

**(1961) 08 AHC CK 0011****Allahabad High Court****Case No:** First Appeal No. 93 of 1954

Ram Katori and Another

APPELLANT

Vs

Chamanlal and Others

RESPONDENT

**Date of Decision:** Aug. 7, 1961**Acts Referred:**

- Court Fees Act, 1870 - Section 12, 28, 7

**Citation:** AIR 1962 All 268 : (1961) 31 AWR 717**Hon'ble Judges:** B. Dayal, J; A.P. Srivastava, J**Bench:** Division Bench**Advocate:** K.C. Saksena, for the Appellant; N.A. Kazmi, for the Respondent**Final Decision:** Disposed Of**Judgement**

Srivastava, J.

This is a court-fee matter. The Chief Inspector of Stamps when examining the records of this Court discovered that in First Appeal No. 93 of 1954 which had arisen out of suit No. 140 of 1951 filed in the Court of the Civil Judge, Saharanpur, proper court-fee had not been paid on the plaint. The court-fee paid on the memorandum of appeal was also found to be insufficient. He therefore, recommended that additional court-fee be realised not only from the appellant who had filed the appeal but also from the respondents who had filed the plaint in the Court of the Civil Judge. We are not concerned at present with the question whether any additional court-fee is payable in respect of the memorandum of appeal. The dispute before us relates to the question of court-fee payable on the plaint. The Chief Inspector of Stamps has prayed that the deficiency in court-fee on the plaint should be directed to be made good. When the respondents were informed of this report an objection was filed on their behalf. The report as well as the objection are now before us for disposal.

2. The facts of the case as were set out in the plaint were that there were two brothers Cha-man Lal and Ajodhya prasad. Ajodhya Pd. died leaving his widow Smt. Soniya, a minor son Manak Chand and a daughter Makhmali. Manak Chand also died later. After the death of Ajodhya Pd. and Manak Chand, Chaman Lal divided the entire property which originally belonged to himself and Ajodhya Pd. between himself and his son ignoring the widow and the daughter of Ajodhya Pd. The widow and the daughter claimed a share in the property and the dispute was referred to arbitration. An award followed and was made a decree of the Court in 1931. By that decree certain properties were given to Smt. Soniya as the widow of Ajodhya Pd. Smt. Soniya executed a will in respect of the properties she thus received in favour of the defendants. She then died.

The plaintiffs who were the collaterals of Ajodhya Pd. disputed the validity of the will on several grounds and claimed the properties left by Smt. Soniya on the ground that the properties were her stridhan and as they were her stridhan heirs they were entitled to the same. On that basis they claimed possession over the properties mentioned in Schedule A of the plaint and also claimed for a declaration that they were entitled to recover the amount of the decree in suit no. 544 of 1930 which had been passed in favour of Smt. Soniya. The properties in lists A were valued at Rs. 9,000/- and the decree was valued at Rs. 4,900/- the amount for which it had been passed. The suit was thus valued at Rs. 13,900/- and a court-fee of Rs. 821/14/- was paid. We are told that at a Ma stage the relief about the decree was given up and was deleted from the plaint. The suit therefore remained a simple suit for possession over the properties in Schedule A of the plaint. A question of insufficiency of court-fee was raised by the defendants but was decided against them. The suit was ultimately decreed and the defendants have filed First Appeal no. 93 of 1954 against that decree.

3. The point raised by the Chief Inspector of Stamps is that as the relief claimed by the plain-tiffs involved adjudging void of the will executed by Smt. Soniya on the 6th of June, 1947 and as without the will being adjudged void, the suit could not have been decreed, the plaintiffs were liable to pay court-fee u/s 7(iv-A) of the Court Fees Act in addition to the court-fee which they had paid. According to him, the will covered the two properties which were claimed in the suit and as the plaintiffs claimed through Smt. Soniya as her stridhan heirs, they were bound u/s 7(iv-A) of the Court Fees Act to pay court-fee on the full value of the property. The total value of the suit for purposes of court-fee should therefore have been Rs. 13,900/- plus Rs. 33,900/- i. e., Rs. 27,800/- and the court-fee that should have been Paid was Rs. 1,740/10/- and not Rs. 821/14/. There was thus, according to him, a deficiency of Rs. 918/12/- which the plaintiff should be directed to pay.

4. In the objection which the counsel for the plaintiff-respondents filed against the report of the Chief Inspector of Stamps the only point raised was that no additional court-fee was necessary because there was" no relief for the cancellation of the will

and the will was a fictitious document which did not confer any rights on the defendants. When the case was argued before us, learned counsel urged in addition that, in any case, even if the court-fee paid on the plaint was insufficient, there was no provision under the Court Fees Act under which this Court could recover the additional court-fee from the plaintiffs.

5. An effective answer to the first objection of the respondents is provided by the words of Section 7(iv-A) itself. It reads:-

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

(iv-A)--In suits 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..

