

AGRA DIOCESAN TRUST ASSOCIATION

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v.

ANIL DAVID AND ORS.

(Civil Appeal No. 1722 of 2020)

FEBRUARY 19, 2020

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**[ARUN MISHRA, M. R. SHAH
AND S. RAVINDRA BHAT, JJ.]**

Uttar Pradesh Court Fees Act, 1870: s.7(iv-A) – Suits filed by plaintiff- appellant for cancellation of sale deed – Contested by defendants on the ground that although the relief for cancellation of the sale deed in question was sought, but the appellant had improperly valued the suit and paid insufficient court fee – Trial court recorded the findings against the appellant and held that that the suits were undervalued and court fee paid by the plaintiff was insufficient – Aggrieved appellant filed writ petition contending that the appellant was not party to the sale deed and, therefore, trial court committed an error in deciding the issues against him and in directing him to pay ad valorem court fee on the market value of the land and that as the land in dispute was agricultural land, the appellant was obliged to pay the court fee on the revenue payable as fixed by the State Government in view of s.7(iv-A) of the Act – High Court by impugned order accepted the respondent’s contentions that the circle rate fixed by the collector to charge stamp duty took into account the actual market value of the property situated in the area – It further held that fixation of circle rate by the collector is the proper mode for fixation or determination of the market value unless an aggrieved person challenges that the circle rate fixed by the collector is not the correct market value of the property – On appeal, held: There was no compulsion for the plaintiff at the stage of filing the suit, to prove or establish the claim that the suit lands were revenue paying and the details of such revenue paid – Once it is conceded that the value of the land [per explanation to s.7 (iv-A)] is to be determined according to either sub clauses (v), (va) or (vb), this meant that the concept of “market value” - a wider concept in other contexts, was deemed to be referrable to one or other modes of determining the value under sub clauses (v), (va) or (vb) of s.7 (iv-A) – This aspect was lost sight of by High Court, in

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- A *the facts of this case – The reasoning and conclusions of the High Court, are therefore, not sustainable – Consequently, the question of what is the market value, based on the revenue payable, would be an issue to be tried in the suit.*

Allowing the appeals, the Court

- B **HELD: 1.** It is undisputed that the point in issue was with respect to valuation for purposes of court fee; equally, it is not in issue that since the plaintiff (i.e. petitioner) sought, in addition to a declaration, in both the suits, decrees of cancellation, the crucial point was what the correct value for purposes of court fee was.
- C Now, market value has been specifically defined, in the context of a litigation like the present one. According to Section 7 (iv-A), in case the plaintiff (or his predecessor-in-title) was not a party to the decree or instrument, the value was to be according to one-fifth of the value of the subject matter, “and such value shall be deemed to be” under Section 7 (iv-A), “if the whole decree or
- D instrument is involved in the suit, the amount for which or value of the property in respect of which the decree is passed or the instrument executed”. Importantly, the explanation to Section 7 (iv-A) created a deeming fiction as to what constitutes the “value of the property” by saying that “in the case of immovable property
- E shall be deemed to be the value as computed in accordance with the sub-section (v), (v-A) or (v-B) as the case may be.” [Para 15][959-D-G]
2. The plaintiff/petitioners’ contention was and continues to be that the value determinable is in terms of clause (v) of Section 7, by reason of Section 7 (iv-A). Section 7 (v) (i) contains two clauses- (a) and (b): both are in respect of revenue paying lands. The petitioner valued its suits on the basis of revenue which according to it, was payable. While so stating, the value (for purposes of court fee) was determined to be Rs.3000/- in each of the suits. There was no compulsion for the plaintiff to, at
- F the stage of filing the suit, prove or establish the claim that the suit lands were revenue paying and the details of such revenue paid. Once it is conceded that the value of the land [per explanation to Section 7 (iv-A)] is to be determined according to either sub clauses (v), (va) or (vb) of the Act, this meant that the
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concept of “market value” – a wider concept in other contexts, was deemed to be referable to one or other modes of determining the value under sub clauses (v), (va) or (vb) of Section 7 (iv-A). This aspect was lost sight of by the High Court, in the facts of this case. The reasoning and conclusions of the High Court, are therefore, not sustainable. Consequently, the question of what is the market value, based on the revenue payable, would be an issue to be tried in the suit. [Paras 16-18][959-H; 960-A, D-F]

Suhrid Singh alias Sardool Singh v. Randhir Singh & Ors. (2010) 12 SCC 112 : [2010] 3 SCR 1121;
Shailendra Bhardwaj v. Chandra Pal & Anr., (2013) 1 SCC 579 : [2012] 10 SCR 1125 – relied on.

