



UPMA010038492022

In the Court of District Judge, Mau.

Present:Rameshwar, H.J.S.

Judicial Officer Code no.UP6537

Civil Revision no. 108 of 2022

Rakesh Tiwari & Ors.

---Revisionists

Versus

Smt. Asha Tiwari

---Opposite party

JUDGMENT

1. Present Civil Revision has been preferred under Section 115 of the Code of Civil Procedure against the impugned order dated 18.08.2022 passed by learned Civil Judge (Junior Division), Mohammadabad Gohana, District Mau in original suit no. 0191 of 2002, titled as 'Harivansh Tiwari and His L.Rs. versus Asha Tiwari', by which learned learned Civil Judge (Junior Division), Mohammadabad Gohana, District Mau decided issues no.3 and 4 in favour of the defendant and directed the plaintiffs to evaluate the suit under Section 7(iv-A) of the U.P. Amendment Act according to property mentioned in sale deed in dispute and pay the Court fee accordingly.
2. The Brief facts of the case are that, plaintiffs Harivansh Tiwari and his L.Rs. filed original suit no. 0191 of 2002, titled as 'Harivansh Tiwari and His L.Rs. versus Asha Tiwari', in the Court of Civil Judge (Junior Division), Mohammadabad Gohana, District Mau seeking two reliefs: (A) the Court to cancel sale deed dated 09.10.2001 regarding the 1/3 share of plot no. 994 measuring 1.392 situated in village Maryadpur, Paragana Natthupur, Tehsil Madhuban, District Mau in favour of the plaintiff against the defendant Asha Tiwari and copy of

the same be sent to the Sub-Registrar, Madhuban, District Mau for necessary action; (2) defendant be restrained by perpetual injunction against the defendant to interfere in peaceful possession of plaintiffs in plot no. 994 situated in village Maryadpur, Paragana Natthupur, Tehsil Madhuban, District Mau in sowing and cultivating the crops in the above land.

3. In the original suit, on the basis of pleadings of parties, six issues were framed on 06.05.2019, in which issue no.3 has been framed whether the suit is undervalued? While issue 4 has been framed whether paid Court fee is insufficient? Vide order dated 05.07.2022, the learned Court below decided issue no.3 and 4 that the suit is valued rightly and sufficient Court fee has been paid mentioning that the defendant has not produced any document, which shows that the suit is undervalued and sufficient Court fee has not been paid. But vide order dated 18.08.2022, the learned Court below again heard the learned counsel for both the parties on issue no.3 and 4 and held that as per value of property mentioned in sale deed in question, according to Section 7 (iv-A) of the U.P. Amendment Act, plaintiffs to value the suit and pay Court fee accordingly. Feeling aggrieved with the impugned order, revisionists filed this civil revision.
4. Heard the learned counsel for the parties and perused the record carefully.
5. The learned counsel for the revisionist submits that impugned order is against the facts and law. The learned Court below has not applied its judicial mind in passing the impugned order. The learned counsel for the revisionist further submits that vide order dated 05.07.2022, the learned Court below decided the issue no.3 and 4 and held that suit is valued rightly and paid Court fee is sufficient and if the defendant is aggrieved with the

order dated 05.07.2022, she may file civil revision against the order dated 05.07.2022. When the learned Court below decided the issue no3 and 4, he has not been conferred power to revise its order dated 05.07.2022. In compliance of the order of the Court, the plaintiff filed his evidence by way of affidavit on 08.07.2022 and copy of the same was given to learned counsel for the defendant; after this proceeding, the Court below again revised its order dated 05.07.2022 and decided the issue no.3 and 4 in favour of the defendant in affirmative, which is erroneous order and can not be sustained in the eye of law.

6. The learned counsel for the opposite party submits that the learned Court below has rightly decided issue no.3 and 4 holding that the suit is undervalued and insufficient Court fee has been paid and plaintiffs to value the suit and pay Court fee accordingly. In passing the impugned order, the Court below has not committed any illegality or irregularity. The impugned order has been passed according to law.
7. In this regard, for proper appreciation of the issues, it would be essential to extract the relevant provisions of law. Section 7 (iv) (a) of the Court Fees Act 1870 reads as follows:

“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: -

XXXXXX XXXXXX XXXXXX 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:

(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-

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. 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.

