**(1964) 07 P&H CK 0006**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** Regular First Appeal No. 134 of 1962

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| Parbhu and Others | | APPELLANT |
| | Vs | |
| Girdhari and Others | | RESPONDENT |

**Date of Decision:** July 28, 1964

**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 1 Rule 8, Order 7 Rule 11, 30
- Court Fees Act, 1870 - Article 17, 7
- Specific Relief Act, 1963 - Section 42

**Citation:** (1964) 2 ILR (P&H) 886

**Hon'ble Judges:** Prem Chand Pandit, J; P.D. Sharma, J; Mehar Singh, J

**Bench:** Full Bench

**Advocate:** P.C. Jain and J.V. Gupta, for the Appellant; J.C. Mittal, D.S. Tewatia and N.C. Jain, for the Respondent

**Final Decision:** Allowed

**Judgement**

Mehar Singh, J.
The two questions for consideration before this Full Bench are

(1) What is the scope of the phrase "with reference to any property" as used in the second proviso added by Punjab Act 31 of 1953 to Section 7(iv) of the Court Fees Act, and whether the above phrase in a suit for declaration with consequential relief in respect of a previous decree would mean the property which was the subject-matter of the previous decree?

(2) Whether a suit like the present, in which the Plaintiffs seek a declaration that the previous decrees are null and void and be set aside and further pray for fresh partition of the property, is governed by Section 7(iv)(c) of the Court Fees Act?

2. There are 36 Plaintiffs and 145 Defendants in the suit, in which these questions have arisen, who are proprietors of the Shamilat Abadi Land in dispute of Thullas

Pachhmasian and Khurara in village Ismaila 11 Biswas. The detailed description of the land is given in paragraph 2 of the plaint. The Plaintiffs aver that Defendants 1 to 56 and ancestors of Defendants 57 to 93 and 104 to 106 instituted a suit sometime in 1949 against Defendants 94 to 98 and ancestors of Defendants 99 to 103 etc. for possession by partition of the land, the subject-matter of dispute in the present litigation. The Plaintiffs then definitely. further aver that those Defendants instead of making all the co-sharers parties to that previous suit obtained a wrong and collusive preliminary decree on February 20, 1950, and final decree on June 29, 1954, by just making Defendants 94 and 95 and one Chandgi deceased, ancestor of Defendants 99 to 101 etc. as representatives of all the remaining co-sharers of the land according to Order I, Rule 8 of the Code of Civil Procedure. This is stated in paragraph 3, and in paragraph 4 the grounds of attack are given in so far as the previous decrees are concerned. Out of those grounds the first two alone are material for the present purpose. Those two grounds are:

(Alif) In the suit regarding partition every right-holder has a similar right, as against the others and especially at the time of allotment everybody has a separate right. Therefore, every right-holder should have been made a party to the suit individually to look after his interest. In such suits, the provisions of Order I, Rule 8. Code of Civil Procedure, are not applicable according to law.

(be) The proceedings under Order I, Rule 8, Code of Civil Procedure, have not been taken according to law and the permission was not duly obtained. No proclamation was got made and the service was not got duly effected according to rules. The "copy of the plaint and list of the names of the proprietors were not pasted in accordance with the law and rules. All the reports regarding service are bogus and wrong.

To put it briefly these grounds attack the previous decrees by saying (i) that Order I, Rule 8 of the CPC cannot be applied to a partition suit, and (ii) that, in any case, that rule was never complied with. The other grounds do not affect the present matters. In the prayer clause the Plaintiffs ask (a) for a declaration that the previous decrees are null and void against their rights and for setting aside the same, and (b) for partition of the land with delivery of possession according to the partition.

3. The Plaintiffs have treated the first relief as one to obtain a declaratory decree where no consequential relief is prayed as in (iii) of Article 17 in Schedule II of the Court Fees Act, 1870 (Act 7 of 1870), and the second relief as falling under (vi) of Article 17 in Schedule II of the same Act, because according to them a suit for partition is one ''where it is not possible to estimate at a money value the subject-matter in dispute, and this is not otherwise provided for by this Act''. They have paid court-fees as fixed in Article 17 (iii) and (vi) of Schedule II of the said Act. The Defendants raised an objection with regard to the valuation both for purposes of court-fee and jurisdiction as given by the Plaintiff''s, the latter having valued the suit for the purposes of jurisdiction at Rs. 4,000 in paragraph 7 of the plaint, but

having paid the fixed court-fee as explained.

4. There is a preliminary issue on the question of the valuation for the purposes of jurisdiction and court-fee and the learned trial Judge having found that the value of the land is Rs. 7,425-1-6, has taken that to be the value for the purposes of Me court-fee u/s 7(iv)(c) of the said Act, when read with second proviso, added by the Punjab amendment, demanding from the Plaintiffs ad valorem court-fee on that amount. The Plaintiffs having failed to pay the court-fee so demanded, the learned trial Judge proceeded to reject their plant under Order 7, Rule 11 of the Code of Civil Procedure.

5. In Act 7 of 1870, Section 7(iv)(c), with the second proviso introduced by the Court Fees (Punjab Amendment) Act, 1953 (Punjab Act 31 of 1953), reads:

7. The amount of fee payable under this Act in the suits next hereinafter mentioned shall be computed as follows:

* * * *

* * *

(iv) In suits

* * *

(c) to obtain a declaratory decree or order, where consequential relief is prayed,

* * *

according to the amount at which the relief sought is valued in the plaint or memorandum of appeal.

In all such suits the Plaintiff shall state the amount at which he values the relief sought:

Provided that the minimum court-fee in each case shall be thirteen rupees:

Provided further that in suits coming under sub-clause (c) in cases where the relief sought 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 this section.

In Jai Lal v. Raman. Regular Second Appeal No. 56 of 1955, decided on March 24, 1960, Bedi, J. and myself when considering, in a suit exactly of the same nature as the present suit between the parties, the scope of the words ''with reference to any property'' in second proviso to Section 7(iv)(c) held that "the proviso has no application to the present suit because it is not a suit in which relief is sought ''with reference to any property''. What the Plaintiffs seek is a declaration that the previous decrees are null and void against them and not binding on them and for cancellation of those decrees with additional prayer for perpetual injunction against

the Defendants restraining them from putting those decrees into execution. No doubt ultimately if the final decree is put into execution it will mean division by metes and bounds of the village, Abadi, but the suit itself directly has no reference to any property. The indirect effect of the suit, if it succeeds, cannot be a reason for holding that the suit falls under the second proviso as above". In Jai Lal's case we refused to apply the second proviso, as introduced by Punjab Act 31 of 1953 to Section 7(iv)(c) to the facts of that case which were exactly the same as the facts of the present case. This same question arose in Saudagar Chand Ram Chand v. Girdhari Lal, Second Appeal from Order No. 12, of 1961, before Khanna, J. on September 5, 1962, and on the basis of Sham Lal v. Om Parkash and Ors. ILR 1955 Punj. 896 : 1955 P.L.R. 171, and Ram Kanwar v. Naurang Rat 1956 P.L.R. 155, it was held that to a case like the present, second proviso as introduced in the Punjab to Section 7(iv)(c) was attracted and ad valorem court-fee was payable. It appears that Jai Lal''s case was not referred to before Khanna, J. When the present appeal came before Khanna, J., and myself, we were of the opinion that in view of the conflict thus arising, the matter should be disposed of by a larger Bench and it is in these circumstances that the two questions have come before this Full Bench.