....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 related.

Explanation.- The value of the property for the purpose 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-sections (v), (v-B) or (v-A) as the case may be."

6. It cannot be disputed in the present case that the suit though it was not for the cancellation of the will of Smt. Soniya did involve the adjudging void of that will. The plaintiffs claimed to be the stridhan heirs of Smt. Soniya and she was a party to the will having executed it herself. The plaintiffs thus claimed through a Party to the instrument. If therefore, the will was an instrument securing property, Clause (iv-A) of Section 7 of the Court Fees Act applied and as the entire will was to be adjudged void in the suit, court-fee was payable on the value of the entire property involved.

7. It is, however, urged that a will is not an instrument securing property and so clause (iv-A) did not apply at all. This contention cannot be accepted in view of the decision. by a Division Bench of this Court in [Udai Pratap Gir and Another Vs. Shanta Devi and Others,](#)

8. Reference was made by the learned counsel to two earlier cases, [Chief Inspector of Stamps Vs. Ramesh Chandra adopted son of B. Sheo Prasad,](#) and [The Chief Inspector of Stamps, U.P. Vs. The Sunni Central Board of Waqf, U.P.,](#) . Both these cases were considered in [Udai Pratap Gir and Another Vs. Shanta Devi and Others,](#) . The former was distinguished on the ground that in that case the testator was alive

when the suit was filed. This ground of distinction is present in the case in hand too. Here also Smt. Soniya was dead before the institution of the suit. The view taken by Misra, J., in 1953 ALJ 101 : AIR 1953 All 650 was not approved by the Division Bench it. Udai Pratap Gir and Another Vs. Shanta Devi and Others, . In these circumstances we think the decision in Udai Pratap Gir and Another Vs. Shanta Devi and Others, , with which we respectfully agree, is applicable and should be followed. The contention that Clause (iv-A) of Section 7 of the Court Fees Act was not applicable to the case at all cannot, therefore, be accepted.

9. The allegation that the will of Smt. Soniya was a fictitious document appears to be entirely immaterial. Whatever, may be the ground on which the plaintiffs wanted to get the will adjudged void or to avoid it, there can be no doubt that the suit filed by them involved a decision of the question whether the will was void as against the plaintiffs or not. This feature clearly attracted the application of Section 7(iv-A) of the Court-fees Act to the case. If that provision applied, court-fee had to be paid on Rs. 9000/-, the full value of the properties in Schedule A in addition to the court-fee paid on the same and in respect of the relief of possession of those properties.

10. It is, however, urged that even if additional court-fee was payable, the respondents can not be required to pay it now. The question is whether the deficiency can now be realised from the respondents and they can be directed to pay the same. The only provision of the Court Fees. Act on which reliance was placed by the learned Standing Counsel appearing on behalf of the revenue is Section 12 which reads as follows :

"12 (i) Every question relating to valuation for the purposes of determining the amount of any fee chargeable under this Chapter on a plaint or memorandum of appeal shall be decided by the Court in which such plaint or memorandum as the case may be, is filed and such decision shall be final as between the parties to the suit.

(ii) But whenever any such suit comes before a Court of appeal, reference or revision, if such Court considers that the said question has been wrongly decided to the detriment of the revenue, it shall require the party by whom such fee has been paid, to pay within such time as may be fixed by it, so much additional fee as would have been payable had the question been rightly decided. If such additional fee is not paid within the time fixed and the defaulter is the appellant, the appeal shall be dismissed, but if the defaulter is the respondent, the Court shall inform the Collector who shall recover the deficiency as if it were an arrear of land revenue.""

Clause (1) makes decisions on questions of valuation for the purpose of court-fee final between the parties. The second clause, however, entitles the appellate court to intervene if the question of valuation has been wrongly decided. The section therefore relates only to a question of valuation for the purpose of determining the amount of court-fee. In a suit like the present where the only relief claimed was

possession over certain properties and declaration that the plaintiffs were entitled to realise the amount of a decree the suit was liable to be valued for purposes of court-fee at the market value of the property and the amount of the decree. That was how the present suit was valued. There is no dispute at all about the value of the properties claimed. The properties in Schedule A have been correctly valued at Rs. 9,000/-. The decree is worth Rs. 4,000/-. No question of valuation was thus in dispute. Nor has any question of valuation been decided incorrectly to the detriment of revenue.

11. Valuation is one thing and the determination of the amount of court-fee on that valuation is an entirely different thing. The point which the Chief Inspector of Stamps has raised, does not relate to valuation at all. He accepts the valuation made by the plaintiffs as correct but contends that on that valuation the, court-fee ought to have been paid not only u/s 7(v) treating the suit as one for possession but should also have been paid u/s 7(iv-A) treating it as a suit involving adjudging void of an instrument securing property. So the question which has arisen in the case, does not relate to valuation at all. It only relates to the determination of the amount chargeable on the plaint on account of court-fee. Clause (i) of Section 12 does not, therefore, appear to be applicable and if this clause does not apply no action can be taken under the second clause of this section.