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: 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;

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:

[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].

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

(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;

(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;

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;

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.

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-

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

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

(a) where the land forms an entire estate, or a definite share of an estate, paying annual revenue to Government, or forms part of such an estate and is recorded in the Collector's register as separately assessed with such revenue; and such revenue is permanently settled—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— 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— 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) 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-

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;

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

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

according to the market value of the subject matter, and such value shall be determined by multiplying by fifteen the annual net profits of the superior proprietor;

(2) of under proprietary or sub-proprietary land as such - according to the value of the subject matter, and such value shall be determined by multiplying by ten the annual under- proprietary or sub-proprietary rent, as the case may be, recorded in the Collector’s register as payable for the land for the year next before the presentation of the plaint. If no such rent is recorded in the collector’s register the value shall be determined in the manner laid down in clause (c) of sub-section (v) of this section save that the multiple will be ten. Explanation - Land held by any permanent lessees shall be treated for the purposes of this sub-section, as under- proprietary or sub-proprietary land.

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-

(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;

(b) an ex-proprietary or occupancy tenant - by multiplying by two such rent in case of suits for possession of land

between rival tenants, and by annual rent in suits by tenants against trespassers;

(c) any other tenant – by annual rent.

If no such rent is recorded in the Collector's register, the value shall be determined in the manner laid down in clause (c) of 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."

10. In OS No. 24/2013, the averment with respect to suit valuation and court fee was as follows:

"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. 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.

(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."

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. 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.

(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."

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. 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 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

(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).

8. In the case of ***Suhrid Singh alias [Sardool Singh v. Randhir Singh & Ors.](#) (2010) 12 SCC 112***, Hon'ble Apex Court held 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 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:

“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 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 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. 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.”

9. [In the case of Shailendra Bhardwaj & Ors. v. Chandra Pal & Anr.](#) (supra), Hon’ble Apex Court had considered 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 Hon’ble High Court affirmed that view. Hon’ble Apex 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:

“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 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 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 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.”

10. In the case of *Agra Diocesan Trust Association versus Anil David and others*, Civil Appeal no. 1722 of 2020, Hon’ble Apex Court held that:-

“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 context, 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.

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 cost.”

11. According to under Section 7(iv-A) of the U.P. Amendment Act, the Court fee has to be computed according to the value of the subject matter and an ad valorem Court fee has to be paid.
12. In the case of ***Paras Nath and others versus Addl. District Judge, Ambedkar Nagar and others, decided on 28.08.2019***, Hon'ble Allahabad High Court held that Section 7(iv-A) of the U.P. Amendment Act specifically provides payment of Court fees in case where the suit is for or involving cancellation or adjudging/declaring null and void decree for money or an instrument Article 17(iii) of Schedule 11 of the Court Fees Act would apply.
13. From the perusal of record, it appears that previously the suit was valued and paid Court fees was found to be sufficient and issue no.3 and 4 were decided in affirmative in favour of the plaintiffs vide order dated 05.07.2022, as no document was filed by the defendant in her support. Whereas, on objection and document, the learned Court below finds that suit was not valued as per market value of the sale deed in question according to subject matter mentioned in the sale deed as per Section 7(iv-A) of the U.P. Amendment Act.
14. A legal question has arisen out, whether once suit was valued and the learned Court found that sufficient Court fee has been paid, then under what circumstances, impugned order was passed deciding issue no.3 and 4 negative against the plaintiffs and directed them to reevaluate the suit and pay Court fee accordingly according to subject matter mentioned in the sale deed in question in the light of Section 7 (iv-A) of the U.P. Amendment Act against her previous order.