6. It is now well-settled that the question of court-fees must be considered in the light of the allegations made in the plaint and its decision cannot be influenced either by the pleas in the written statement or the final decision of the suit on merits : S.Rm.Ar.S.Sp. Sathappa Chettiar Vs. S.Rm.Ar.Rm. Ramanathan Chettiar, . In the plaint the Plaintiffs have undoubtedly claimed with the declaration sought by them the consequential relief of setting aside the previous decrees. The learned Counsel for the Plaintiffs has contended that the mention of such consequential relief in the plaint was not necessary for the main relief claimed by the Plaintiffs is that the previous decrees are null and void, and that relief is just surplusage. It is consequently to be ignored. The reason urged by him for this is that the position of the Plaintiffs is that they were not parties to the previous partition suit and the decrees in that suit, so that not being parties to the same they have no need to have those decrees set aside. In Harwant Singh v. Jagan Nath AIR 1945 Lah. 348. Tek Chand. J. with whom Backett J. concurred, held that where a Plaintiff is not actually or constructively represented in a previous suit and thus is not a party in it, he is not. entitled to have the decree cancelled. That actually was a case of cancellation of sale of property sold at an auction in execution of a decree and the suit was for declaration that the sale was not binding on the Plaintiff who was not a party to the decree in execution of which the sale was made. So the answer to the question whether the present Plaintiffs are obliged to ask for cancellation of the decrees in the previous partition suit or not is dependent upon the question whether they were or were not actually or constructively represented in that suit, in other words parties to that suit. Whatever may be the finding of fact after trial of the questions raised by the pleadings of the parties, and in particular by the Plaintiffs in their plaint, for the present matter, the averments of the Plaintiffs in the plaint have to be taken on their

face and the question answered. No doubt the Plaintiffs have not in exact words said in the plaint that they were not parties to or represented in the previous partition suit, but they have left no manner of doubt in stating the facts Which, as the same are to be taken as stated by them in the plaint, show, in my opinion, that they were not parties to or represented in the previous partition suit actually or constructively. They aver that all the co-sharers were not made parties to the previous partition suit but that some of the co-sharers obtained the decrees as representatives of the remaining co-sharers not actually made parties to the previous partition suit according to Order I, Rule 8 of the Code of Civil Procedure. If the matter rested there, there would be no difficulty, for in that event Order I, Rule 8 having been properly applied and complied with, the co-sharers not being parties to the suit had the opportunity to become parties to it if they so wished and they would be taken to have been constructively represented in it. The argument on behalf of the Plaintiffs that to a partition suit provisions of Order I, Rule 8, have no application, was negatived in Jai Lal''s case in which in this respect reference has been made to Bir Singh v. Pirthi Singh AIR 1928 Lah. 693. Rule 8 of Order 1 is so worded as to include all types of suits falling within the terms of it and nothing shows that a partition suit is an exception to that rule provided the requirements of the rule are complied with. Another case Which supports this view is Jethamal Singh v. Ranjeet Singh ILR (1952) 2 Raj. 900. So Order I, Rule 8, applies even to a partition suit unless it is shown in terms that its provisions are not attracted, which is not the case here. This, however, does not settle the matter because the Plaintiffs further say that there was noncompliance with Rule 8 of Order I, as (a) necessary permission of the Court was not duly obtained, (b) no proclamation was made and service effected according to its provisions, (c) the copy of the plaint and the names of the proprietors or co-sharers were not publically advertised, and (d) the reports regarding service were bogus and wrong. I have already said that these averments have to be taken on their face without regard to what might be the conclusion after trial with regard to the same. It is apparent that if Rule 8 of Order I is not complied with in its terms, those who are to have notice of the suit, in which the rule is sought to be applied, then have no opportunity for applying to the Court to be made a party to the suit. Where such an opportunity is absent, they cannot be regarded from any consideration even constructively represented in or parties to the suit. On the words of the rule this is, to my mind, the obvious conclusion. In Kali Kanta Surma v. Gouri Prosad Surma Bardeuri ILR (1890) 17 Cal. 906, the learned Judges, at page 910; observed:

The Plaintiffs based their claim to the goat sacrificed on the 4th of each month on an alleged custom under which they say that each of the five families took certain goats in each month, and they bring this suit to have their right to the goat killed on the 4th declared without making the other four families parties. We do not think that such a declaration could in any case be made in their absence, or in the absence of the other Brahmins and Sudras attached to the temple and interested in the

offerings. It is part of the Plaintiffs'' case that they are interested in the offerings, and to make any declaration in a suit to which they are not parties would be in effect to partition joint property, and to define the share of each without all the sharers being before the Court, which manifestly cannot be done--see Prahlad Singh v. Luchmunbutty 12 W.R. 256. It was argued on behalf of the Plaintiffs-Respondents that the parties being numerous, the first Court followed the course laid down in Section 30 of the Code of Civil Procedure, and permitted some of each group of persons interested and who ought to have been made parties, to represent the rest. We have heard the order of the first Court read out to us. and though that order purports to have been passed u/s 30, it is clear that the provisions of that section have not at all been properly carried out. Section 30, as we understand it, requires that the Court should exercise a judicial discretion in permitting some definite person or persons to sue or be sued on behalf of all the persons interested, and it further requires the Court to give to the persons interested notice of the institution of the suit which must include a notice of the names of the persons who have been permitted to represent others, so that the persons interested may have an opportunity of knowing who have been selected to represent them. Now, in the present case no such thing was done. In the first place the Court did not give permission to any definitely named persons among those interested to represent the rest; and in the second place the notice issued by the Court did not show who the persons were that had been selected to represent the remaining persons interested. That being so, we think that the persons interested in the result of the suit who are necessary parties have not been properly made parties to it, and that the suit must fail by reason of defect of parties.

