
(2025) 10 AH CK 0032

Allahabad HC

Case No: First Appeal From Order No. 1790 Of 2025

Pramod Kumar And 5
Others

APPELLANT

Vs

Sheeshram And 11
Others

RESPONDENT

Date of Decision: Oct. 8, 2025

Acts Referred:

- Court Fees Act, 1870 — Section 6(A), 7

Hon'ble Judges: Sandeep Jain, J

Bench: Single Bench

Advocate: Abhishek Gupta, Chandra Bhan Gupta

Final Decision: Allowed

Judgement

Sandeep Jain, J

1. The instant appeal under Section 6-A of the Court Fees Act, 1870 has been preferred by the plaintiffs against the impugned order dated 28.04.2025 passed by the Civil Judge (Senior Division)/Fast Track Court, Bulandshahr, in Original Suit No. 01 of 2015, Pramod Kumar (deceased) and others vs. Sheeshram and others, whereby the court fees for the relief of cancellation of sale deeds has been ordered to be paid ad-valorem on the market value of the disputed property.

2. The plaintiffs claimed the following reliefs in the original suit:-

"A. By decree of declaration granted in favour of the plaintiffs, the sale deed dated 22.01.2014 executed by defendant no.3 in favour of defendant no.1, which was registered in Book No.1, Jild No.2554 at pages 143-212 at Sr. No.755 in the office of Sub-Registrar, Syana be declared null and void.

B. By decree of declaration granted in favour of the plaintiffs, the sale deed dated 23.01.2014 executed by defendant no. 4 and 5 in favour of defendant no.1, which was registered in Book No.1, Jild No.2555 at pages 37-74 at Sr. No.794 in the office of Sub-Registrar, Syana be declared null and void.

C. By decree of declaration granted in favour of the plaintiffs, the sale deed dated 18.10.2014 executed by defendant no. 3 in favour of defendant no.2, which was registered in Book No.1, Jild No.2826 at pages 289-320 at Sr. No.10214 in the office of Sub-Registrar, Syana be declared null and void.

D. By decree of mandatory injunction granted in favour of the plaintiffs against defendant no.1 to 6, the defendants be directed to remove the illegal constructions from the ABCD property of the plaintiffs, after demolishing them and to restore the property in it's original condition.

E. The cost of the suit be awarded to the plaintiffs against the defendants first party.

F. Any other relief which the Court deems fit and appropriate in the facts and circumstances of the case may also be granted to the plaintiffs against the defendants first party."

3. In the plaint, the plaintiffs valued the above reliefs as under:-

4. Relief 'A', 'B' and 'C' were valued according to the consideration mentioned in the sale deed at Rs.20 lacs, 11 lacs and 10 lacs, respectively. Relief 'D' was valued at Rs.1 lac on the basis of the market value of the disputed construction.

5. In this way, the plaintiff valued the whole suit at Rs.42 lacs and has paid for the reliefs A, B and C, court fees of Rs.200/- each in accordance with Article 17 (iii) of Schedule II of the Court Fees Act, 1870 and for the relief 'D' maximum court fees of Rs. 500/- was paid, as such, plaintiff paid a total court fees of Rs.1,100/-

6. The trial court concluded that for the above reliefs, the plaintiff has paid a court fees of Rs.1,100/-, which was inadequate because the plaintiff was seeking declaration that the above sale deeds were void and, as such, the plaintiff was bound to pay court fees in accordance with Section 7 (iv-A) of the Court Fees Act, 1870, as amended in U.P. The trial court also noted that if the plaintiff or his predecessors in title were not a party to the above sale deeds, then the suit is to be valued according to 1/5th of the value of the subject matter.

7. Learned counsel for the plaintiff-appellant submits that the impugned order of the trial court is erroneous because the trial court has not considered the fact that the plaintiff or his predecessors were not the parties to the alleged sale deeds, which are sought to be cancelled, as such, the trial court should have ordered that only 1/5th value of the subject matter is to be taken into consideration and accordingly, ad-valorem court fees should have been ordered to be paid.