Case Law Reference

[2010] 3 SCR 1121	relied on	Para 12
[2012] 10 SCR 1125	relied on	Para 13

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1722 of 2020.

From the Judgment and Order dated 27.05.2019 of the High Court of Uttarakhand at Nainital in Writ Petition No. 1758 of 2016 (M/S).

With

Civil Appeal No. 1723 of 2020.

P. N. Mishra, Sr. Adv., Nilakanta Nayak, Amit Yadav, B. D. Das, Shishir Deshpande, Advs. for the Appellant.

Rakesh Dwivedi, Sr. Adv., Ms. Pallavi Langar, Amrendra Kumar Mehta, Advs. for the Respondents.

The Judgment of the Court was delivered by

S. RAVINDRA BHAT, J.

1. Leave granted. With consent of counsel for the parties, the appeals were heard finally.

2. The appellant, (hereafter “the plaintiff”) had filed a suit (O.S. 24/ 2013) in the court of the Civil Judge (Senior Division), Dehradun for cancellation of a sale deed dated 08.03.2013, executed by the defendant-

- A respondent no.1. The third respondent, (hereafter called the “purchaser”) had acquired the property from the defendant-respondent no.1. Another suit (O.S. No. 25/ 2013, also titled as *Agra Diocesan Trust Association v. Anil David and Others*), was filed by the plaintiff for cancellation of the sale deed dated 08.03.2013 executed by the first two respondents in favour of the purchaser. A further relief sought was for permanent
- B injunction against the respondents/ defendants restraining them from interfering in the plaintiff’s peaceful possession of the property in dispute. The defendants filed their written statements, contending *inter alia* that although the relief of cancellation of the sale deed in question has been sought, the plaintiff had improperly valued the suit and the court fee paid
- C was insufficient.

3. The trial court on the pleadings of the parties, framed the issues; the relevant issues, Nos. 8 and 10 in both suits were (a) whether the suit filed by the plaintiff was undervalued and (b) whether the court fee paid by the plaintiff was insufficient.

- D 4. The trial court by its order dated 23.04.2016, recorded the findings against the plaintiff/ petitioner and held that the suits filed were under-valued and the court fee paid by the plaintiff was insufficient. Aggrieved by the same, the plaintiff filed the writ petition before the High Court, contending that the land in dispute was agricultural land.
- E Further, it was stated that the appellant-plaintiff was not party to the sale deed, and therefore, the learned trial court has committed an illegality in deciding the issues against the plaintiff and in directing the plaintiff to pay *ad valorem* court fee on the market value of the land. It was also submitted that as the land in dispute was agricultural land, the petitioner
- F was obliged to pay the court fee on the revenue payable as fixed by the state government in view of Section 7(iv-A) of the Court Fees Act, 1870.

5. The High Court, by the impugned judgment, after hearing counsel for the parties, accepted the respondent/defendants’ contentions that the circle rate fixed by the collector to charge stamp duty took into
- G account the actual market value of the property situated in the area. It was held that fixation of circle rate by the collector is the proper mode for fixation or determination of the market value (for purposes of payment of court fees), unless an aggrieved person challenges that the circle rate fixed by the Collector is not the correct market value of the property.

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6. Mr. P.N. Mishra, learned senior counsel, argued that the land in dispute is revenue payable land. Accordingly, the suits were correctly valued at 30 times of the revenue fixed by the state. It was urged that being a stranger to the sale deed in question, the plaintiff had to pay 1/5th on the market value as assessed, i.e. on 30 times the revenue. It was urged that the market value in the sale deed was mentioned at ₹ 11,79,09,000/- and ₹ 7,20,36,000/- respectively as the market value assessed in view of the circle rate fixed by the collector, which was not the correct market value. Counsel relied on a textual interpretation of Section 7(iv-A) of the Court Fees Act. Reliance was placed on *Shailendra Bhardwaj v. Chandra Pal & Anr.*, (2013) 1 SCC 579 to say that the circle rate fixed by the collector for charging stamp duty is not the correct market value of the property for the purpose of court fees. Therefore, the market value mentioned in the sale deed in order to pay the stamp duty, i.e. ₹ 11,79,09,000/- and ₹ 7,20,36,000/- respectively, is not the correct market value of the property in dispute. Mr. Mishra also argued that the suits were properly valued and the proper court fee was paid. The courts below, according to him, erred in holding that the suits were under-valued by the plaintiff and that the court fee paid was insufficient.