The learned Counsel for the Defendants has urged two considerations in so far as this case is concerned. The first consideration which he has urged is that the two reasons given by the learned Judges of non-compliance with the provisions of Order I, Rule 8, do not exist in the present case, which is correct, but the ratio of the case is not confined to those two reasons; it is this, that when there is non-compliance with the provisions of Order I, Rule 8, those who are purported to be represented are in fact not parties to the suit. The second objection is that in that case the suit was dismissed for this defect and that situation does not arise in the present case between the parties. He says that it may have been open to the present Plaintiffs to raise this matter in the previous partition suit or in appeal against the decrees in that suit. Kali Kanta Surma''s case, though the suit was dismissed on the basis of the particular defect found by reason of noncompliance with the provisions of Order 1. Rule 8, is a clear authority that if those provisions have not been complied with, then those who are sought to be made parties to a suit by reason of those provisions are in fact not parties to it. Thus, the Plaintiffs having clearly averred in the plaint noncompliance with Order I, Rule 8, in the previous partition suit, and having detailed in what respect there was non-compliance, and their statement of facts in the plaint being for the purposes of the decision of the matter of court-fee, the only

material to be considered, the consequence is obvious that they have clearly and unmistakably stated such facts which support their position during the arguments that they have in their plaint taken the stand that they were not parties to the previous partition suit even constructively. If the procedure provided in Order I, Rule 8, was not adhered to. those co-sharers who were not actually on the record as parties in the previous partition suit could not and did not become constructive parties to that suit for they never had any opportunity of either prosecuting that suit as Plaintiffs if they wished to do so, or defending the same as Defendants if they wished to take that side. The mere omission of exact words that the Plaintiffs were not parties to the previous partition suit, to my mind, makes no difference, once it is abundantly clear from the averments in the plaint that the Plaintiffs say that so far as they are concerned there was not any compliance of Order I, Rule 8, and so they never became parties even constructively to the previous partition suit. On this conclusion that the Plaintiffs were not even constructively parties to the previous partition suit, in the present suit they have no right to claim the setting aside of the previous decrees in that suit because they have not been parties to those decrees, and even if they have stated in the prayer clause of the plaint that they seek setting aside of those decrees, such prayer is superfluous and a surplusage, not affecting the real nature of the relief which they are entitled to seek. That relief is for declaration that the decrees in the previous partition suit are null and void on the ground or grounds given by the Plaintiffs in the plaint. So the Plaintiffs not being parties to the previous partition suit and the decrees in that suit, they were not constructively represented in the same and their suit then is for declaration to avoid the decrees as nullities without any consequential relief. Such a claim falls under Article 17(iii) of Schedule II to Act 7 of 1870 Alam Khan v. Bhag Bhari AIR and Harwant Singh v. Jagan Nath AIR 1945 Lah. 348. It has, however, been further contended by the learned Counsel for the Defendants that even if the relief for setting aside the decrees in the previous partition suit is considered as surplusage, the second relief claimed by the Plaintiffs for partition of the Abadi area in dispute and possession according to the partition itself be treated as a consequential relief to the first declaratory relief claimed by the Plaintiffs. The second relief of claim with regard to partition does not directly How from the first relief for declaration that the decrees in the previous partition suit are null and void. The reason for this is simple that the right to partition does not arise ''from'' those decrees. It is a right that exists from joint ownership or co-ownership of the land. Its exercise has been arrested by the presence of those decrees and once those decrees are out of the way, the right to partition flows not from those decrees but from the title which the Plaintiffs claim jointly with the Defendants. In Zeb-ul-Nisa v. Chaudhri Din Mohammad AIR 1941 Lah. 97 (F.B.), it was held that the expression ''consequential relief in Section 7(iv)(c) means some relief, which would follow directly from the declaration given, the valuation of which is not capable of being definitely ascertained and which is not specifically provided for anywhere in the Act and cannot be claimed independently of the declaration as a ''substantial relief. Consequently, if the relief claimed in any

case is found in reality to be tantamount to a substantial relief and not a mere ''consequential relief in the above sense the Plaintiff must pay court-fee on the substantial relief. In the present case the relief for partition is an independent relief and for the matter of court-fee it is specifically covered by Article 17 (vi) of Schedule II of the said Act, and, as I have shown, it does not directly follow from the declaration that the decrees in the previous partition suit are null and void. Its basis is the joint and common title claimed by the Plaintiffs along with the Defendants in the Abadi area in dispute. So the second relief claimed by the Plaintiffs for partition of the land and possession in the wake of the same is an independent relief for which court-fee is payable under Article 17(vi) of Schedule II of the said Act, and the Plaintiffs have actually paid court-fee according to that provision. In this approach the answer to the second question as above, in my view, is that to the present claim of the Plaintiffs seeking declaration that the decrees in the previous partition suit are null and void, their further prayer of setting aside of those decrees being surplusage and their claim to second relief for partition not being consequential relief as it is in itself an independent relief, the provisions of Article 17(iii) for the first relief and of Article 17(vi) for the second relief in Schedule II of the said Act are attracted. The Plaintiffs have already paid court-fee according to those provisions. In the wake of this answer to the second question, the first question does not really arise in the circumstances.

7. The conclusion that I have reached above is that the Plaintiffs not having been constructively represented in and parties to the previous partition suit because of non-compliance of the provisions of Order I, Rule 8. their claim for declaration that the decrees be declared null and void falls under Article 17(iii) of Schedule II of the said Act, but I will assume for the present that the Plaintiffs were constructively represented in the previous partition suit, and then proceed to consider what is the position with regard to the amount of court-fee. If the Plaintiffs were parties to the previous partition suit or were constructively represented therein, they are then obliged to seek further and consequential relief to have those decrees set aside : see Zeb-ul-Nisa v. Chaudhri Din Mohammad AIR 1941 Lah. 97 (F.B.). In such circumstances Section 7(iv)(c) of Act 7 of 1870 applies to the relief claimed by the Plaintiffs that the decrees in the previous partition suit be declared null''and void and also set aside. If the second proviso introduced by Punjab Act 31 of 1953 to Section 7(iv)(c) was not there, the Plaintiffs were entitled to set their own valuation for the purposes of court-fee. In that event the valuation of Rs. 4,000 stated by them in the plaint would be the valuation for this purpose and the court-fee payable by them would have been ad valorem on this amount. As pointed out, the second proviso as introduced by Punjab Act 31 of 1953 enjoins calculation of the value of the property in the manner provided in clause (v) of Section 7 if the suit is for a declaratory decree With consequential relief and ''the relief sought is with reference to any property''. The question then is whether, When the Plaintiffs in the present suit seek that the decrees in the previous partition suit be declared null and void and

