

**A.F.R.****Court No. - 36****Case :-** FIRST APPEAL FROM ORDER No. - 147 of 2024**Appellant :-** Kaniz Fatima**Respondent :-** Imran Khan**Counsel for Appellant :-** Pranab Kumar Ganguli**Counsel for Respondent :-** Sheikh Moazzam Inam**Hon'ble Kshitij Shailendra,J.****The Proceedings:****Appeal under section 6-A of the Courts Fees Act, 1870**

1. Heard Shri P.K. Ganguli, learned counsel for the plaintiff-appellant and Shri Sheikh Moazzam Inam, learned counsel for the sole-respondent.
2. The instant appeal under Section 6-A of the Court Fees Act, 1870 (hereinafter referred to as 'the Act of 1870') at the instance of plaintiff of Original Suit No.576 of 2021 (Kaniz Fatima v. Imran Khan) questions correctness and legality of the order dated 13.12.2023 whereby the learned Civil Judge, (Senior Division), Gorakhpur has decided the issue No.2 holding that though the suit has been correctly valued, the plaintiff has not deposited *ad-valorem* Court fees on market value of the property and, therefore, she has been called upon to deposit the *ad-valorem* Court fees.

**Submissions of the appellant:**

3. Challenging the order impugned, Shri Ganguli submits that the defendant-respondent is son of the plaintiff-appellant and he committed a fraud in the manner that under the garb of getting executed a power of attorney from the appellant, he got executed and registered a gift deed dated 07.04.2021 and the appellant, having come to know about the fraud, instituted the suit in question claiming a decree for declaration to the effect that the gift deed be declared as null, void, forged and fabricated having no

effect on the rights of the plaintiff and consequential information in this regard be sent to the Sub-Registrar's office.

4. Argument is that such a relief claimed falls under Article 17 (iii) of Schedule II of the Act of 1870, as applicable in the State of Uttar Pradesh, inasmuch as, the appellant had not claimed any consequential relief and, therefore, fixed amount of Court fees deposited by her was sufficient. He further submits that the court below has wrongly invoked Section 7(iv-A) of the Act of 1870 which applies only for cancellation of an instrument, which is not the situation here. Shri Ganguli has further urged that the defendant has no right to raise any objection in the matter of Court fees and, in this regard, reliance has been placed upon judgment of Supreme Court in the case of **Ratnavaramaraja v. Vimla, AIR 1961 SC 1299**.

Submissions of the respondent:

5. *Per contra*, learned counsel for the respondent submits that since the plaintiff has claimed relief for adjudging the instrument of gift as null and void, the Court fees would be payable as per Section 7(iv-A) of the Act of 1870 and residuary Article 17(iii) of Schedule II would not apply. He, therefore, supports the order impugned.

Analysis of rival contentions:

6. Having heard learned counsel for the parties, the Court finds that the trial court has passed the order impugned after taking into consideration the following Authorities:-

**(i). Suhrid Singh @ Sardool Singh v. Randhir Singh & others, (2010) 12 SCC 12;**

**(ii). Shailendra Bharadwaj & others v. Chandra Pal & another, (2013) 1 SCC 579;**

**(iii). Agra Diocesan Trust Association v. Anil David and others, AIR 2020 SC 1372;**

7. Although the judgment of **Suhrid Singh @ Sardool Singh** (supra) is not applicable in the State of Uttar Pradesh as the said case had arisen out of State of Punjab, where different Rules of Court fees exist, the Supreme Court in the case of **Shailendra Bharadwaj & others** (supra), has extensively dealt with the provisions of Court Fees Act, 1870 in a case where instrument is sought to be adjudged as null and void and has clearly held that in such situation, Section 7(iv-A) would be applicable. The judgment of **Shailendra Bharadwaj & others** (supra) has further been relied in **Agra Diocesan Trust Association** (supra).

8. Now dealing with the argument of Shri Ganguli that residuary Article 17(iii) would apply, it is first necessary to refer the said Article which reads as under:-

"17(iii) To obtain a declaratory decree where no consequential relief is prayed in any suit, not otherwise provided for by this Act."

9. At the same time, Section 7(iv-A) of the Act of 1870 needs reproduction as under:-

"(iv-A) For cancellation or adjudging void instruments and decrees. 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 party 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-sections (v), (v-A) or (v-B), as the case may be.”

**10.** A perusal of Article 17 (iii) of Schedule II shows that it applies in a case where a declaratory decree is sought to be obtained without claiming any consequential relief, however, the language used in the article is clear and unambiguous to the effect that such a suit is “not otherwise provided for by this Act”. Meaning thereby that if a suit is otherwise covered by any other provision in the Act, 1870, the aforesaid residuary clause would not apply.

**11.** In the instant case, relief claimed is for adjudging the gift deed as null, void as well as forged and fabricated. In this view of the matter it is not a simplicitor suit for declaration of rights and it clearly falls under section 7(iv-A) of the Act which is specifically otherwise provided in the Act.

**12.** In **Ajay Tiwari v. Hriday Ram Tiwari and others, 2006 (4) AWC 3546 (DB)**, a Division Bench of this Court dealt with the conflict in between Article 17(iii) of Schedule II and Section 7(iv-A) of the Act of 1870 and held that in a suit for declaring a sale deed as null and void, the Court fees would be payable as per Section 7(iv-A) of the Act and not as per Article 17(iii).

