

(1967) 05 AHC CK 0013

In the Allahabad High Court

Case No : F.A. No's. 301 and 302 of 1959

Kunj Behari Lal (died and after him Smt. Bibi) and Another

APPELLANT

Vs

Shugan Chand and Others

RESPONDENT

Date of Decision : 19-05-1967

Acts Referred:

Court Fees Act, 1870 — Article 17(iii), 6B, 7(ivA)(UP)

Court Fees Act, 1870 — Article 17(iii), 6B, 7(ivA)(UP)

Court Fees Act, 1870 — Article 17(iii), 6B, 7(ivA)(UP)

Citation : (1967) 37 AWR 552

Hon'ble Judges : V.G. Oak, J;S.N. Dwivedi, J;Gangeshwar Prasad, J

Bench : Full Bench

Advocate : K.C. Saxena and S.C, for the Appellant; Radha Krishan, for the Respondent

Judgement

Gangeshwar Prasad, J.—The matters which have been referred to this Full Bench relate to court-fee.

2. Sagun Chandra and Smt. Rajeshwari Devi Plaintiffs-Respondents in F.A. No. 301 of 1959, filed suit No. 3 of 1957 in the court of the civil Judge Farm-khabad, for a declaration that a sale deed dated 16-10-1952 was unauthorised, void, illegal and ineffective against the Plaintiffs and it did not bind them or affect their one-third share in the property purporting to have been sold under it. Smt. Ram Piari, Plaintiff-Respondent in F.A. No. 302 of 1959, filed in the same court suit No. 48 of 1956 for a similar declaration in her own favour in respect of the same sale deed. A court fee of Rs. 18-12-0, as a fixed court-fee for a suit to obtain a declaratory decree, was paid on the plaint in both the suits. The Inspector of Stamps raised an objection that additional court-fee was payable on the plaint in the two suits as the reliefs claimed therein were covered by Section 7(iv-A) (UP) of the Court Fees Act. Kunj Behari Lal, who is the vendee under the sale deed and who was the main contesting Defendant in the suits, also took an objection that the court-fee paid on the plaints was insufficient. The learned Civil Judge framed an issue on the question of court-fee and gave a finding thereon on

6-9-1957. He held that Section 7(iv-A) (UP) of the Court Fees Act has no application as a sale deed is not an instrument securing property and that the suits fall Under Article 17(iii) of Schedule II of the Court Fees Act. His finding, accordingly, was that the court-fee paid on the plaint in the two suits was sufficient. On the same date the learned Judge passed an order that, for the reasons given in the finding recorded by him, the report of the Inspector of Stamps was not correct and directed that information of the order be given to him. No application for revision of this order was filed u/s 6-B of the Court Fees Act. Both the suits were decreed. Kunj Behari Lal thereupon filed these appeals, paying the same court-fee on the memorandum of appeal as had been paid on the plaint. After examining the record, the Stamp Reporter of this Court reported that the suits giving rise to these appeals really fall within the purview of Clause (2) of Section 7(iv-A) (UP) of the Court Fees Act and there was, accordingly, a deficiency of Rs. 161-12-0 in the court-fee on the plaint and a similar deficiency on the memorandum of appeal in each of the two cases. There was an objection to the report and the matters eventually came up before a learned Judge of this Court. The learned Judge found that there was a conflict of authorities on the questions involved and ordered that the papers be laid before Hon"ble the Chief Justice for constituting a larger Bench for deciding them. The matter went before a Division Bench, but the Bench thought that the questions should be decided by a Full Bench. That is how they have been referred to this Bench.

3. The questions that arise for consideration may be formulated thus:

- (1) Whether the suits giving rise to these appeals fall u/s 7(iv-A) (UP) or Under Article 17(iii) of Schedule II of the Court Fees Act?
- (2) Whether the decision or order of the Civil Judge dated 6-9-1957 relating to the court-fee payable in the suits has become final?
- (3) Whether an order directing the Plaintiffs-Respondents to make good the deficiency in court-fee on the plaint in the two suits can be made by this Court in the appeals arising out of them and what would be the result if the deficiency is not made good?

Question 1.--Section 7(iv-A) applies to 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. A sale deed cannot appropriately be described as an instrument securing money. Money is certainly paid or promised in exchange for transfer of ownership effected by a sale deed, but securing money is not the object of a sale deed and it does not constitute its essence. What has to be seen, therefore, is whether a sale deed is an instrument securing "other property having such value." The Civil Judge, relying on Chief Inspector of Stamps Vs. Jash Pal Singh and Others, , held that a sale deed is not an instrument securing property. In that case a learned single Judge of this Court has observed:

The expression "an instrument securing money" obviously means a document

creating a charge or hypothecation bond or a mortgage deed or any other document intended to assure payment of money. The expression "an instrument securing other property" should have, unless the context does not permit it, a similar meaning deed of sale hardly secures property. It conveys the property and transfers the title of the property to the transferee.