set aside, they are claiming relief "with reference to any property"? In Jai Lal's case I have given the answer to this question in the negative. While taking a contrary view in Saudagar Chand-Ram Chand"s case, the first case upon which reliance was placed by Khanna, J. was Sham Lal's case. In that case the facts would show that the Plaintiff did seek declaration that the decree was inoperative and sought an injunction restraining its execution. While the matter was pending, the second proviso to Section 7(iv)(c) was introduced by the amending Punjab Act. and the only argument which the learned Judges considered Was whether in such circumstances when the proviso was enacted during the pendency of the litigation, it could or could not be applied, their answer being that it could be applied. There was no argument before the learned Judges whether the declaratory relief sought was "with reference to any property". So, in my opinion, Sham Lal's case is not of assistance on this question. The second was Ram Kanwar"s case in which declaration was sought for cancellation of a lease deed. The learned Judge was of the opinion that the word "property" in the second proviso as introduced by the Punjab amendment is used in the sense of a right in property as involved in that case, that is to say, lease rights in the property. This on facts is not a parallel case. The ground on which the decision in Jai Lal's case is based is already given, it being that when the Plaintiffs in the present suit seek declaration that the decrees in the previous partition suit be declared null and void, then this prayer has no reference to any property and this relief, therefore, does not fall within the scope of the second proviso so introduced by the Punjab amendment. Of course if the Plaintiffs succeed and the decrees in the previous partition suit are declared null and void, the ultimate result would be that the land, the subject-matter of litigation, would be available for partition between the parties. That, however, is not the direct effect of such a declaration and not the subject-matter of it. In Madras a similar proviso has existed for a considerable time With Section 7(iv)(c) of Act 7 of 1870 and that proviso is in these terms:

that in suits coming under Clause (c), in cases where the relief sought is with reference to any immovable property, such valuation shall not be less than half the value of the immovable property, calculated in the manner provided for by paragraph V of the section.

In the Madras High Court the words used in this proviso "with reference to any immovable property" have come for consideration in a few cases. In Ambalam S. Vaiyapuri Chetty and Others Vs. P.K. Ramachandra Thevar by his authorized agent and manager, V. Kalayana Sundaram Pillai and Another, , the Plaintiff sued for an injunction to restrain Defendants from putting up a fence on the ground that the property was his and that the Defendants had no right to it. Devadoss, J., was of the opinion that the plaint, as drafted, was for declaration as well as for an injunction and the prayers in the plaint were for the declaration of the Plaintiff"s title and for a perpetual injunction against the Defendants. It was on this reading of the plaint and the prayer of the Plaintiff having been for declaration of his title to the property that

the learned Judge came to the conclusion that the declaratory relief, with the consequential relief, was within the scope of the proviso to Section 7(iv)(c) of the Act. In re: Venkitakrishna Pattar, , was a case in which the Plaintiff sued for a declaration of rights of way and drainage over a certain paramba and for a mandatory injunction ordering Defendants to remove the fences. Walls, etc., that had been built in defence of those rights Jackson, J., observed that--"In the present suit the question of title is not raised at all; it is only a question of easement and the difficulty is to decide how far the Madras proviso is applicable to such cases," and went on to observe further that "considering that the subject-matter is neither land, nor house nor garden, but an easement over the same, there seems to be no practical object in ordering Courts to apply clause (v). When valuing suit for easements, it only imports unnecessary difficulty into what ought to be the plain and simple mechanical process of assessing court-fees. There is no doubt in the present case that the Plaintiffs have fully paid any fee that is risrhtlv leviable,...." The Plaintiffs in that case had paid court-fee u/s 7(iv)(d). In E.R. Gurunatha Chettiar by next friend Angammal Vs. The Secretary of State for India in Council, . Varadachariar, J. observed that:

The amendment provides for a case where ''the relief sought is with reference to any immovable property''. It seems to me that the prima facie interpretation of that expression is that the dispute should in some sense relate to the title to immovable property. This case was followed in In Re: Rajah K.J.V. Naidu, ,and P. Venkatalakshmi v. B. Venkayya AIR 1958 A.P. 106, In Marimuthu Nadar v. The Tuticorin Municipality (1954) 1 M.L.J. 279, the Respondent municipality published a Town Planning Scheme for the area covering the properties of the Petitioners. Obviously the scheme had reference to the properties so covered by it. The suit by the Petitioners was for a declaration that the scheme propounded by the Respondent under the Town Planning Act was illegal and ultra vires and for a permanent injunction prohibiting them from enforcing all or any provisions of the scheme against the Petitioners. The learned Judge considered the previous cases, to most of Which reference has already been made, and proceeded to observe--"What is questioned here is about the right of the Municipal Council to publish a scheme applicable to the area within the Municipality in which the properties of the Plaintiffs are situated and on the ground apart from its being ultra vires and illegal, as not being in conformity with the requirements of the Act. The mere fact that the scheme decided upon by a resolution of the Municipal Council relates to immovable properties would not make the properties covered in the suit the subject-matter of the suit and the declaration asked for is in respect of the proposed scheme and not in respect of the immovable properties which may be affected by the scheme. So also is the consequential relief of injunction which is to prohibit the Municipal Council from enforcing the scheme even though the ultimate effect of such a prohibition is to prevent the Municipal Council from interfering with the ownership and possession of the immovable properties belonging to the Plaintiffs. Both the substance of the plaint and the

reliefs asked for relate only to the proposed scheme and are not directed against any immovable properties. In valuing plaints of this nature, one has to see what the real subject-matter of the suit is. No title to or right to possession of the immovable property is in question in the sense that such a right or title has been denied by the Defendants and that the declaration and injunction had become necessitated thereby. The scope of the suit is confined to the Defendants'' right to exercise the powers under the Madras Town Planning Act. Though the reliefs asked for may be in some way connected to the immovable properties they cannot therefore amount to reliefs with reference to immovable properties". This case is a close parallel to the present case. In this case the scheme affected the properties of the Petitioners and declaration to have the scheme declared illegal and ultra vires was held by the learned Judge not to have been relief ''with reference to immovable properties''. In the present case the Plaintiffs claim declaration that the decrees in the previous partition suit are null and void, and though those decrees themselves refer to property, but the suit itself is to have the decrees declared null and void and does not raise any question of title to any property. In the wake of this approach I am confirmed in my previous opinion in Jai Lal&#65533;s case that the relief sought by the Plaintiffs in the present case for declaration that the decrees in the previous partition suit are null and void is not a relief that is sought ''with reference to any property'' as in the second proviso added by the Punjab amendment to Section 7(iv)(c). The declaration does not raise a question of title to property. It is not directly concerned with any property, nor does it relate to any property, it merely seeks to have the decrees declared null and void, and the fact that such declaration would ultimately affect certain property does not, in my opinion, make the relief in the present suit in this respect one ''with reference to any property'' in the second proviso as added by the Punjab amendment to Section 7(iv)(c). In this approach my answer to the first question is that the words ''with reference to any property'' in the second proviso as added by Punjab Act 31 of 1953 to Section 7(iv)(c) of Act 7 of 1870 cannot be applied to the suit of the Plaintiffs for declaration as made by them that decrees in the previous partition suit are null and void and be set aside. The answer to the second question follows that if the Plaintiffs are taken as having been represented in the previous partition suit, their relief for declaration to have the decrees in that suit declared null and void and to have the same set aside is a claim for a declaratory relief with consequential relief falling u/s 7(iv)(c) of Act 7 of 1870. In view of this answer, the Plaintiffs are liable to pay court-fee on the value given by them in the plaint which is Rs. 4,000.