7. Mr. Rakesh Dwivedi, learned counsel appearing for the respondent defendants, resisted the present proceedings. He urged that this court should desist from interfering with the concurrent findings of the courts below, under Article 226 of the Constitution of India. It was also submitted by him that the circle rate fixed by the collector for charging stamp duty was so fixed in terms of the actual market value of the property situated in the area. It is argued that the fixation of circle rate by the collector is the correct mode for fixation of market value, unless an aggrieved person challenges that the circle rate fixed by the collector is incorrect. It is submitted that the appellants, in an arbitrary manner, valued the market value of the suit property for payment of court fee and jurisdiction of the court.

8. In the impugned judgment, the High Court reasoned as follows:

“19. The submission of the learned counsel for the petitioners that to ascertain the market value and for the purpose of payment of court fee and jurisdiction of the court, should be considered from plaint averments alone and what has been stated in the written statement is not relevant is acceptable to

- A *the extent that what has been contended in the written statement is not relevant, but the court has to consider while determining the market value for the purpose of court fee and jurisdiction of the court, the court has to consider the averments of plaint, whether the suit has been valued for the*
- B *purpose of court fee and jurisdiction as per the relief claimed and in accordance with the provisions contained in the Court fee and Suit Valuation Act. The court is not supposed to accept the plain averment in regard to the payment of court fee and jurisdiction as contended by the plaintiff. On a perusal of*
- C *the plaint averments and the provisions contained in Section 7(iv-A), this Court is of the view that at one place the plaintiff has valued the suit for cancellation of sale deed and for the purpose of payment of court fee and jurisdiction Rs. 2,00,00,000/- and immediately thereafter at thirty times of the revenue payable i.e. Rs. 3,000/- and paid the court fee on 1/5 of the valuation of Rs. 3,000/-.*
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- E *20. It is nowhere stated in the plaint that how the plaintiff has valued the market value of the property in question at Rs. 2,00,00,000/- whereof as per the circle rate fixed by the Collector, the market value of the property in dispute is Rs. 11,00,00,000/-. The stamp duty has been paid on an amount of Rs. 2,00,00,000/- sale consideration but in view of the provisions contained in Section 7(iv-A) of the Act the sale consideration is not the relevant factor for the purpose of payment of court fee and jurisdiction of the court. It is only the market value of the suit property the court fee is to be paid and jurisdiction of the court be fixed. The plaintiff cannot take two contradictory market value in his plaint, as in one place he has fixed the market value of Rs. 2,00,00,000/- and the jurisdiction of hearing the suit for valuation of Rs. 1,00,000/- vests in Civil Judge (Sr. Div.), whereof a suit valued for an amount of Rs. 3,000/- for the purpose of payment of court fee and jurisdiction, the jurisdiction to try the suit of the valuation of Rs. 3,000/- vests in the court of Civil Judge (Jr. Div.).*
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- H *21. Section 15 the Code of Civil Procedure provides that every suit shall be instituted in the court of the lowest grade competent to try it. Section 15 of CPC is quoted hereunder:*

“15. Court in which suits to be instituted.- Every suit shall be instituted in the Court of the lowest grade competent to try it.”

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22. Assuming that the market value of the suit property is Rs. 3,000/-, as per the averment of the plaint, then the suits could not have been filed in the Court of Civil Judge (Sr. Div.). If it is a valuation of Rs. 2,00,00,000/- as per the plaint averment for the purpose of payment of court fee and jurisdiction and the suits have been instituted in the competent court of jurisdiction, then there is no basis of it that the market value of the suit is Rs. 2,00,00,000/-. The submission of learned counsel for the petitioners that circle rate is not the correct mode to ascertain the market value has some force, but it is not the absolute proposition. In some cases, the market value may be higher or lower than the circle rate but to ascertain the market value, the party assailing the market value as fixed in the circle rate has to prove that the circle rate has not been fixed on the real market value. Unless otherwise market value is proved on higher or lower side, the market value assessed on the basis of circle rate cannot be said improper/incorrect market value.