8. I have considered the submissions made by the learned counsel for the plaintiff-appellant and have perused the impugned order as well as the documents filed by the appellant.

9. It is apparent that the plaintiff is seeking the relief of declaring three sale deeds null and void and mandatory injunction. The plaintiff has valued the relief of declaring the sale deeds null and void on the basis of their consideration, which is Rs.20 lacs, 11 lacs and 10 lacs, respectively. The plaintiff has valued the relief of mandatory injunction according to the market value of the disputed construction, which is Rs.1 lac.

10. From the perusal of the impugned order, it is not evident on which basis the trial court has determined the market value of the reliefs claimed by the plaintiff, on the date of filing of the suit.

11. Section 7 (iv-A) of The Court Fees Act, 1870 (as applicable in Uttar Pradesh), reads as under:-

(iv-A) For cancellation or adjudging void instruments and decrees.- (iv-A) In suit for or involving cancellation of or adjudging void or voidable a 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 was 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

sub-section (v), (v-A) or (v-B), as the case may be.

12. The Apex Court in the case of Shailendra Bhardwaj & Others vs. Chandra Pal & Another (2013) 1 SCC 579, held as under:-

"8. On comparing the abovementioned 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.

9. The suit, in this case, was filed after the death of the testator and, therefore, the suit property covered by the will has also to be valued. Since Section 7(iv-A) of the U.P. Amendment Act specifically provides that payment of court fee 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 II of the Court Fees Act would not apply. The U.P. Amendment Act, therefore, is applicable in the present case, despite the fact

that no consequential relief has been claimed. Consequently, in terms of Section 7(iv-

A) of the U.P. Amendment Act, the court fees have to be computed according to the value of the subject-matter and the trial court as well as the High Court have correctly held so.

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 abovementioned 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."

13. The Allahabad High Court in the case of Smt. Bibbi & Another vs. Sagun Chandra & Others 1967 SCC OnLine All 79 (Full Bench), held as under:-

"12. The next thing to be seen is whether the suits fall within any of the categories mentioned in the first portion of Sec. 7(iv-A). In what circumstances a suit has to be regarded as one for cancellation of an instrument and in what others as one for merely obtaining a declaratory decree has been a matter on which there has been considerable divergence of view in the decided cases. The divergence has, however, lost its significance in the State of U.P., in view of Sec. 7(iv-A) introduced into the Court Fees Act by U.P. Act XIX of 1938. The section has a very wide compass. It covers not merely suits for cancellation of instruments described therein but also for adjudging them void or voidable, and it goes further and embraces not only suits for cancellation of such instruments or adjudging them void or voidable but also suits involving such cancellation or adjudging. On the scope of the first portion of the section, therefore, it is not necessary to refer to authorities. I may, however, mention a Division Bench case of this Court, Mst. Jileba v. Parmeshara [A.I.R. 1949 Alld. 641.], where it was held that Sec. 7(iv-A) has been so worded that even though the plaintiff has not claimed the relief of cancelling or adjudging void or voidable an instrument, if the suit involves such cancellation or adjudging void or voidable such instrument, court-fee under Sec. 7(iv-A) is payable.