P.C. Pandit. J.

8. I have had the benefit of going through the judgment prepared by my learned brother, Mehar Singh, J., but With great respect to him, I have not been able to persuade myself to concur in the view taken by him. I am, therefore, writing my separate judgment.

The following two questions have been referred to the Full Bench for decision:

(1) What is the scope of the phrase "with reference to any property" as used in the second proviso added by Punjab Act No. 31 of 1953 to Section 7(iv) of the Court-fees Act, and whether the above phrase in a suit for declaration with consequential relief in respect of a previous decree would mean the property which was the subject-matter of the previous decree?

(2) Whether a suit like the present, in which the Plaintiffs seek a declaration that the previous decrees are null and void and be set aside and further pray for fresh partition of the property, is governed by Section 7(iv)(c) of the Court-fees Act?

They have arisen in the following circumstances:

The Plaintiffs, who are some of the proprietors in the village, brought a suit for partition of the village abadi measuring 79,201 square yards claiming 146881/432978th share therein against the Defendants, who Were also co-sharers in the same. Their allegations were that in 1949 the Defendants and their ancestors brought a suit for possession by partition of this very land and in that suit some of the co-sharers had not been impeaded as parties and the provisions of Order 1, Rule 8, Code of Civil Procedure, were resorted to. That suit ended in a preliminary decree, which was passed on 20th February, 1950. and the said decree was also made final on 29th June, 1954. According to the Plaintiffs; both those decrees were null and void and not binding upon them, because they were obtained as a result of fraud. It was also stated that in a suit of that kind the provisions of Order 1, Rule 8, Code of Civil Procedure, could not be applied and every right-holder should have been made a party. It was further asserted that even the proceedings under Order 1, Rule 8, Code of Civil Procedure, had not been taken according to law and all the reports regarding service were bogus and wrong. It was said that the Local Commissioner in the previous suit had not taken the partition proceedings according to the decree. The following reliefs were then claimed by the Plaintiffs:
(a) The partition proceedings in suit No. 36 of 1949 Girdhari and Ors. v. Dhara and Ors. in which preliminary and final decrees, dated the 20th February, 1950, and the 29th June, 1954, respectively, were passed may be declared null and void against the rights of the Plaintiffs and set aside and the entire proceedings may be taken afresh, that is, the partition proceedings may be reopened.

(b) A decree for partition in proportion to the Khewat to the extent of 146881/432978th share may be passed against the Defendants and in favour of the Plaintiffs, and the Plaintiffs got delivered the possession of their shares separately.

(c) In the alternative, the Plaintiffs may be granted some other relief to which they are deemed entitled by the Court.

(d) The costs of the suit may be awarded.

This suit was valued for purposes of jurisdiction at Rs. 4,000, which, according to the Plaintiffs, was the value of the property in dispute. According to the Plaintiffs, the value of the suit for purposes of court-fee could not be determined and hence a fixed court-fee of Rs. 19.50 nP., was paid for the prayer (a). Another court-fee of Rs. 19.50 nP. was paid on the allegation that the Plaintiffs were in joint possession of the property in dispute. Thus a total court-fee of Rs. 39 was paid on the plaint.

9. An objection was raised by the Defendants in the written statement that the value of the suit for purposes of jurisdiction for both the prayers should have been fixed separately and the court-fee should also have been paid on the market value of the entire land, which, according to them, was more than one lakh rupees.

10. A preliminary issue was framed by the trial Court to the effect "Whether the suit had been properly valued for purposes of court-fee and jurisdiction. If not, what is the proper valuation for the purpose?"

11. The Plaintiffs led oral evidence on this issue and their case was that the market value of the land in dispute was Re. 0-1-6 per square yard. No evidence was led by the Defendants in rebuttal.

12. The trial Court held that the market value of the land in question was Re. 0-1-6 per square yard and thus its total value came to Rs. 7,425-1-6. It was also held that the suit was governed by the provisions of Section 7(iv)(c) of the Court-fees Act as amended by the Court-fees (Punjab Amendment) Act of 1953. The value of the suit for purposes of Court-fee and jurisdiction was, therefore, held to be Rs. 7.425-1-6 and the Plaintiffs were directed to pay ad valorem court-fee thereon. Since they failed to do so, the plaint was rejected. Against that the Plaintiffs filed the present Regular First Appeal No. 134 of 1962 in this Court.

13. The appeal came up for hearing before Mehar Singh and Khanna, JJ. who found that there was conflict of judicial opinion on the question of court-fee involved in the case and referred the above two questions to the Full Bench for opinion.

14. Taking the second question first, learned Counsel for the Appellants submitted that the suit was for partition of joint property of which the Plaintiffs were in joint possession. The court-fee was, therefore, leviable under Schedule II, Article 17, Sub-clause-(vi). The other allegations in the plaint had been made merely to entitle the Plaintiffs to obtain a decree for partition. The ultimate relief claimed was one for partition of the joint property. His second argument was that relief (b) was distinct from relief (a). Relief (b) would be governed by Schedule II, Article 17(vi), whereas relief (a) by Schedule II, Article 17(hi), which was applicable to suits in which a declaratory decree without any consequential relief was claimed. He submitted that the main relief claimed in (a) Was for a declaration that the preliminary and final decrees in the previous suit be declared null and void and the other relief, namely, that those decrees be set aside was a mere surplusage. His third argument was that even if it be held that their case was governed by Section 7(iv)(c) of the Act, the

proviso added to this section by the Court-fees (Punjab Amendment) Act, 1953, would not be applicable, because the relief sought was not "with reference to any property" and the Plaintiffs could value the relief in any way they liked. Learned Counsel for the Respondents, on the other hand, submitted that the present case was covered by the provisions of Section 7(iv)(c) of the Court-fees Act and the proviso added to the same by the Punjab Amendment was fully applicable. He contended that both the reliefs, namely, for setting aside the previous decrees and the claim for repartition mentioned in relief (b) were consequential reliefs, which directly flowed from the declaration claimed by the Plaintiffs to the effect that the preliminary and the final decrees in the previous partition suit were null and void. His argument, in the alternative, was that even if the Punjab proviso did not apply, the Plaintiffs had to fix the value of the reliefs sought by them and in the present case they had done so and fixed that value at Rs. 4,000 and, under these circumstances, they had to pay court-fee on this amount.

15. The relevant provisions of the Court-fees Act for determining this question are these:

Section 7. The amount of fee payable under this Act in the suits next hereinafter mentioned shall be computed as follows:

* * *

* * *

(iv) In suits

* * *

(c) to obtain a declaratory decree or order, where consequential relief is prayed.