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23. A perusal of the impugned order would show that the trial court having considered the market value as mentioned in the sale deed has found the correct market value of the suit property and held that the suits have not been valued properly. Thus, I am of the considered view that since no other market value has been proved by the petitioners/plaintiff that the settled revenue of the land is Rs. 3,000/- and in absence of any evidence in this regard, the trial court has rightly considered the market value of the property in dispute in accordance with the market value fixed by the Collector in order to charge the stamp duty, which is the correct market value.

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24. So far the findings recorded by the trial court that the petitioners/plaintiff is required to pay the ad valorem court fee on the market value is incorrect in view of the provisions contained in Sub Section (2) of Section 7(iv-A) of the Court Fee Act. Since the petitioners/plaintiff or its predecessor-in-

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A *interest is not the party to the instrument, therefore, the petitioners/plaintiff is obliged to pay 1/5 of the value of the subject matter as mentioned in the instrument involved in the suit.*

B *25. In view of the findings recorded above, I am of the considered view that the trial court has rightly held that O.S. no. 24 of 2013 and O.S. 25 of 2015 have been undervalued and court fee paid is insufficient and in fixation of market value as mentioned in the sale deed Rs. 11,79,09,000/- (in O.S. no. 24 of 2013) and Rs. 7,20,36,000/- (in O.S. no. 25 of 2013) is correct, whereof the finding in regard to the payment of ad valorem court fees are illegal and is liable to set aside. Thus, the judgment and order passed by the trial court on issue nos. 8 and 9 are modified to the extent that the plaintiff shall value the suit no. 24 of 2013 at the rate of Rs. 11,79,09,000/- and O.S. no. 25 of 2013 at the rate of Rs. 7,20,36,000/- respectively, and shall pay the court fee on 1/5 of the aforesaid value thereon. So far Relief 'B' and 'C' are concerned, the petitioners have paid the fixed court fee. The petitioners shall pay the remaining court fee within two months from today, on payment of remaining court fee the trial court shall proceed to decide both the suits in accordance with law."*

9. For a proper appreciation of the issue, it would be essential to extract the relevant provisions of law. Section 7(iv-A) of the U.P. Court Fees Act, 1870 reads as follows:

F *"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: -*

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G ***For cancellation or adjudging void instruments and decrees.** (iv-A) In suit for or involving cancellation of or adjudging void or voidable decree for money or other property having a market value, or an instrument securing money or other property having such value:*

H *(1) where the plaintiff or his predecessor-in-title was a party to the decree or the instrument, according to the value of the subject-matter, and*

(2) where he or his predecessor-in-title was not a party to the decree or instrument, according to one-fifth of the value of the subject matter, and such value shall be deemed to be-

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if the whole decree or instrument is involved in the suit, the amount for which or value of the property in respect of which the decree is passed or the instrument executed, and if only a part of the decree or instrument is involved in the suit, the amount or value of the property to which such part relates.

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Explanation - 'The value of the property' for the purposes of this sub-section, shall be the market-value, which in the case of immovable property shall be deemed to be the value as computed in accordance with the sub-section (v), (v-A) or (v-B) as the case may be.

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For easement.- (iv-B) In suits – (a) for a right to some benefit (not herein otherwise provided for) to arise out of land;

For an injunction – (b) to obtain an injunction:

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To establish an adoption – (c) to establish an adoption or to obtain a declaration that an alleged adoption is valid;

To set aside an adoption- (d) to set aside an adoption or to obtain a declaration that an alleged adoption is invalid or never, in fact, took place;

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To set aside an award other than awards mentioned in Section 8. - (e) to set aside an award not being an award mentioned in Section 8;

according to the amount at which the relief sought is valued in the plaint:

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[Provided that such amount shall not be less than one fifth of the market value of the property involved in or effected by the relief sought or Rs.200 whichever is greater:

Provided further that in the case of suits falling under clauses (a) and (b), the amount of court fee leviable shall in no case exceed Rs.500].

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Explanation 1.- When the relief sought is with reference to any immovable property the market value of such property

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A *shall be deemed to be the value computed in accordance with sub-section (v), (v-A) or (v-B) of this section, as the case may be.*

Explanation 2 – In the case of suits-

B *(i) falling under clauses (a) and (b), the property which is affected by the relief sought, and where properties of both the plaintiff and defendant are affected, the property of the plaintiff so affected;*

C *(ii) falling under clauses (c) and (d), the property to which title by succession or otherwise may be diverted or affected by the alleged adoption; and*

(iii) falling under clause (e), the property which forms the subject-matter of the award;

D *shall be deemed to be the property involved in or affected by the relief sought within the meaning of the proviso to this sub-section.*

For restitution of conjugal rights – (iv-C) in suits – (a) for the restitution of conjugal rights;

E *For marital rights – (b) for establishing or annulling or dissolving a marriage;*

For guardianship – (c) for establishing a right to the custody or guardianship of any person such as a minor, including guardianship for the purpose of marriage.

