

**Pawan Kapoor and others Vs. State of
H.P. and others**

Civil Suit No. 2 of 2023

Reserved on: 11.9.2024

25.10.2024 Present: Mr. Ajay Kumar, Senior Advocate, with
Mr. Ajay Kumar Dhiman, Advocate, for
the plaintiffs.

Mr. Ajit Sharma, Deputy Advocate
General, for defendants No.1 and 2.

Mr. Reeta Goswami, Senior Advocate,
with Ms. Komal Chaudhary, Advocate,
for defendant No.3.

The plaintiffs have filed the present suit seeking a declaration that they are owners in possession of the land mentioned in the head note of the plaint, they are entitled to remain in possession till they are ejected as per the law, and the order dated 16.6.2022, passed by defendant No.2 is void ab initio which has no effect on the title of the plaintiffs on the suit land. It has been asserted that defendant No.2 passed an order based on an application filed by defendant No.3. The order is bad and has effectively set aside the order passed by this Court as confirmed by the Hon'ble Supreme Court. Hence, the suit.

2. Defendants No.1 and 2 filed a written statement denying the contents of the plaint and taking preliminary objections regarding the suit being bad for non-joinder and mis-joinder of necessary parties, the suit having not been properly valued for Court fees and jurisdiction, lack of cause of action & jurisdiction, plaintiffs having not come to the Court with clean hands, plaintiffs being estopped from filing the present suit by their act and conduct and the plaintiffs being guilty of *suppressio veri* and *suggestio falsi*.

3. No written statement was filed on behalf of defendant No.3.

4. An objection was raised on behalf of defendants No.1 and 2 regarding the valuation. This Court also noticed on 20.6.2024 that the plaintiffs had valued the suit for the purpose of pecuniary jurisdiction at ₹2,38,00,000/- and paid the Court fee of ₹100/-. Hence the parties were heard on the question of valuation.

5. I have heard Mr Ajay Kumar, learned Senior Counsel assisted by Mr Ajay Kumar Dhiman,

learned counsel for the plaintiffs, Mr Ajit Sharma, learned Deputy Advocate General, for defendants No.1 and 2 and Ms. Reeta Goswami, learned Senior Advocate, assisted by Ms. Komal Chaudahry, learned counsel for defendant No.3.

6. Mr. Ajay Kumar, learned Senior Counsel for the plaintiffs submitted that the suit is properly valued for Court fees and jurisdiction. The plaintiffs have the freedom to value the suit as per market value for jurisdiction. The suit has to be valued for Court fees as per Article 13 of the H.P. Court Fees Act. Therefore, he prayed that the objection raised by the defendant be overruled. He relied upon the order passed by this Court in *Civil Suit No. 140 of 2022, decided on 23.8.2024* in support of his submission.

7. Mr. Ajit Sharma, learned Deputy Advocate General, for defendants No.1 and 2 submitted that it is impermissible for the plaintiffs to put two different valuations for Court fees and jurisdiction. He prayed that the plaintiffs be directed to correct the valuation.

8. Ms. Reeta Goswami, learned Senior Counsel for defendant No.3 adopted the submissions of Mr. Ajit Sharma and submitted that the suit is not properly valued for the purpose of Court fees and jurisdiction. She relied upon the judgment of this Court passed in *Civil Suit No. 20 of 2023, titled Kulvinder Singh Vs. Chattar, dated 31.5.2024* in support of her submission.

9. I have given considerable thought to the submissions made at the bar and have gone through the records carefully.

10. Civil Suit No. 140 of 2022 was concerned with a suit for partition, whereas the present suit has been filed for declaration simpliciter; hence, the order regarding the valuation of the suit for partition is not relevant to the present case. Similarly, Civil Suit No. 20 of 2023 was concerned with the civil suit for declaration with consequential relief which was covered by Section 7(iv)(c) of the H.P. Court Fees Act whereas in the present case no consequential relief has been

sought; hence, the order passed in the civil suit no. 20 of 2023 is not relevant to the present case.