Our view on this point receives strength from the decision in [Chunni Lal and Others Vs. L. Gurdial Prasad and Others](#). In that case a written statement had been filed by the defendants claiming a set off in respect of certain amount. The valuation of the relief claimed in the written statement had been correctly made but the court-fee paid was found to be insufficient. The defendants in fact had paid Rs. 365/- though they should have paid Rs. 465/4/-. The deficiency was discovered in appeal and a question arose whether u/s 12 of the Court Fees Act, deficiency in court-fee could be realised. Answering the question in the negative, it was observed :

"Obviously Section 12 applies to a case in which the question relates to "valuation" for the purpose of determining the amount of court-fee. In the present case, there was no question at any stage as to the correctness of the valuation. The only question that has been raised is whether on the valuation put upon the relief claimed in the written statement, the correct amount of court-fee has been paid.

The dispute arises because there is a difference of opinion between the office of the lower Court and the office of this Court in the calculation of the amount of court-fee. In our opinion, Section 12, Court Fees Act has no application to the facts of the present case".

The situation in the present case is exactly the same.

12. The Standing Counsel, however, urged that as the suit involved adjudging of the will of Smt. Soniya to be void, it should be deemed that a relief had been claimed in that respect. That relief ought to have been separately valued for purposes of

court-fee. As no value was put on that relief, a question of valuation must also be held to be involved. We are unable to accept this contention. Clause (iv-A) of Section 7 of the Court Fees Act applies to two kinds of cases. Under the first class fall suits in which relief of cancellation or adjudging void of a certain decree or instrument is prayed for. Those are suits known as suits for cancellation or adjudging void or voidable of an instrument or decree. The other class consists of those cases where the suit is not for any relief of that kind but where the cancellation or adjudging void or voidable of an instrument or decree is only involved. In the latter class of cases no relief for cancellation or adjudging void or voidable is prayed for. The Court is, however, required to go into that question as otherwise the suit cannot be properly disposed of.

The law does not compel a plaintiff to claim a relief if he does not consider it necessary to do so. The law only compels him to pay an additional amount of court fee even though no relief is claimed by him if the question is involved in the case and may have to be dealt with by the Court. If no relief is claimed in suits of the latter class it is not possible for the court to deem that a relief has been claimed and require separate valuation of that relief for purposes of court-fee. The court can, however, require court-fee to be paid under Clause (iv-A) of Section 7 of the Court Fees Act on the ground that the case involves a question of cancellation or adjudging void of an instrument or decree. Requiring a separate valuation without there being a relief to be valued may also unnecessarily increase the valuation for the purposes of jurisdiction.

13. If Section 12 is excluded from consideration on the ground that it is not applicable, there is no other provision under which the respondents can be directed to make good the deficiency in court-fee. Section 28 of the Court Fees Act was also referred to. It reads as follows :

""28--No document which ought to bear a stamp under this Act shall be of any validity, unless and until it is properly stamped.

But, if any such document is through mistake or inadvertence received, filed or used in any Court or office without being properly stamped, the presiding Judge or the head of the office, as the case may be, or, in the case of a High Court any Judge of such Court, may if he thinks fit order that such document be stamped as he may direct, and on such document being stamped accordingly, the same and every proceeding relative thereto shall be as valid as if it had been properly stamped in the first instance"".

14. The first part of the section is a declaratory one and provides that if a document is not properly stamped it shall not be of any validity unless and until the deficiency has been made good. If the plaint in the present suit was insufficiently stamped, it must be held to be invalid under this part of the section.

The second part of the section can, however,, apply only;

- (1) if a document has been received, filed or used in any Court or office and
- (2) it has been, so received, filed or used through mistake, or inadvertence.

If these two conditions are fulfilled, the presiding Judge, or head of the office or in the case of a High Court, any Judge of the High Court may direct the document to be properly stamped. The plaint in the present case has not been received, filed or used in the High Court. It was filed and used only in the trial court. Nor is there anything to show that a mistake or inadvertence was committed in the plaint being filed, received or used even in the trial court. Here the trial court deliberately held that the court-fee paid was sufficient. The second part of the section Cannot therefore apply and even under that part we cannot direct that the plaint should be properly stamped.

15. We are, however, not called upon to decide at present what would be the effect on the plaintiffs' claim of the fact that their plaint was insufficiently stamped and was invalid on that account. That question can arise only when the appeal is being heard. We, therefore, express no opinion on that point

16. In the result though we agree with the view of the Chief Inspector of Stamps that the plaint was insufficiently stamped, we are unable to direct the plaintiff-respondents to make good the deficiency.