F *according to the amount at which the relief sought is valued in the plaint, but in no case shall such amount be less than Rs.200.*

For possession of lands, buildings or gardens – (v) in suits for the possession of land, buildings or gardens-

G *according to the value of the subject matter; and such value shall be deemed to be-*

(I) where the subject-matter is land, and

H *(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; A

(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— B

ten 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— C

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

(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) above- E

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-

Explanation.—The word “estate”, as used in this sub-section, means any land subject to the payment of revenue, for which the proprietor or a 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; F

For possession of superior proprietary and under-proprietary land – (v-A) In suits for possession - G

(1) of superior proprietary rights where under-proprietary or sub-proprietary rights exist in the land-

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- A *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 -*
- B *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.*
- C *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.*
- D *Explanation – Land held by any permanent lessees shall be treated for the purposes of this sub-section, as under-proprietary or sub-proprietary land.*
- Possessory suit between tenants – (v-B) 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-*
- E *(a) a permanent tenure-older 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;*
- F *(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.*
- G *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 shall be that entered in clauses (a), (b) and (c) of this sub-section according as the class of tenancy affected is governed by clauses (a), (b) or (c) of this sub-section."*
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10. In OS No. 24/2013, the averment with respect to suit valuation and court fee was as follows: A

“15. That the valuation of the suit for the purpose of court fee and jurisdiction is as under: -

(a) Relief “A” is for cancellation of sale deed.

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The relief “A” is valued for the purpose of court fee and jurisdiction at Rs.2,00,00,000/- Hence, relief “A” is valued for the purpose of court fee and jurisdiction at 30 times of the land revenue, i.e., Rs.3,000/-. The plaintiff was not a party to the sale deed, hence the court fee of 1/5 of Rs.3,000/- is being paid.

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(b) For Relief “B” - Rs.5,00,000/-, on which the prescribed court fee has been paid.

(c) For Relief “C” -Rs.5,00,000/-, on which the prescribed court fee has been paid.”

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In O.S. No. 25 of 2013, the averment with respect to valuation for purposes of court fees, is as below:

“15. That the valuation of the suit for the purpose of court fee and jurisdiction is as under: -

(a) Relief “A” is for cancellation of sale deed.

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The relief “A” is valued for the purpose of court fee and jurisdiction at Rs.1,00,00,000/- Hence, relief “A” is valued for the purpose of court fee and jurisdiction at 30 times of the land revenue, i.e., Rs.3,000/-. The plaintiff was not a party to the sale deed, hence the court fee of 1/5 of Rs.3,000/- is being paid.

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(b) For Relief “B” - Rs.5,00,000/-, on which the prescribed court fee has been paid.

(c) For Relief “C” -Rs.5,00,000/-, on which the prescribed court fee has been paid.”

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11. The reliefs sought in each case were:

(i) for a decree for declaration that the sale deed dated 08.03.2013 executed by defendant no. 1 in favour of defendant no. 3 (suit no.