11. The present suit has been filed seeking a declaration without any consequential relief. Ms. Reeta Goswami, learned Senior Counsel for defendant No.3 submitted that the consequential relief is inherent in the plea of the declaration. This submission is not acceptable. It was laid down by the Hon'ble Supreme Court in *Kamaleshwar Kishore Singh v. Paras Nath Singh, (2002) 1 SCC 304* that the Court fee has to be paid on the plaint as framed and not on the plaint as it ought to have been framed. It was observed:

“8. It is well settled that the court fee has to be paid on the plaint as framed and not on the plaint as it ought to have been framed unless by astuteness employed in drafting the plaint the plaintiff has attempted to evade payment of the court fee or unless there be a provision of law requiring the plaintiff to value the suit and pay the court fee in a manner other than the one adopted by the plaintiff. The court shall begin with an assumption, for the purpose of determining the court fees payable on plaint, that the averments made therein by the plaintiff are correct. Yet, an arbitrary valuation of the suit property having no basis at all for such valuation and made so as to evade payment of court fees and fixed

for the purpose of conferring jurisdiction on some court which it does not have, or depriving the court of jurisdiction which it would otherwise have, can also be interfered with by the court. It is the substance of the relief sought and not the form which will be determinative of the valuation and payment of court fees. The defence taken in the written statement may not be relevant for the purpose of deciding the payment of the court fee by the plaintiff. If the plaintiff is ultimately found to have omitted to seek an essential relief which he ought to have prayed for, and without which the relief sought for in the plaint as framed and filed cannot be allowed to him, the plaintiff shall have to suffer the dismissal of the suit. These principles of law were overlooked by the trial court in passing the impugned order which was put in issue before the High Court. We are further of the opinion that though the revision preferred by the plaintiff was directed against the order dated 1-3-1997, the real question arising before the High Court was to find out whether the suit was properly valued and proper court fee was paid thereon in accordance with law. While doing so if the High Court was required to examine the correctness or otherwise of the order dated 17-12-1996 it should not have felt inhibited from doing so. In the facts of the present case, we are clearly of the opinion that the High Court was not justified in dismissing the revision on the ground that the order dated 1-3-1997 was an order correcting a clerical or typing error only.”

12. Therefore, the Court has to look into the plaint as framed to determine the Court fees payable on the same.

13. The present suit has been filed for seeking declaration and is governed by entry 13(3) of Schedule 2 of the H.P. Court Fees Act, 1968 corresponding to entry 17(3) of Schedule 2 of the Court Fees Act, 1870. Section 4 of the Suit Valuation Act, 1887 deals with the valuation of the suit governed by Schedule-2, Article 17 of the Court Fees Act, 1870 or Schedule-2, Article 13 of H.P. Court Fees Act, 1968. It provides that in a suit mentioned in Section 7, paragraph (iv) or Schedule-2, Article 17 related to the land or interest of which the value has been determined by the rules framed under Section 3 of the Suit Valuation Act, the amount at which the suit is valued for jurisdiction shall not exceed the value of the land or interest as determined by those rules. Punjab Government issued a notification No. 255, dated 18/89, under Section 3 of the Suit Valuation

Act for determining the value of the land for the purpose of jurisdiction which reads as under:-

“1. In suits for the possession of land the value of the land, for purposes of jurisdiction, shall be held to be as follows;-

(a) Where the land forms an entire estate, or a definite share of an estate paying annual revenue, to the Government or forms part of such an estate, and the annual revenue payable for such part is recorded in the Collector's register, and such revenue is permanently settled-sixty times the revenue assessed on the land.

(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, the revenue is settled, but not permanently- thirty times such revenue so payable.

(c) Where the land pays no such revenue, or has been partially exempted from such payment, or is charged with any fixed payment in lieu of such revenue, and net profits have arisen from the land during the year next before the date of presenting the plaint-fifteen times such net profits. But where no such net profits have arisen therefrom-the market value.

(d) Where the land forms part of an estate paying revenue to the Government, but is not a definite share of such estate and does not come under clauses (a), (b) or (c) of this rule market value of the land.

(e) Where the subject matter is a garden, the market value of the garden.

XXXXX

4. In the application of the above rules the word "land" includes all such rights, e.g., share in village common and in wells as are accessory to the land in suit, and the word "revenue" as used in the preceding rules, when applied to land irrigated from canals, shall be held to include owner's rate for the year next before the date of presentation of plaint, or half the occupier's rate for the same period in cases in which no owners rate is chargeable."