* * *

according to the amount at which the relief sought is valued in the plaint or memorandum'' of appeal.

In all such suits the Plaintiff shall state the amount at which he values the relief sought:

Provided that the minimum court-fee in each case shall be thirteen rupees.

Provided, further, that in suits coming under Sub-clause (c) in cases where the relief sought 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 this section.

(v) In suits for the possession of land, houses and gardens--according to the value of the subject-matter; and such value shall be deemed to be--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, 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--five 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-- fifteen times such net profits;

(d) where the land forms part of an estate paying revenue to Government, but is not a definite share of such estate and is not separately assessed as above-mentioned the market value of the land;

(e) where the subject-matter is a house or garden--according to the market value of the house or garden.

Schedule II

Fixed Fees

Number Proper fee

17. Plaint or memorandum of appeal in each of the following suits:

* * * * *

(iii) to obtain a declaratory dec-Rs. 19.50 nP. ree where no consequential (Punjab) relief is prayed;

(vi) every other suit where it is not possible to estimate at a money value the subject-matter in dispute and which is not otherwise pro-Rs. 19.50 nP. vided for by this Act. (Punjab)

16. It is undisputed that in determining the amount of court-fee leviable on a plaint, the Court must base its decision on the allegations contained therein. It was held by their Lordships of the Supreme Court in S.Rm.Ar.S.Sp. Sathappa Chettiar Vs. S.Rm.Ar.Rm. Ramanathan Chettiar, , that the question of court-fees must be considered in the light of the allegations made in the plaint and its decision could not be influenced either by the pleas in the written statement or by the final decision of the suit on the merits. It had also been observed in a Full Bench decision of the Lahore High Court in Mt. Zeb-ul-Nisa and Ors. v. Chaudhri Din Mohammad and Ors. AIR 1941 Lah. 97 (F.B.):

The true criterion for determining the question of court-fee in cases of this description is the substance of the relief claimed as disclosed by the plaint, taken as a whole and not merely the form in which the relief claimed is expressed. The mere fact that the relief as stated in the prayer clause is expressed in a declaratory form does not necessarily show that the suit is for a mere declaration and no more. If the relief so disclosed is a declaration pure and simple and involves no other relief, the suit would fall under Article 17(iii) and the court-fee payable would be Rs. 10 only. At the initial stage of determining the court-fee on a plaint, the question whether the declaratory suit is liable to be dismissed, either because it does not fall within the purview of Section 42, Specific Relief Act, or because the Plaintiff has failed to sue for a further relief which was open to him or for some other reason does not arise. That question arises only after the necessary court-fee on the true relief as disclosed by the plaint is paid and the plaint is properly before the Court.

17. The contention of the learned Counsel for the Plaintiffs that their suit was merely for the partition of the property and that the other allegations made by them were only to get that relief is not correct, because in order to determine that point we have to consider the entire plaint and then decide as to what relief the Plaintiffs are actually claiming. As a matter of fact, in the plaint, besides the relief for partition, they are actually wanting a declaration that the decrees in the previous suit be held to be null and void and the same be set aside. In face of those decrees and without getting them reversed, it is not possible for them to claim fresh partition. It is also clear that if the Plaintiffs were a party to the previous decrees either constructively or otherwise, then they are bound under the law to get them set aside before they can claim fresh partition. On the other hand, if they were strangers to the previous suit and had not been made parties to it, then they were not obliged to get the decrees reversed and it was enough for them if they got a declaration simpliciter that the decrees were null and void. Even if they had asked for setting aside those decrees as a consequential relief, such a relief would be regarded as a mere surplusage. A Division Bench of the Lahore High Court consisting of Tek Chand and Beckett JJ. in S.Rm.Ar.S.Sp. Sathappa Chettiar Vs. S.Rm.Ar.Rm. Ramanathan Chettiar, , observed thus:

A suit by a stranger for a declaration that the property sold at auction sale was his property and was not liable to be sold in execution of the decree passed in a suit in which he was not actually or constructively represented falls under Schedule II, Article 17(iii) and not Section 7(iv)(c). The Plaintiff in such case is not entitled to have the sale cancelled. The relief for cancellation of sale does not follow from the declaration asked for and must be regarded as a surplusage.

18. To similar effect is another Bench decision by the same learned Judges in Alam Khan v. Mt. Bhag Bhari and Anr. AIR 1941 Lah. 159. Bearing these principles of law in mind, the question for determination is whether in the present case it can be said that the Plaintiffs were parties to the previous partition suit, which ended in

preliminary and final decrees. I may at once state that nowhere in the plaint have they mentioned that they were not parties to the previous suit. As a matter of fact, they have clearly and in unequivocal terms claimed the relief that the previous decrees may be declared null and void as against the rights of the Plaintiffs and that they should be set aside and the partition proceedings be taken afresh. Learned Counsel for the Appellants contended that it was stated in the plaint that instead of making all the co-sharers as parties, the Respondents obtained wrong and collusive preliminary decree, dated 20th February, 1950 and final decree, dated 29th June, 1954, by making certain Defendants as representatives of all the remaining co-shares of the land in dispute under Order 1, Rule 8, Code of Civil Procedure. It was further stated that those decrees were null and void, and the same, according to them, deserved to be set aside and could not be executed for the various reasons mentioned in the plaint. One of the reasons given was that every rightholder should have been made a party to the suit individually to look after his interest, because in partition suits, the provisions of Order 1, Rule 8, Code of Civil Procedure, were not applicable. Another reason mentioned was that the proceedings under Order 1, Rule 8, Code of Civil Procedure, had not been taken according to law and the permission of the Court was not duly obtained. No proclamation was issued and the service was not duly effected according to the Rules, the copy of the plaint and the list of the names of the proprietors were not pasted in accordance with law and the rules and all the reports regarding service were bogus and wrong. It was also mentioned that the Local Com missioner had not taken the partition proceeding according to the decree. The various irregularitie committed by the Local Commissioner were the enumerated in the plaint. Learned Counsel con tended that from the above allegations it was clea that his clients were not made parties to the previous suit and it was only by applying the provisions of Order 1. Rule 8, Code of Civil Procedure, that they were so made, but under the law these pre visions could not apply to such suits and, there fore, they could not be deemed to be parties to the previous litigation. In the alternative, his argument was that even if these provisions did (sic) to partition suits, then the allegations in the (sic) were that there had been no proper compliance with the same and, as such, taking these allegations to be correct for determining the question (sic) court-fee, they under the law could not be (sic) to be parties to the previous suit. Reliance for (sic) submission was placed on a Bench decision of (sic) Calcutta High Court in Kali Kanta Surma and Ors. v. Gouri Prosad Surma Bardeuri and Ors. ILR (1890) 17 Cal. 906.