**13.** Now testing the submission of Shri Ganguli as regards right of a defendant to raise objection in Court fees matter, this Court deems it appropriate to refer Sections 6(3) and 6(4) of the Act of 1870 which read as under:-

"**6 (3).** If a question of deficiency in court-fee in respect of any plaint or memorandum of appeal is raised by an officer mentioned

in Section 24-A the Court shall, before proceeding further with the suit or appeal, record a finding whether the court-fee paid is sufficient or not. If the Court finds that the court-fee paid is insufficient, it shall call upon the plaintiff or the appellant, as the case may be, to make good the deficiency within such time as it may fix, and in case of default shall reject the plaint or memorandum of appeal:

**6(4).** Whenever a question of the proper amount of court-fee payable is raised otherwise than under sub-section (3), the Court shall decide such question before proceeding with any other issue."

**14.** The aforesaid provisions clearly provide adjudication of objection raised in relation to sufficiency of Court fees. Such objection can be raised by two category of persons; one, by the officers mentioned under Section 24-A of the Act and the other, by the persons other than those mentioned in the said provision. For a ready reference, Section 24-A of the Act is reproduced as under:-

**"24-A. Control of court-fee and Stamp Commissioner.-(1)**

The levy of fees under this Act shall be under the general control and superintendence of the Chief Controlling Revenue Authority, who may be assisted in their supervision thereof by the Commissioner of Stamps and by as many Assistant Commissioners of Stamps, Deputy Commissioners of Stamps and Assistant Commissioners of Stamps as the State Government may appoint in this behalf or by any other subordinate agency appointed for the purpose.

(2). The officers and the agency referred to in sub-section (1) shall have access to all records, and shall be furnished with all such information as may be required by them for the performance of their duties under this Act."

**15.** In the instant case, the defendant-respondent falls under the category described under Section 6(4) of the Act of 1870 and, therefore,

he certainly had a statutory right to raise objections and the Court was bound to decide the same. In this regard the Division Bench in paragraph 13 of **Ajay Tiwari** (supra) has held as under:-

“13. The learned Counsel for the plaintiff/appellant faintly argued that it is not open for the defendants/respondents to take any objection with regard to the inadequacy or deficiency in payment of court fees. The above submission has no merits as the question of deficiency or payment of proper amount of court fees can also be raised otherwise than by the officers of the State or the Revenue. Section 6(4) of the Act stipulates that whenever a question of proper amount of court fees payable is raised otherwise than under Sub-section (3) of Section 6, i.e., by person other than the officers mentioned in Section 24-A of the Act, the Court shall decide such question before proceedings with any other issue. Thus, the Court is empowered to decide the question of payment of proper amount of court fees even if it has not been raised by the officers of the State or Revenue. Therefore, the submission has no force and is not acceptable more particularly as the same was not even raised in the court below. “

**16.** As far as reliance placed by learned counsel for the appellant on **Ratnavaramaraja** (supra), it is observed that the Apex Court, in that case, was dealing with maintainability of revision before the High Court at the instance of a defendant who was aggrieved by determination of an issue regarding valuation of property and Court fees. The Supreme Court held that whether proper Court fees is paid on a plaint is primarily a question between the plaintiff and the State and, even if, the defendant may believe and even honestly that proper Court fees has not been paid by the plaintiff, he has still no right to move the superior Court by way of appeal or revision and, therefore, it was held that High Court had grievously erred in entertaining the question of Court fees at the instance of defendants in revision-application filed under Section 115 CPC.

17. The instant case has not been filed by a defendant but it is a statutory appeal preferred by the plaintiff when the order has been passed against her. Therefore, with due respect to the decision of Apex Court in **Ratnavaranaraja** (supra), the same has no application in the fact situation involved in the present case. Further, the ratio laid down in **Ratnavaranaraja** (supra), was re-considered by the Apex Court in **Shamsher Singh v. Rajinder Prasad and others, AIR 1973 SC 2384** and considering both the decisions, the Division Bench of this Court, in **Ram Krishna Dhandhanian and another v. Civil Judge (Senior Division), Kanpur Nagar and others, 2005 (3) AWC 2751(DB)** has held in paragraph 13 as under:-

“13. In **Sri Rathnavarmaraja v. Smt. Vimla, AIR 1961 SC 1299**, the Hon'ble Supreme Court held that whether proper court-fee has been paid or not, is an issue between the plaintiff and the State and that the defendant has no right to question it in any manner. The said judgment of the Apex Court was reconsidered and approved in **Shamsher Singh v. Rajinder Prasad and others, AIR 1973 SC 2384**, observing as under :--

"The ratio of that decision was that no revision on a question of court fee lay where no question of jurisdiction was involved."

18. The Division Bench, in the same judgment of **Ram Krishna Dhandhanian and another (supra)**, as regards right of a defendant to raise objections on valuation and deficiency in court fees, held in 'paragraph 19' as under:-

“19. Thus, in view of the above, the legal position can be summarized that the defendant has a right to raise all objections on the valuation and deficiency of the court-fees. The matter is to be adjudicated upon and decided by the Court under Section 12 of the Act, 1870 and the decision so taken by the trial Court shall be final. The defendant cannot raise the grievance against the said decision unless the valuation suggested by him affects the jurisdiction of the Court. However, the appellate or revisional

Court always can test the issue *suo motu* and make the deficiency good as the purpose of the Act is not only fixing the pecuniary jurisdiction of the Court but also creating revenue for the State.”

Conclusion:

**19.** In view of the above discussion on facts and law, this Court does not find any error in the order impugned.

**20.** The appeal is, accordingly, **dismissed**. Interim order, granted earlier, stands vacated.

**Order Date :- 7.11.2024**

Jyotsana

**(Kshitij Shailendra, J.)**