14. It was laid down by the Lahore High Court in *Jamal v. Qadir Bakhsh*, 1914 SCC OnLine Lah 82: AIR 1914 Lah 95 that where the plaintiff filed a civil suit for declaration, the suit is covered by Section 4 and has to be valued as per the rules framed under Section 3 to determine the value for jurisdiction. It was observed:-

"5. We think that Mr Badr-ud-din's contentions have no force whatever and that the present suit which is one for a declaration and relates to occupancy land or interest in occupancy land is clearly covered by Section 4 of the Suits Valuation Act, which must be read with the rules framed under the provisions of S. 3 to determine the value of the suit for purposes of jurisdiction. Under the provisions of the aforesaid sections and rules the jurisdictional value of the present suit is clearly 15 times the land revenue,

which is less than Rs. 1,000 and since both the Courts below have concurred in dismissing the suit, no further appeal lies to this Court. The appeal is accordingly dismissed with cost.”

15. It was held in *Sohan Singh v. Devi Singh*, 1918 SCC OnLine Lah 55: AIR 1918 Lah 246 that a suit falling under Article 17 Schedule 2 has to be valued as per Section 4 of the Suit Valuation Act. It was observed at page 246: -

“2. For the purposes of the Court Fees Act the suit falls under Article 17, Sch. 2 and the Court fee is a fixed one of Rs. 10. Consequently Section 8 of the Suits Valuation Act, does not apply and the only statutory provision which does apply is Section 4 of the Suits Valuation Act, but that section merely fixes the maximum value of the jurisdiction in such suits and does not deal with any minimum.”

16. It was held in *Ghulam Hussain v. Mahand*, 1937 SCC OnLine Lah 23: AIR 1937 Lah 677: PLR (1937) 39 Lah 193 that the rules framed by the State Government would be relevant for determining the value of the suit seeking a declaration regarding the land. A suit for declaration is governed by Article 17 to Schedule 2 and is to be valued as per Section 4 read with Section 3 of Suit Valuation Act. It was observed: -

4. The Suits Valuation Act is divided into different parts. Part 1 is headed "Suits relating to land" and comprises Ss. 2 to 6. Part 2 is headed "Other Suits" and comprises Ss. 7 to 10. Part 3 is headed "Supplemental Provisions" and includes Ss. 11 and 12. S. 3 empowers the Local Government to make rules subject to the control of the Governor. General in Council, for determining the value of land for purposes of jurisdiction in the suits mentioned in Section 7 of the Court-fees Act, paras, (v) and (vi) and para, (x), Cl. (d). Para, (v) deals with suits for possession of land, houses and gardens. Para, (vi) provides for suits to enforce a right of pre-emption and para, (x), Cl. (d), provides for the specific performance of an award. It is obvious that a suit under Article 22 does not fall under any of these provisions and the Local Government is not competent under this section to frame any rules governing those cases which do not fall under the paragraphs mentioned in the section itself. S. 4 lays down that where a suit mentioned in Section 7 of the Court Fees Act, para. (iv), or Sch. 2, Article 17, relates to land or an interest in land of which the value has been determined by rules under S. 3, the amount at which, for purposes of jurisdiction, the relief sought in the suit is valued shall not exceed the value of the land or interest as determined by those rules. Para, (iv) of S. 7 provides for suits : (a) for moveable property where the subject matter has no market value, (b) to enforce a right to share the joint family property, (c) to obtain a declaratory decree or order, where consequential relief is prayed, (d) to obtain an injunction, (e) for a right to some benefit to arise out of land

not otherwise provided for in the Court-fees Act and (f) for accounts.