19. There is no merit in the contentions raised (sic) the learned Counsel for the Plaintiffs-Appellant because, firstly, the Plaintiffs have not stated (sic) the plaint that they were not made parties to the previous suit. On the other hand, their (sic) is that some of the co-sharers had not been in pleaded. Secondly, in para 3 of the plaint the have clearly stated that the previous suit was finally decreed by making Defendants Nos. 94 (sic) 95, and Chandgi, deceased, ancestor of Defendant Nos. 99 to 101, etc., as representatives of all (sic) remaining co-sharcrs of the land in dispute under

Order 1. Rule 8, Code of Civil Procedure. In other words, they admit that they were impleaded as Defendants in a representative capacity. No authority was cited in support of the contention that the provisions of Order 1. Rule 8, Code of Civil Procedure, did not apply to partition suits. On the other hand there is a Bench decision of this Court in Jai Lal and Ors. v. Raman and Ors. Regular Second Appeal No. 56 of 1955, decided by Mehar Singh and Bedi JJ. on 24th March, 1960, wherein it was held that the provisions of Order 1, Rule 8, Code of Civil Procedure, applied to partition suits. In that case, reliance was placed on a Single Bench decision of Zafar Ali J. in Bir Singh v. Prithi Singh AIR 1928 Lah. 693. To similar effect is the Bench decision of the Rajasthan High Court in Jethmal Singh and Ors. v. Ranjeet Singh and Ors. ILR (1952) 2 Raj. 900. The contention that the provisions of Order 1, Rule 8, Code of Civil Procedure, were not complied with in the previous suit and as such the Plaintiffs could not be deemed to be parties to that suit has ''no merit as well. Firstly, as mentioned above, it was not the case of the Plaintiffs in the plaint that they were not parties to the previous suit, even in a representative capacity. They could have easily mentioned this fact, if there was any truth in that. In the absence of such an assertion on their part, it is not necessary to go into the other allegations of the plaint. Secondly, it is not their case that no service was effected on them. On the other hand, the allegations made by them are general in nature and there is authority for the proposition that if the provisions of Order 1, Rule 8, Code of Civil Procedure, have not been complied with in a particular case, at least those parties. who had appeared and contested the suit, would be bound by the previous decree see in this connection Ismail Munshi and Anr. v. Niamat Khan and Ors. 101 I.C. 738 (Cal. D.B.). In the present case, it cannot be said on the allegations of the plaint itself that the Plaintiffs had not appeared and contesed the previous suit. It is pertinent to mention that Kali Kanta Surma''s case was considered by this Calcutta Bench decision. Thirdly. Kali Kanta Surma''s case is clearly distinguishable on facts. No question of court-fee was involved therein. The suit was dismissed on merits on the ground that it could not be decreed in the absence of all the parties, who were interested in the subject-matter of the litigation. Under all these circumstances, I am of the view that reading the plaint as a whole, there is no manner of doubt in my mind that the Plaintiffs were parties to the previous suit and it is. therefore, that they purposely did not make a statement in the plaint that they were not impleaded actually or constructively as parties in the previous litigation and it is also on that very account that they had in unequivocal terms claimed a relief that the decrees in the previous suit be set aside.

20. Since I have held that the Plaintiffs were parties to the previous suit, there is no dispute then that in such a case, it was necessary for them to get the previous decrees set aside before they can claim fresh partition. That being so, the provisions of Section 7(iv)(c) are attracted.

21. Now the point for determination is as to what is the effect of the other prayer made by the Plaintiffs for fresh partition of the property in dispute. The contention

of the learned Counsel for the Plaintiffs was that this prayer was not a consequential relief as envisaged by the provisions of Section 7(iv)(c), but, on the other hand, it was an independent relief for the partition of the property. Reliance was placed on the Full Bench decision of the Lahore High Court in Mt. Zeb-ul-Nisa and others case. Consequently, this prayer was covered by Article 17(vi) of Schedule II and, as such, Court-fee of Rs. 19.50 nP. was leviable independently on this relief. He further contended that so far as the other relief, with regard to the declaration that the previous decrees were null and void and be set aside, was concerned, the same was governed by the provisions of Article 17 (iii) of Schedule II and a court-fee of Rs. 19.50 nP. was thus payable. Learned Counsel for the Defendants on the other hand, contended that the prayer for fresh partition of the property in dispute was not an independent relief, but the same was also a consequential one and flowed from the declaration sought by the Plaintiffs and, as such, the provisions of Section 7(iv)(c) applied to the same.

22. In Mt. Zeb-ul-Nisa s case, the following observations made by a Full Bench of the Allahabad High Court in Kalu Ram Vs. Babu Lal and Others, , were approved:

The expression ''consequential relief in Section 7(iv)(c) means some relief, which would follow directly from the declaration given, the valuation of which is not capable of being definitely ascertained and which is not specifically provided for anywhere in the Act and cannot be claimed independently of the declaration as a ''substantial relief.

With regard to this definition, Chitlay in his Commentaries on the ''Court-fees Act and the Suits Valuation Act'', Second Edition, on page 135 has observed thus:

With great respect, it is submitted that except the first element in the definition, the elements stated therein as essential are not essential ingredients of ''consequential relief within the meaning of this clause.

Similarly, Justice S.D. Singh, in his book "The Law of Court-fees and Suits Valuation in India," 1963 Edition, on page 139 has remarked:

It is submitted with respect that some of the assumptions made in this definition of the expression ''consequential relief are not borne out by any of the clauses. The relief need not be one, the valuation of which is not capable of being definitely ascertained and which is not specifically provided for anywhere in the Act.

In my view, consequential relief is incidental to the main declaratory relief and the same cannot be granted, if the latter is refused. I am supported in this view of mine by the following observations of Harnam Singh. J. in Smt. Anguri Devi v. Gurnam Singh AIR 1951 Simla 238:

Section 7(iv)(c) contemplates a suit in which the declaratory relief is the basic relief and the consequential relief is asked for as incidental to the declaratory relief. Indeed, in order to bring a suit within Section 7(iv)(c), the two reliefs are to be so

connected together that if the Court in the exercise of its discretion refuses to pass a declaratory decree, the claim for consequential relief also fails.

There are a number of decided cases in which the declaration sought for was to the effect that the previous decree for partition was null and void and along with the declaration a further prayer for fresh partition was also made. In all those cases, it was held that the prayer With regard to fresh partition was a consequential relief see in this connection Bholanath Chakravarty and Ors. v. Girish Chandra Chakravarty and Anr. AIR 1954 Patna 406 (D.B.), Star Trading and Investment Ltd. Vs. Ashutosh Mukherjee and Others, , Mt. Fazilat Khatun v. Haji Rahimbux Gulmahomed and Ors. AIR 1941 Sind 154 (D.B.), and Kara Gowri Saha and Ors. v. Dukhi Saha and Ors. 5 I.C. 582 (Cal. D.B.). From the above discussion, it would be apparent that the relief for fresh partition was also a consequential relief and the case would still be covered by the provisions of Section 7(iv)(c). The answer to question No. 2, therefore, in my opinion, is in the affirmative.