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- A 24 of 2013) is void and not binding on the plaintiff and a decree of cancellation thereof;
- (ii) for a decree for declaration that the sale deed dated 08.03.2013 executed by defendant nos. 1 and 2 in favour of defendant no. 3 (suit no. 25 of 2013), is void and not binding on the plaintiff and a
- B decree of cancellation thereof;
- (iii) a decree for permanent injunction restraining defendant nos. 1 to 3, their agents, employees, representatives etc. from interfering in any way with the property more fully described in the schedule of the plaint, till the disposal of the suit (in both suits); and
- C (iv) a decree of permanent injunction restraining defendant no. 3, his agents, employees, representatives etc. from in any way transferring, alienating or creating third party interest in the property more fully described in the schedule of the plaint till the disposal of the suit (in both suits).
- D 12. In *Suhrid Singh alias Sardool Singh v. Randhir Singh & Ors.* (2010) 12 SCC 112, this court noted that the trial court ruled that the claims relating to the sale deeds amounted to seeking cancellation of the sale deeds and therefore, *ad valorem* court fee was payable on the sale consideration in respect of the sale deeds. The said view was
- E affirmed in the revision. The court addressed the issue of court fee payable in regard to the claim for a declaration that the sale deeds were void and not “binding on the coparcenary”, and for the consequential relief of joint possession and injunction. After referring to the provisions of the Court Fees Act, 1870 as amended in Punjab (as the controversy arose from the High Court of Punjab and Haryana), the Court held:
- F “Where the executant of a deed wants it to be annulled, he has to seek cancellation of the deed. But if a non-executant seeks annulment of a deed, he has to seek a declaration that the deed is invalid, or non est, or illegal or that it is not binding on him. The difference between a prayer for cancellation and
- G declaration in regard to a deed of transfer/conveyance, can be brought out by the following illustration relating to A and B, two brothers. A executes a sale deed in favour of C. Subsequently A wants to avoid the sale. A has to sue for cancellation of the deed. On the other hand, if B, who is not
- H the executant of the deed, wants to avoid it, he has to sue for

a declaration that the deed executed by A is invalid/void and non est/illegal and he is not bound by it. In essence both may be suing to have the deed set aside or declared as non-binding. But the form is different and court fee is also different. If A, the executant of the deed, seeks cancellation of the deed, he has to pay ad valorem court fee on the consideration stated in the sale deed. If B, who is a non-executant, is in possession and sues for a declaration that the deed is null or void and does not bind him or his share, he has to merely pay a fixed court fee of Rs. 19.50 Under Article 17(iii) of the Second Schedule of the Act. But if B, a non-executant, is not in possession, and he seeks not only a declaration that the sale deed is invalid, but also the consequential relief of possession, he has to pay an ad valorem court fee as provided under Section 7(iv)(c) of the Act.

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Section 7(iv)(c) provides that in suits for a declaratory decree with consequential relief, the court fee shall be computed according to the amount at which the relief sought is valued in the plaint. The proviso thereto makes it clear that where the suit for declaratory decree with consequential relief is with reference to any property, such valuation shall not be less than the value of the property calculated in the manner provided for by Clause (v) of Section 7.”

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13. In *Shailendra Bhardwaj & Ors. v. Chandra Pal & Anr. (supra)*, this court had to consider whether a suit for declaration that a will and a sale deed are void resulting in their cancellation, fell under Section 7(iv-A) of the Court Fees Act, 1870 as amended by the U.P. Amendment Act (Act 19 of 1938) or Article 17(iii) of Schedule II of the Court Fees Act, 1870 for the purpose of valuation. The trial court had held that the court fee had to be paid under Section 7(iv-A) and the High Court affirmed that view. This court noted the provisions of the Court Fees Act, 1870 as amended by the U.P. Amendment Act (Act 19 of 1938) and held as follows:

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“On comparing the above mentioned provisions, it is clear that Article 17(iii) of Schedule II of the Court Fees Act is applicable in cases where the Plaintiff seeks to obtain a declaratory decree without any consequential relief and there is no other provision under the Act for payment of fee relating

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A *to relief claimed. Article 17(iii) of Schedule II of the Court*
Fees Act makes it clear that this Article is applicable in cases
where the Plaintiff seeks to obtain a declaratory decree
without consequential reliefs and there is no other provision
under the Act for payment of fee relating to relief claimed. If
B *there is no other provision under the Court Fees Act in case*
of a suit involving cancellation or adjudging/declaring void
or voidable a will or sale deed on the question of payment of
court fees, then Article 17(iii) of Schedule II shall be
applicable. But if such relief is covered by any other provisions
of the Court Fees Act, then Article 17(iii) of Schedule II will
C *not be applicable. On a comparison between the Court*
Fees Act and the U.P. Amendment Act, it is clear that Section
7(iv-A) of the U.P. Amendment Act covers suits for or involving
cancellation or adjudging/declaring null and void decree for
money or an instrument securing money or other property
having such value.”