5. Article 17 to Sch. 2 provides for plaint or memorandum of appeal in each of the following suits : (1) to alter or set aside a summary decision or order of any of the civil Courts not established by Letters Patent or of any revenue Court; (2) to alter or cancel any entry in a register of the names of proprietors of revenue paying estates; (3) to obtain a declaratory decree where no consequential relief is prayed. (4) to set aside an award; (5) to set aside an adoption; (6) every other suit where it is not possible to estimate at a money value the subject matter in dispute and which is not otherwise provided for by this Act. From the inventory of suits covered by para, (iv) it would be clear that this suit does not fall under that paragraph. It could have fallen under Article 17 to Sch. 2 and possibly does fall under that Article in every other Province in India but for the enactment of a separate Article 22 which as stated above was for the first time inserted in the Punjab in 1922. Technically speaking, therefore, S. 4 is not applicable to the suit before us; Ss. 3 and 4 as remarked above apply to suits relating to land. We, now consider the scope and the applicability of S. 9. This section falls under Part 2 which, as stated above, is headed "Other Suits". It cannot be denied, therefore, that this section does not refer to suits relating to land, and consequently, the powers vested in the High Court by this section can be exercised only in respect of those suits which do not relate to land. It is for this reason that R. 2 framed by the High Court, in Ch. 3-G refers to immovable property and not land which evidently means that it deals with immovable

property other than land. It follows therefore that no rule relating to suits falling under Article 22 could be framed by the High Court, nor could it be framed by the Local Government as Article 22 to Sch. 2 finds no place in S. 3. The inclusion of Article 22 in Ch. 3-D of Vol. 1, of the Rules and Orders of the High Court is consequently ultra vires, with the result that there is no specific provision in the rules dealing with the jurisdictional value of the suits that fall under Article 22 of Sch. 2, to the Court-fees Act.

6. The question would then naturally arise as to what should be the jurisdictional value of such suits. Counsel for the appellant refers to *43 Bom 507 [Rachappa Subba Rao v. Shidappa Venkatarao, AIR 1918 PC 188: 50 IC 280: 43 Bom 507: 46 IA 24 (PC).]* and *50 Mad 646, [Vasireddi Veeramma v. Marapudi Butchiah, AIR 1927 Mad 563: 101 IC 379: 50 Mad 646: 52 MLJ 381.]* and contends that in these circumstances we must hold that the jurisdictional value of the suit should be the market value of the property and not the notional value, or in other words the arbitrary value placed upon a suit by artificial methods, We have however considered the effect of these judgments on the case before us and have come to the conclusion that they do not afford any help in the solution of the problem involved in this case. The Privy Council case referred to a practice not uncommon in Bombay of valuing a prayer for a declaratory decree at Rs. 130 and condemned it as being unwarranted in law, but in the end, their Lordships came to the conclusion that they would not be justified in assisting an objection of the type “which rests on no sort of merit but on the most technical of

technicalities". In *50 Mad 646 [Vasireddi Veeramma v. Marapudi Butchiah, AIR 1927 Mad 563: 101 IC 379: 50 Mad 646: 52 MLJ 381.]* the learned Judges dealt with a suit the subject matter of which was not land or other properties which might be affected directly or indirectly by the declaration of adoption. In the present case, we are dealing with a land suit which but for Article 22 would have clearly fallen under Article 17 of Sch. 2 to the Court-fees Act. Under the Punjab Court Act, 'land suit' means a suit relating to land as defined in the Punjab Tenancy Act or to any right or interest in such land. In *60 PR 1907 [Jalla v. Gehna, (1907) 60 PR 1907: 79 PLR 1908: 76 PWR 1907 (FB).]* a Full Bench of the Punjab Chief Court held that for the purposes of the Punjab Courts Act, the value of a suit for a declaration that a sale by a male proprietor of ancestral agricultural land would not be binding after the alienor's death was the value of the land calculated at thirty times the revenue and not the amount of the consideration of the sale in dispute. By Section 12 of the Suits Valuation Act, the jurisdiction of a Court is not affected in any manner with respect to any suit instituted before rules under Part 1, applicable to the valuation of the suit, take effect or Part 2 comes into force, or with respect to any appeal arising out of any such suit.