23. Coming to the first question, the point for consideration is as to what is the scope of the phrase "with reference to any property" as used in the second proviso to Section 7(iv)(c) of the Court-fees Act. It may be mentioned that this proviso was inserted by the Punjab Amendment Act 31 of 1953 and reads as under:

Provided further that in suits coming under sub-clause (c) in cases where the relief sought 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 this section.

The relief mentioned in this proviso is the consequential relief referred to in Section 7(iv)(c). The proviso says that where the relief sought 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 the clause (v) of Section 7. It means that where the consequential relief claimed is with reference to any property, then the valuation will be determined in the manner mentioned in this proviso and not according to the valuation fixed by the Plaintiff as mentioned in Section 7(iv). The expression "where the relief sought is with reference to any property", in my opinion, means that the consequential relief claimed must be one which should have some relationship with the right, title or interest in the property in dispute. In other words, this proviso will be attracted only if the Plaintiff claims such a consequential relief that if the same is allowed, then the right, title or interest of the parties to the suit property is affected thereby. It may be mentioned that a somewhat similar expression occurs in the proviso introduced by the Madras Legislature in Section 7(iv)(c) of the Court-fees Act. It reads thus:

Provided that in suits coming under Sub-clause (c), in cases where the relief sought is with reference to any immovable property, such valuation shall not be less than half the value of the immovable property calculated in the manner provided for by

paragraph (v) of this section.

The expression "With reference to any immovable property" occurring in this proviso came for consideration in a number of cases in the Madras High Court and the view generally taken there was that the consequential relief sought should in some sense relate to the title to immovable property. Vardhachariar J. in E.R. Gurunatha Chettiar by next friend Angammal Vs. The Secretary of State for India in Council, ,observed thus:

That the prima facie interpretation of the expression ''the relief sought is with reference to any immovable property'' in proviso to Section 7(iv)(c) Court-fees Act, as amended by Madras Act 5 of 1922, is that the dispute should in some sense relate to the title to immovable property.

Later on, in this very judgment, the learned Judge remarked:

I would also point out that the words ''the relief sought'' in the proviso must be read as relating to the words ''consequential relief in clause (c) of the main Act.

The same view had been taken in a number of other decisions of that Court (see in this connection In Re: Rajah K.J.V. Naidu, . Thus, it would be seen that the Madras authorities, referred to above, have also taken the same view as mentioned by me above. Moreover, so far as our own High Court is concerned, a similar view was taken by Bishan Narain J. in Ram Kanwar and Ors. v. Naurang Rai and Ors. 1956 P.L.R. 155, where it was observed:

That the word ''property'' in the Punjab Amending Act 31 of 1953 is used in the sense of a right in the property involved in the case, which in this case are the lease rights. The Court-fee should be paid on the market value of the leasehold rights and not on the market value of the factory.

This decision was followed by Khanna, J., in an unreported ruling--S.A.O. 12 of 1961 Saudagar Chand-Ram Chand v. Girdhari Lal and Ors. decided on 5th September, 1962.

24. Now, the question arises whether the expression "with reference to any property" in a suit for declaration with consequential relief in respect of a previous decree would mean the property which was the subject-matter of the previous decree. The answer to this question, in my opinion, is that in case the previous decree relates to some property and in the declaratory suit subsequently brought the consequential relief is such that it would affect the right, title or interest of the parties to that property, then the expression "with reference to any property" would mean the property which was the subject-matter of the previous decree. For example, if in the previous decree, the shares of the parties in a property had been determined and subsequently some of the parties bring a suit for a declaration that the previous decree was null and void and further claim a consequential relief that the same should be set aside, then the consequential relief is with reference to the

property mentioned in the previous decree, because by setting aside the same, the right, title or interest of the parties in that property would be affected.

25. In the present case, a decree for partition specifying the shares of various co-sharers was passed and if the consequential relief was granted and the previous decree set aside, then obviously the title of the various co-owners in the property in dispute would be affected.

26. Moreover, a reading of the following paragraphs 5 and 6 of the plaint would show that the possession of some of the co-owners at least had been changed as a result of the previous decree and the property in their hands had ceased to be joint:

Para 5.--Due to the aforesaid irregularities the Plaintiffs'' rights have clearly been prejudiced causing loss to them. The Plaintiffs came to know about it at the time of handing over the possession at the spot about a month ago. The Defendants have repeatedly been asked not to interfere or put obstruction in the possessions of the Plaintiffs in the land in dispute according to the spot, to get the entire proceedings declared null and void and to get the partition made afresh but they have refused to do so.

6. The cause of action against the Defendants arose to the Plaintiffs about a month ago on account of above-mentioned circumstances and facts, handing over the possessions and taking the measurements at the spot. And also the right to file the suit against the Defendants accrued on the 25th April, 1961, that is, the day the Defendants made a refusal.

If the consequential relief prayed for by the Appellants was to be granted, then the result would be that the title of those persons who had changed their possessions would be affected on this ground as well.

27. Learned Counsel for the Appellants relied on Jai Lal and others'' case, for his submission that the proviso should not be applied to the present case, because in similar circumstances the Division Bench did not apply the same. While dealing with this matter, the learned Judges observed thus:

What the Plaintiffs seek is a declaration that the previous decrees are null and void against them and not binding on them and for cancellation of those decrees with additional prayer for perpetual injunction against the Defendants restraining them from putting those decrees into execution. No doubt ultimately if the final decree is put into execution, it will mean division by metes and bounds of the village abadi, but the suit itself directly has no reference to any property. The indirect effect of the suit, if it succeeds, cannot be a reason for holding that the suit falls under the second proviso as above.

As I have already mentioned above, if the previous decree is set aside, then obviously the title of the various owners in the property in dispute would be affected. Besides, no reasons have been given by the learned Judges for coming to

this conclusion. For the reasons already indicated above, with great respect to the learned Judges, I am unable to concur in the view expressed by them. Reliance was also placed by the learned Counsel on Marimathu Nadar v. The Tuticorin Municipality (1954) 1 M.L.J. 279, but this authority is clearly distinguishable on facts. There some town planning scheme framed by the Municipality was being challenged and the title of the various owners to the lands covered by that scheme was not affected in any way.

28. In view of what I have said above, the proviso to Section 7(iv)(c) applies to the present case. The Plaintiffs, therefore, will have to pay an ad valorem court fee on the market value of their share (146881/432978) in the property in dispute. The market value of the entire land has been found to be Rs. 7,425-1-6.

P.D. Sharma, J.

29. I agree with my learned brother Pandit, J. and have nothing to add.