15. From the perusal of order dated 28.07.2022 passed by the learned Court below, it appears that application 140C2 was moved by the defendant stating that on 05.07.2022, at the time of deciding of issue no.3 and 4, no document was filed on record, which shows that the suit was undervalued and sufficient Court fee was not paid, whereas in the file sale deed executed in favour of Asha Tripathi by Harivansh Tiwari is on record, in which land in dispute was valued to Rs.2,20,000/-, but above document was not numbered, so without taking consideration of above document, issues no.3 and 4 were decided in favour of the plaintiffs. On the application 140C2, objection 141C2 by plaintiffs was filed. After hearing both the parties, the learned Court below came to the conclusion that again hearing on issues no.3 and 4 is essential, so the learned Court below allowed the application 140C2 and fixed the date for hearing on issue no.3 and 4. Thereafter, vide impugned order, learned Court below decided issues no.3 and 4 in favour of the defendant and directed the plaintiffs to evaluate the suit under Section 7(iv-A) of the U.P. Amendment Act according to property mentioned in sale deed in dispute and pay the Court fee accordingly.
16. From the perusal of the suit, it appears that the same has been filed on 31.01.2002. A perusal of the plaint before the amendment in plaint, Relief “A” was sought by the plaintiff that defendant be restrained by perpetual injunction to interfere in peaceful possession of plaintiffs in plot no. 994 situated in village Maryadpur, Paragana Natthupur, Tehsil Madhuban, District Mau in sowing and cultivating the crops in the above land. From the perusal of the plaint, it appears that earlier Relief “A” was for perpetual injunction and the same was valued for the purpose of Court fee of Rs.12.50 and jurisdiction at 30

times of the land revenue i.e. Rs.375/-, but considering the case of injunction, Court fee of Rs.200/- was paid rightly before the cancellation of sale deed dated 09.10.2001. Whereas by the amendment incorporated in plaint vide order dated 31.07.2003, reliefs were renumbered and relief “A” was sought that the Court to cancel sale deed dated 09.10.2001 regarding the 1/3 share of plot no. 994 measuring 1.392 situated in village Maryadpur, Paragana Natthupur, Tehsil Madhuban, District Mau in favour of the plaintiff against the defendant Asha Tiwari and copy of the same be sent to the Sub-Registrar, Madhuban, District Mau for necessary action and relief “A” was renumbered as relief “B” in the plaint. Since, the plaintiffs sought relief for cancellation of sale deed dated 09.10.2001, but as per amendment, he has not paid Court fee as per cancellation of sale deed dated 09.10.2001, so learned Court below has reheard on issue no.3 and 4 and came to the conclusion that the the suit was undervalued and sufficient Court fee was not paid. Hence, the learned Court below directed the revisionists to pay the Court fee according to market value of the sale deed mentioned therein according to Section 7 (iv-A) of the U.P. Amendment Act, as relief was sought for cancellation of sale deed dated 09.10.2001.

17. In the backdrop of above discussion, this Court is of the opinion that the learned Court below has rightly decided issue no.3 and 4 that the suit is undervalued and sufficient Court fee has not been paid and directed the revisionists to pay the Court fee according to market value of the sale deed mentioned therein according to Section 7 (iv-A) of the U.P. Amendment Act, as relief was sought for cancellation of sale deed dated 09.10.2001. The learned Court below has not committed any illegality, irregularity or jurisdictional error in passing the

impugned order. The impugned order has been passed according to law. Hence, the impugned order deserves to be upheld and this civil revision is liable to be dismissed.

ORDER

The Civil Revision no. 108 of 2022 is dismissed and the impugned order dated 18.08.2022 passed by learned Civil Judge (Junior Division), Mohammadabad Gohana, District Mau in original suit no. 0191 of 2002, titled as 'Harivansh Tiwari and His L.Rs. versus Asha Tiwari', is hereby affirmed. Let a copy of this judgment along with record be sent to the Court concerned and record of this civil revision be consigned according to rules. The learned Civil Judge (Junior Division), Mohammadabad Gohana, District Mau is directed to decide the suit as soon as possible without providing unnecessary adjournments to any of the parties, as there is direction of Hon'ble Allahabad High Court. Parties shall appear there on 03.03.2023

Dated: February 24, 2023

(Rameshwar)
UP6537

District Judge, Mau.

Judgment signed, dated and pronounced today in open Court.

Dated: February 24, 2023

(Rameshwar)
UP6537

District Judge, Mau.