7. On all these grounds we are disposed to hold that the plaint was properly valued for jurisdictional purposes at 30 times the revenue assessed on the land and that consequently the Subordinate Judge was competent to hear the appeal. This finding would further avoid the anomaly of assessing a lesser value on a declaratory suit where consequential relief is prayed

for and a higher value on a similar suit where; no consequential relief is prayed for, Counsel for the appellant has frankly conceded that in view of the finding arrived at by us on the jurisdictional value of the suit he has nothing to urge on the merits of the case. We accordingly dismiss the appeal but make no order as to costs. Before we close we may remark that the trouble, in this case, has arisen on account of the oversight of the Punjab Legislature to amend Section 4 of the Suits Valuation Act, at the time when it amended the Court-fees Act and inserted Article 22 as a separate Article dealing with plaint or memorandum of appeal in a suit by a reversioner under the Punjab Customary law for a declaration in respect of alienation of ancestral land, Previously, such declaratory suits were governed by Article 17 of Sch. 2 to the Court-fees Act, and were provided for under Section 4 of the Suits Valuation Act. What the Legislature really intended in enacting Article 22 was partially to amend Article 17 in this respect, and if it did not introduce the amendment in Article 17 itself, it should have brought the Suits Valuation Act into line with the new amendment. As we have held that the Local Government is not competent to make any rules relating to suits falling under Article 22 by virtue of the powers conferred upon it by Section 3 of the Suits Valuation Act and that so long as Article 22 is not expressly inserted in S. 4, no rule framed under Section 3 of the Suits Valuation Act, can be referred to in order to determine the jurisdictional value of suits falling under Article 22, we consider it necessary to bring this lacuna to the notice of the Local Government with a view to enable them to remove this defect

by the requisite amendment of the Suits Valuation Act. A copy of this judgment will be forwarded to the Local Government through the Registrar of this Court for necessary action.”

17. It was held in *Ganga Singh v. Kundan Singh*, 1946 SCC OnLine Lah 20: AIR 1947 Lah 80 that where the suit under Article 22 Schedule 2 of Court Fees Act, 1870 (as amended by Punjab) related to the land or any interest, the value for the purpose of jurisdiction will not exceed the one provided in the rules framed under Section 3. It was observed:-

“7. The result is that where the suit under Article 22, Sch. II, Court-fees Act, 1870, relates to land or an interest in land the value for purposes of jurisdiction is not to exceed the value determined by the rules framed under section 3 of the Suits Valuation Act, 1887. These rules were published as Punjab Government Notification no. 255, dated 4-3-1689. Accordingly, land forming an entire estate or a definite share of an estate paying annual revenue to the Government as mentioned in the rules shall for purposes of jurisdiction be valued at 60 times the revenue if permanently settled and 30 times the revenue if not so permanently settled.”

18. Delhi High Court held in *Hans Raj Kalra v. Kishan Lal Kalra*, 1976 SCC OnLine Del 113: ILR (1976) 2 Del 745 that where the suit has been filed

for seeking a declaration, the same is governed by Article 17 of Schedule 2 and the valuation has to be made as per Section 4 read with Section 3 of Suit Valuation Act. It was observed:-

“19. Section 34 of the Specific Relief Act provides that any person entitled to any legal character or any right as to any property may institute a suit and the court may at its discretion make therein a declaration that he is so entitled and “the plaintiff need not in such a suit ask for any further relief”. Section 34 is, however, not exhaustive of the circumstances in which a bare declaratory decree may be made by a Court and the Court in India has been held, by the Supreme Court, to have the power to pass a bare declaratory decree even in cases which do not fall within the terms of the Section (a). The proviso to the Section bars the Court from making any such declaration “where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so”. A bare declaration can, therefore, be granted by the Court under section 34 provided the plaintiff is unable to seek further relief than a mere declaration of title. As has been noticed above, a suit for a mere declaration and a suit for a declaration with consequential relief is treated differently by the Court Fees Act in that the court fees in the former is a fixed court fee under Article 17 of Schedule II of the Court Fees Act, while court fees payable on the latter depend on the value that the plaintiff puts on the relief that he claims under section 7(iv)(c) of the Act. There has, therefore, been considerable judicial controversy in

India as to when could a suit be said to be one for a bare declaration or for a declaration with consequential relief. The controversy has its genesis both in the impact that it has on the court fees payable, as indeed the jurisdiction of the court, as well as its impact on the bar provided in Section 34 of the Specific Relief Act.

