there; are several cases of this Court, deciding that a valuation is possible, Naraina Putter v. Aya Putter 7 M.H.C.R. 372 and Parathayi v. Sankumani 15 Mad. 294.

13. In this case the Madras High Court took the view that such a case would be governed by Section 7(iv)(c), Court-fees Act, but the same High Court in Parathayi v. Sankumani 15 Mad. 294, appear to have held that such a case would come within the purview of Article 1, Schedule 1 of the Act. Ad valorem court-fees have to be paid both under Article 1, Schedule 1 and Section 7(iv)(c), Court-fees Act; but the basis of valuation, in my opinion, is not the same as would presently appear. The Bombay High Court also in Parvatibai v. Vishvanath Ganesh 29 Bom. 207, expressly dissented from the aforesaid Full Bench decision of the Allahabad High Court, but in this case there was a distinct prayer for cancellation of the deed in question.

14. The Full Bench decision of the Allahabad High Court discussed above Karam Khan v. Daryai Singh 5 All. 331 made it necessary for the taxing Judge of that Court to make a reference to a Full Bench to decide the question: what provisions of the Court-fees Act determine the court-fee payable in respect of a relief that the mortgage deed in suit may be declared void and ineffectual as against the plaintiffs and that it may be cancelled, along with another question of a similar nature? The Full Bench decided the question in the case reported as Kalu Ram v. Babu Lal MANU/UP/0326/1932 : AIR1932All485 . The Full Bench consisting of five Judges including the Chief Justice, Sir Shah Muhammad Sulaiman, held that such a relief was governed by Schedule 1, Article 1, Court-fees Act. It is not for me to say how far the previous Full Bench decision of five Judges could be said to have been overruled by another Full Bench, of an equal number of Judges, but I would respect fully subscribe to the views expressed in the later Full Bench decision in Kalu Ram v. Babu Lal MANU/UP/0326/1932 : AIR1932All485 . In the latter Full Bench decision their Lordships have referred to the decisions of the various High Courts material to the question under discussion and given very good reasons for coming to the conclusion that such a relief would not come within the purview of Article 17, Schedule 2, Court-fees Act, as held in the previous Full Bench decision in Karam Khan v. Daryai Singh 5 All. 331, but that it would be governed by Article 1, Schedule 1, Court-fees Act, that is to say, the plaint in such a case should bear ad valorem court-fees on the amount or value of the subject-matter in dispute. The Full Bench decision in Kalu Ram v. Babu Lal MANU/UP/0326/1932 : AIR1932All485 , was again discussed in the same High Court, in the later Full Bench decision in Sri Krishna Chandra v. Mahabir Prasad MANU/UP/0289/1933 : AIR1933All488 . In this case the plaintiff had prayed for a declaration that a certain decree was not binding upon him and was altogether void and ineffectual.

15. It was held that inasmuch as the plaintiff merely asked for a declaration that the previous decree was not binding on him and was altogether void and ineffectual, his suit was one for obtaining a declaratory decree only, and fell under Article 17(iii), Schedule 2, Court-fees Act. While distinguishing the previous Full Bench decision in Kalu Ram v. Babu Lal MANU/UP/0326/1932 : AIR1932All485 their Lordships, observed that that case came directly within the terms of Section 39, Specific Relief Act; whereas a decree stood on a different footing. If the plaintiff had chosen to ask for a definite relief for the cancellation, or setting aside of the decree, it may have been said that the relief was not merely a declaratory one, but comprised a

substantial relief. Their Lordships also observed that where the plaintiff deliberately omits to claim a consequential relief, and contents himself with claiming a mere declaratory decree, the Court cannot call upon him to pay court-fees on the consequential relief which he should have claimed, although he has omitted to do so. Soon after the decision of the two Full Bench decisions of the Allahabad High Court, referred to above, came the decision of a Division Bench of the same Court in Akhlaq Ahmad v. Mt. Karam Ilahi MANU/UP/0395/1934 : AIR1935All207 . In this case their Lordships held that a case under Section 39, Specific Relief Act, for avoiding an instrument, even if there be no prayer for cancellation of the deed, carries with it by implication a prayer that the Court may further exercise its discretion under that section to order the said instrument to be delivered up and cancelled. Hence they laid it down further that the suit was governed by the provisions of Schedule 1, Article 1 and not Schedule 2, Article 17(iii), Court-fees Act. Counsel for the appellant relied upon the following observations of Niamatullah J., (as he then was) in the case aforesaid:

> In each case the question is one of construction of the plaint and of ascertaining the relief which the plaintiff is claiming. Whether he is rightly claiming the relief of declaration need not be considered where the question is one of court-fee only. To my mind it is open to a plaintiff to sue for a declaration that a document is void or voidable without making it a suit falling within the purview of Section 39, Specific Relief Act. It may be that such a suit is, in certain circumstances, liable to be dismissed under the proviso to Section 42 of that Act on the ground that the plaintiff, being able to seek a further relief (e. g. cancellation) than a mere declaration, omits to do so. There is a class of cases in which it is imperative that a plainly tiff should have an instrument set aside or cancelled. Even where it is not so imperative, but the plaintiff is 'able to seek further relief,' a mere declaration will not be granted. If a plaintiff deliberately prays for a mere declaration that an instrument is void and if the circumstances of the case are such that the document can be completely annulled, he is, at least, 'able' to have the instrument adjudged void, which implies that a copy of the decree anulling it shall be sent to the registration office for a note to be made on the copy therein retained, so that anyone searching and inspecting the registration office may at once find out that the document, though subsisting at one time, was subsequently annulled. In such a case his suit may be dismissed, being barred by the proviso to Section 42, Specific Relief Act. But for all purposes of court fee, it is not open to a Court to say that the plaintiff must be taken to have done what he should have done, though he persists in saying that he does not sue for cancellation. Another class of cases in which a plaintiff can sue virtually for a declaration that an instrument is void or voidable against him without suing for cancellation is where the instrument has been executed by several persons or affects the interests of several persons against some of whom it is not void or voidable and the plaintiff sues for a declaration of his right to property and of the invalidity of the instrument so far as it affects his interest in such property. In such; cases declaratory relief does not necessarily imply the relief that the instrument may be 'adjudged' void or voidable with the consequence of a note of annulment being made in the registration office and of the Court ordering that the same be 'delivered up and cancelled'.

16. I have quoted in extenso the two paragraphs in the judgment of Niamatullah J., because counsel for the appellant in this Court strenuously urged that those

observations of his Lordship's completely apply to the plaintiff under discussion in this case. He has urged that for the purposes of court-fee the Court is not entitled to look into the further question whether the plaintiff will, or will not, get the relief sought by him, or whether the plaint is properly framed in view of Section 42, Specific Relief Act; but the plaint, read as a whole, in the present case does lead to the inference that this is a suit in substance to set aside the two sale deeds impugned, and not merely for a declaration. That is how the plaint was understood by the Court of first instance which decreed the suit and directed that a copy of the judgment be forwarded to the registration authorities for taking the necessary steps.

17. In this Court the view has consistently been held that in the matter of court-fees the Court has to look into the real substance of the plaint, and not to its form, to determine under what category the plaint really comes; for example in Mahabir Prasad v. Shyam Bihari Singh A.I.R. 1925 Pat. 44 Jwala Prasad J. as the Taxing Judge held that though in form the plaint may be said to comprise prayers for a declaration and a consequential relief, in substance the plaintiff's claim was for a mere declaratory relief only, as it was not necessary for the plaintiff to pray for a consequential relief in that case, and, therefore, for the purposes of charging court-fees the suit was held to come within the purview of Article 17, Schedule 2, Court-fees Act. Similarly, in the recent Full Bench decision of this Court in Ramkhelawan Sahu v. Surendra Sahi A.I.R. 1938 Pat. 22 it was held that, though in form the plaint was cast for a declaration and for possession making it liable to an ad valorem court-fee, in substance the plaintiff was claiming possession only, making it liable a to court-fee under Section 7(v) of the Act. This class of cases has to be distinguished from another class in which it has been laid down that, where the plaintiff who is entitled to consequential relief frames his suit as one for a declaration only, the Court is not entitled to insist upon his praying for a consequential relief and paying the court-fee proper for such a suit: see the case in Narayan Singh v. Dildar Ali Khan A.I.R. 1925 Pat. 210.

18. As a result of the discussion of the foregoing decisions of this Court and of the several other High Courts, in my judgment, the following propositions are well established: (1) That a suit though cast in the form of a declaratory relief only, but in substance aiming at setting aside a deed formally executed and registered in accordance with law, is not liable to the fixed fee under Article 17, Schedule 2, Court-fees Act; (2) that the plaint in such a suit is liable to ad valorem court-fees either under Section 7(iv)(c) or Article 1 of Schedule 1, Court-fees Act; and (3) that the weight of judicial authority of the different High Courts, and, particularly, of this Court, is in favour of the view that such, a suit is governed by the provisions of Section 7(iv)(c), Court-fees Act.

19. In view of what has been said above, the plaint and the memoranda of appeal in the lower appellate Court and in this Court had to bear court-fee ad valorem on the amount at which the relief sought is valued in the plaint or the memorandum of appeal. Though for the purposes of jurisdiction the plaintiff put the valuation of RS. 4500 according to the valuation of the deeds in question, he did not value his relief in accordance with the terms of Section 7(iv)(c), the last paragraph of which requires that "in all such suits the plaintiff shall state the amount at which he values the relief sought." Hence the plaintiff should be called upon to comply with the requirements of the law, as stated above, and then the taxing officer of this Court will have the opportunity of testing the correctness of the court-fees paid.

20. It may be noted that though both under Section 7(iv)(e), and Article 1, Schedule

1, Court-fees Act, ad valorem court-fee is required to be paid, the basis of valuation is not the same. Whereas under the former provision ad valorem court-fee has to be paid on the amount at which the relief sought is valued in the plaint or memorandum of appeal under the latter provision of the Court-fees Act ad valorem court-fee has to be paid on the amount or value of the subject-matter in dispute: in other words, in accordance with the former provision the plaintiff can put his own valuation on the relief sought by him, whereas under the latter provision the value of the subject-matter must necessarily mean the market value. 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 Chelasami Ramiah v. Chelasami Ramasami MANU/TN/0034/1912 : (1913)24MLJ233 and Arnuachalam Chetty v. Rangasawmy Pillai A.I.R. 1915 Mad. 948 a Division Bench of this Court in Ramcharitar Pandey v. Basgit Rai A.I.R. 1932 Pat. 9 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.

Saiyid Fazl Ali, C.J.

21. I agree.

Chatterji, J.

I agree.