13. In regard to this aspect of the question the learned Judge before whom these matters initially came up for decision referred to Kishan Lal v. A.S. Higher Secondary School Jahangirabad [1963 A.L.J. 353.] and observed that he was unable to reconcile that decision with Ram Kumar v. Damodar Das [A.I.R. 1949 Alld. 535.] . To my mind, I say so with great respect, there is no conflict between the two decisions. I have already stated the nature of the suit with which the latter decision dealt, and there can be little room for doubt that the suit involved adjudging void or voidable the two sale deeds executed in favour of the vendees who were parties to the suit. The plaintiffs expressly stated in the plaint that the sale deeds were not executed for legal necessity and were not binding on them and they apparently prayed for a partition of their shares in the properties which had been sold away. In these circumstances Sec. 7(iv-A) obviously applied. In Kishan Lal v. A.S. Higher Secondary School Jahangirabad [1963 A.L.J. 353.] the suit was for a declaration that a sale deed and a waqf deed executed by a Hindu widow were not binding on the plaintiff on her death as the alienations were without legal necessity and not for the benefit of the estate. Advalorem court-fee under Sec. 7(iv-A) was paid on one-fifth of the value of the property covered by the two deeds. So far as these deeds went there was no dispute as to the sufficiency of the court-fee. The defendants contested the suit, inter alia, on the ground that the lady was not a limited owner but an absolute owner, having inherited the property from her husband under a will. The plaintiff, in his plaint, had made no reference whatsoever to the will and had completely ignored it. After the filing of the written statement by the defendants, however, the plaintiff denied the genuineness of the will alleging that it was a forgery but he took no other plea in respect of it. The suit was dismissed by the trial court and the plaintiff then filed, a first appeal in this Court. The Chief Inspector of Stamps reported that since the appellant in effect wanted cancellation of the will on its being adjudged to be void or voidable in addition to the relief of adjudging the deeds of sale and waqf void or voidable he should have paid additional court-fee for being relieved from the will in respect of the property involved in the suit. The Division Bench rejected the report and held that no additional court-fee was required. I have already noted that not only was there a total absence of any relief in respect of the will but there was also no reference to it in the plaint. The stand taken by the

plaintiff in reply to the defence based upon the will could not be taken into account in determining the court-fee payable for the suit, but in his reply too he did not say that the will was void or voidable and repudiated the very existence of the will by describing it as a forgery. The nature of the suit in than case was, therefore, essentially different from that of the suit in *Ram Kumar v. Damodar Das* [A.I.R. 1949 Alld. 535.] , and it cannot be said that the decision in the former case is in any manner opposed to the decision in the latter.

14. The reliefs claimed in the suits which have led up to these appeals make it clear that the suits are for adjudging the sale deed void or voidable. It is true that the relief claimed in suit No. 48 of 1956, unlike the relief claimed in suit No. 3 of 1957, does not mention the word "void" or "voidable" in connection with the declaration sought. But the absence of the word "void" or "voidable" in the relief is a matter of not much consequence in deciding whether a suit is for adjudging a deed void or voidable or involves such adjudging. In suit No. 48 of 1956 also the plaintiff has prayed for a declaration that the sale deed is "illegal, without authority and not binding on the plaintiff or her one-third share." Evidently, that suit too, like suit No. 3 of 1957, is for adjudging the sale deed void or voidable. Both the suits, therefore, fall squarely within the four corners of Sec. 7(iv-A), and Article 17(iii) of Schedule II which applies only to suits not otherwise provided for does not come into play."

14. It is apparent that the plaintiff has valued the suit on the basis of consideration mentioned in the above sale deeds, which is erroneous, because the market value of the property involved in the above sale deeds is to be considered on the date of the filing of the suit, but the trial court has ignored this fact.

15. It is also apparent that the trial court did not send Amin Commission and obtain report from the office of Sub-Registrar concerned in order to ascertain the true market value of the disputed properties involved in the three sale deeds and also the market value of the disputed construction regarding which the relief of mandatory injunction was claimed. The trial court is directed to send Amin Commission on the spot for ascertaining the market value of the disputed property, which includes the value of the land and superstructure standing on it, in accordance with the rules framed by the U.P. Government under the Stamp Act, 1899 and then determine the correct market value of the disputed property. The trial court is also directed to ascertain, whether the predecessors of the plaintiffs were one of the parties in the disputed sale deeds.

16. In view of the above facts, the trial court has erred in passing the impugned order without going through the relevant provisions and without examining the matter in right perspective.

17. Accordingly, this appeal has merits and is liable to be allowed at the admission stage.

18. Accordingly, the appeal is hereby allowed. The impugned order dated 28.04.2025, is hereby set aside and the matter is remitted back to the trial court for deciding the issue of valuation and court fees according to the observations made in this order, after hearing both the parties, in accordance with law.