20. It is fairly well settled that it is not the form of the plaint or the manner in which the relief is worded in it, but the substance of it, which is determinative of its real nature and character and in determining whether a suit is a suit for a mere declaration or a declaration with consequential relief Court must not be carried away by the form of the plaint but must look to the substance of it (1). It is equally well settled that the question whether the suit would be governed by Section 7(iv)(c) or Article 17 of Schedule II of the Court Fees Act must be determined not on what relief the plaintiff should ask to be able to succeed but according to the relief actually claimed in the plaint (2). It is equally well settled that the question whether a suit comes within the terms of Section 34 of the Specific Relief Act or not will have no impact on the question of valuation of the suit for the purpose of court fees but must be determined on the basis of what the plaintiff actually seeks and not on the basis of what he may be entitled to sue for (3). In case the suit is for a declaration simplicitor it would be necessary for the Court to consider whether a consequential relief is implicit in the declaration. If it is, the provisions of Section 7(iv)(c) of the Court Fees Act would be attracted (4). If on the whole and in substance a suit appears to ask for some relief other than or in addition to a mere

declaration the suit must be held not to be one for a bare declaration even though the plaint may be cast in a declaratory form (5). It is, however, open to the Court, in considering the question, to take into account the maintainability or otherwise of a suit for a bare declaration (6). The consequential relief must be such that it will constitute further relief within the meaning of Section 34 of the Specific Relief Act (7). It must be a relief to which the plaintiff would not be entitled unless a certain title was established and unless the plaintiff would necessarily be entitled to such relief on such title being established (8). A relief is consequential to a declaration if it follows on such declaration and depends on it (9). What ensues or follows must have a necessary connection with the cause. Cause and consequence are co-relative terms, one implying the other. What the courts must, therefore, see is whether the relief, other than the declaratory decree, follows as a natural consequence from the declaration or in other words flows from it (10). But the mere fact that a certain relief flows from the right declared will not by its own force make it consequential relief unless it is asked for as incidental to the declaration (11).”

19. This Court held in *Bhagwanti Devi and another Vs. Devi Ram* (1992) 2 Shim.LC 33 that the valuation of the suit seeking declaration cannot exceed the value determined under Section 3 of the Suit Valuation Act and such a suit has to be valued

as per the land revenue and not as per the market value. It was observed: -

“14. Now judging the facts of the instant suit as per Jamabandi for the year 1986-87 annexed with the gift-deed and consequently plaint, the disputed land forms part of an estate and is recorded as aforesaid, the revenue is settled but not permanently. There is no dispute about it. Its land revenue is Rs. 10.75 p. only. Accordingly, the valuation for the purpose of computing the court fee and for determining the jurisdiction of the Courts should have been computed at ten times and thirty times of the land revenue i. e. Rs. 1075 respectively. The plaintiffs have valued the suit for the purpose of determining the jurisdiction at Rs. 2,50,000 presumably claiming it to be the market value of the land. Simultaneously, the reading of gift-deed under challenge in this suit shows that the market value of the agricultural holding has been shown to be Rs. 38,164.14 p. The aforesaid deed is also a registered one. Thus, taking into consideration the entire facts and circumstances emerging from the record, it appears that the plaintiffs have chosen whimsically a ridiculous figure for the purposes of determining the valuation of the suit for jurisdiction and he has demonstratively over-valued the plaint which valuation is arbitrary and unreasonable. Ordinarily, the Court shall not examine the correctness of the value chosen but the plaintiff cannot be allowed to act arbitrarily in this matter The Court is indeed duty bound to examine such cases and if the plaint appears to be whimsically

over-valued or undervalued, it is duty bound to reject such a valuation.”

20. In the present case, the suit has been valued on the market value as per para 8 for the purpose of pecuniary jurisdiction which is not the correct valuation since the land is assessed to the land revenue as per the Register of Intkaal and Jamabandi and the suit was to be valued based on the land revenue and not the market value. Therefore, the objection raised by the defendants has to be accepted as correct that the suit is not properly valued for jurisdiction.

21. Hence, the plaintiffs are directed to value the suit as per the land revenue in terms of Section 3 read with Section 4 of the Suit Valuation Act and the matter be listed thereafter.

(Rakesh Kainthla)
Judge

25th October, 2024
(Chander)