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14. The Court observed that the suit was filed after the death of
the testator, and that the suit property covered by the will had to be
valued. The court felt that since Section 7(iv-A) of the U.P. Amendment
Act specifically provided that payment of court fees in cases where the
suit is for, or involving cancellation or adjudging/declaring null and void a
E *decree for money or an instrument, Article 17(iii) of Schedule II of the*
Court Fees Act was inapplicable. The U.P. Amendment Act, therefore,
was applicable despite the fact that no consequential relief had been
claimed. Consequently, in terms of Section 7(iv-A) of the U.P.
Amendment Act, court fees were to be computed according to the value
F *of the subject-matter. The trial court and the High Court correctly held it*
to be so. The court distinguished *Suhrid Singh’s* case (*supra*) stating
that:

G *“10. We are of the view that the decision of this Court in*
Suhrid Singh (supra) is not applicable to the facts of the
present case. First of all, this Court had no occasion to
examine the scope of the U.P. Amendment Act. That was a
case in which this Court was dealing with Sections 7(iv)(c),
(v) and Schedule II Article 17(iii), as amended in the State of
Punjab. The position that we get in the State of Punjab is
H *entirely different from the State of U.P. and the effect of the*

U.P. Amendment Act was not an issue which arose for consideration in that case. Consequently, in our view, the said judgment would not apply to the present case.

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11. The Plaintiff, in the instant case, valued the suit at Rs. 30 lakhs for the purpose of pecuniary jurisdiction. However, for the purpose of court fee, the Plaintiff paid a fixed court fee of Rs. 200 Under Article 17(iii) of Schedule II of the Court Fees Act. The Plaintiff had not noticed the fact that the above mentioned Article stood amended by the State, by adding the words “not otherwise provided for by this Act”. Since Section 7(iv-A) of the U.P. Amended Act specifically provides for payment of court fee in case where the suit is for or involving cancellation or adjudging/declaring void or voidable an instrument securing property having money value, Article 17(iii) of Schedule II of the Court Fees Act shall not be applicable.”

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15. It is evident from the above discussion that it is undisputed that the point in issue was with respect to valuation for purposes of court fee; equally, it is not in issue that since the plaintiff (i.e. petitioner herein) sought, in addition to a declaration, in both the suits, decrees of cancellation, the crucial point was what the correct value for purposes of court fee was. Now, market value has been specifically defined, in the context of a litigation like the present one. According to Section 7 (iv-A), in case the plaintiff (or his predecessor-in-title) was not a party to the decree or instrument, the value was to be according to one-fifth of the value of the subject matter, “and such value shall be deemed to be” under Section 7 (iv-A), “if the whole decree or instrument is involved in the suit, the amount for which or value of the property in respect of which the decree is passed or the instrument executed”. Importantly, the explanation to Section 7 (iv-A) created a deeming fiction as to what constitutes the “value of the property” by saying that “in the case of immovable property shall be deemed to be the value as computed in accordance with the sub-section (v), (v-A) or (v-B) as the case may be.”

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16. The plaintiff/petitioners’ contention was and continues to be that the value determinable is in terms of clause (v) of Section 7, by reason of Section 7 (iv-A). Section 7 (v) (i) contains two clauses- (a) and (b): both are in respect of revenue paying lands. The petitioner valued

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- A its suits on the basis of revenue which according to it, was payable. While so stating, the value (for purposes of court fee) was determined to be ₹ 3000/- in each of the suits.

17. A plain reading of the impugned judgment reveals that what weighed heavily with the High Court was the fact that the plaintiff valued the suits differently for the purposes of court fees and jurisdiction, and secondly that:

- C *“no other market value has been proved by the petitioners/ plaintiff that the settled revenue of the land is Rs. 3,000/- and in the absence of any evidence in this regard, the trial court has rightly considered the market value of the property in dispute in accordance with the market value fixed by the Collector in order to charge the stamp duty, which is the correct market value.”*

- D In the opinion of this court, there was no compulsion for the plaintiff to, at the stage of filing the suit, prove or establish the claim that the suit lands were revenue paying and the details of such revenue paid. Once it is conceded that the value of the land [per explanation to Section 7 (iv-A)] is to be determined according to either sub clauses (v), (va) or (vb) of the Act, this meant that the concept of “market value” – a wider concept in other contexts, was deemed to be referable to one or other modes of determining the value under sub clauses (v), (va) or (vb) of Section 7 (iv-A). This aspect was lost sight of by the High Court, in the facts of this case. The reasoning and conclusions of the High Court, are therefore, not sustainable.

- F 18. In view of the above discussion, the impugned judgment and order, and that of the trial court, cannot stand. Consequently, the question of what is the market value, based on the revenue payable, would be an issue to be tried in the suit. Resultantly, the appeals succeed and are allowed without any order on costs.