

In the Court of : **SUB-JUDGE-I, BAKHRI, BEGUSARAI**
Present: **MANOJ KUMAR SINGH, CIVIL JUDGE (Sr. Div.)**
Title Suit No.-31/2020, CIS Reg. No.-34/2020



In the matter of-

Bibi Tara Khatoon

..... Plaintiff

BRBE220000472020

Vs.

Umar Sayeed Khan & Ors.

..... Defendants

Sl.	Date of Order of proceedings	Order with signature of the Court	Office action taken with date
1	2	3	4
	13.02.26	<p>Both parties are present. Today the case record is put up for order after hearing petition dt.-03.01.23 filed by defendants. Copy of the petition has already been served onto the plaintiff. Rejoinder dt.-25.09.23 is present on record.</p> <p style="text-align: center;"><u>ORDER</u></p> <p>The instant petition dt. 03.01.23 has been filed on behalf of defendants submitting therein that the plaintiff has filed instant suit for declaration of right, title over Schedule-1 land of the plaint. The plaintiff has further prayed to declare the sale deed dated 20.7.1982 and deed of gift dated 11.11.1985 executed by Bibi Khaliquan in favour of the defendant with respect to Schedule-2 land as illegal and void ab initio carrying no right title or possession of the defendant. The plaintiff has further prayed that by order of injunction the defendant be specifically directed not to make any interference in the peaceful possession of the plaintiff over the suit land apart from cost of the suit as well as for other relief or reliefs deemed fit and proper by this court. The area mentioned in Schedule-2 of the plaint is 17 Kattha 7 Dhur 10 Dhurki. It is important to mention here that land in question is highly valuable having its value note less than ₹ 3 lakh per Kattha. The plaintiff only with a view to evade from payment of actual ad-valorem court fee deliberately and knowingly undervalued the suit land at ₹ 3 lakh only for the purpose of jurisdiction and ₹ 500/- for the purpose of injunction and has paid court fee only ₹ 300/- which is against the law and principle as laid down by our own Hon'ble High Court, Patna. The plaintiff cunningly did not paid the actual ad-valorem court fee. As a matter of fact the valuation of suit land is not less than ₹ 3 lakh per Kattha. It is important to mention here that even this contention of the defendant is not being consider by this court, the plaintiff is liable to pay ad-valorem court fee over ₹ 3,00,500/- as</p>	

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	<u>Continued</u> 13.02.26	<p><i>“If 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 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 under Article 17(iii) of the Second Schedule of the Act. But if 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.”</i></p> <p>In the present suit the plaintiff has pleaded for declaration that the sale deeds dated 20.07.1982 and Gift deed dt.-11.11.1985 which have been executed by Bibi Khaliquan in favour of the defendant in connection with Sch.-II land are void ab initio. Since the plaintiff is not the executant of the said deeds, therefore, he would not be required to pay ad-valorem Court-fees.</p> <p>Furthermore, the plaintiff has sought for temporary injunction against the defendants till disposal of the suit hence in such circumstances the plaintiff is not required to pay ad-valorem court fee.</p> <p>Moreover, the question of valuation of suit is a mixed question of facts and law hence it can't be decided as preliminary issue.</p> <p>Considering the facts and circumstances of this case <i>the petition dt.-03.01.23 is hereby Rejected</i> and accordingly disposed of.</p> <p>Put up on for further proceedings.</p> <p style="text-align: right;">(Manoj Kr Singh) Sub-Judge-I, Bakhri, Begusarai.</p>	