4. Apart from what has been quoted above nothing else has been said by the learned Judge in support of the view taken by him. There is also no reference to the authorities bearing on the point. Indeed, it has been noted in the judgment that the learned Counsel for the State was not able to cite any authority to support the contention that a sale deed was a document securing property within the meaning of Section 7(iv-A). It would appear that there were weighty authorities in support of the contention. In *Ram Kumar v. Damodar Das* 1949 AWR 67 = AIR 199 All 535 a Division Bench of this Court had to determine the court fee payable by the Plaintiffs-Appellants in a suit filed by them against their father for partition of certain joint family properties. The properties included two items which had already been sold by the father to certain persons and the vendees were also parties to the suit. It was said in the plaint that the two items sold to the vendees were worth Rs. 1,50,000/- but the father of the Plaintiffs-Appellants had sold them for Rs. 82,000/- only, that the sale deeds were not executed for legal necessity and that they were not binding on the Plaintiffs-Appellants. The trial Court had treated the plaint as involving cancellation of the sale deeds and demanded court-fee on one-fifth of the valuation of the subject matter. The Bench upheld the order of the trial court and observed:

We are, therefore of opinion that as this case relates to sale deeds, we have to look to the value of the property in respect of which the sales were effected. That value, according to the Plaintiffs-Appellants themselves, was Rs. 1,50,000/- at least at the time of the sale deeds. The lower court was, therefore, right in demanding court-fee on the sum of Rs. 30,000/-, that is, on one-fifth of the total value which was Rs. 1,50,000/-.

5. The Bench referred, in support of its view, to *Jonnaram Balireddi Vs. Khatipulal Sab alias Abdul Satar and Others*, and *Kolachala Kutumba Sastri Vs. Lakkaraju Bala Tripura Sundaramma and Others*, in both of which the Madras High Court had to deal with a somewhat similar provision introduced into the Court Fees Act by a Madras Act. In the latter case the point whether a sale deed is an instrument securing property does not appear to have been disputed but the Full Bench which decided the case accepted the view taken in the former case where the point was specifically raised and considered. The learned Judge who decided the former case held that a mortgage deed is a "document securing money and a sale deed is a "document securing other property" and referred to the observations made by him in an earlier decision, *Doraiswami Reddiar and Others Vs. Thangavelu Mudaliar and Others*, . These observations may well be quoted here:

The words "securing money" or "other property" are not happy; but the question

is: Is this or not a suit for cancellation of a document securing property having money value? I think it clearly is. I have no doubt that the release deed in question is a document securing property; in other words, by that document, the property covered by it is made secure to the Defendants. Can there be any doubt that a sale deed comes within the terms of this section? The present instrument does not materially differ from a sale deed. By that, the rights of the Plaintiffs in the partnership and its property have been transferred for consideration to the Defendants. The word "secure" may mean according to the Oxford Dictionary, "to make the tenure of a property secure to a person." I am, therefore, of the opinion that the proper section applicable is Section 7(iv-A).

6. In *Smt. Kamla Devi v. Suni Central Board of Waqfs, UP Lucknow* AIR 1949 All. 63 the question whether a waqfnama is an instrument securing property came up for decision before a Division Bench of this Court. The learned Judges constituting the Bench were not agreed in one particular which is not relevant for the purpose of the present case, but they agreed in holding that a waqfnama which operates as an extinguishment of the right of the executant in a property and conveys it to the donee is an instrument securing property within the meaning of Section 7(iv-A).

7. None of the above mentioned cases was, however, brought to the notice of the court in *Chief Inspector of Stamps v. Jashpal Singh* (supra). In a subsequently decided case also a Division Bench of this Court dealt with the meaning of the expression "securing property". The question in that case was whether a will is, after the death of the testator an instrument securing property within the meaning of Section 7(iv-A). The Bench held that it was such an instrument and observed:

The verb "to secure" has a wide meaning and we think that the definition most appropriate in the present context is to make secure or certain (Murray) or to make safe (Oxford)-- *Udai Pratap Gir and Another Vs. Shanta Devi and Others*, .

8. Except for *Chief Inspector of Stamps v. Jashpal Singh* (supra) I do not find any case in which it has been held that a sale deed is not an instrument securing property and as I have shown above, the view taken in that case is contrary to three Division Bench decisions of this Court. It is true that in only one of these three decisions the instrument involved was a sale deed and out of the remaining two one dealt with a waqfnama and the other with a will. But that does not affect the value of the latter two decisions in the determination of the question whether a sale deed is an instrument securing property, because, to my mind, all that may be said for treating a waqfnama or a will as an instrument securing property may be said with equal, if not greater, force for treating a sale deed as such.

9. It appears to be clear that the expression "securing" in Section 7(iv-A) of the Court Fees Act connotes making safe or certain. Surely, the expression must have the same connotation in relation to all the things spoken of in the section and if it is the above connotation that has to be ascribed to it in relation to

"money" it must bear a similar connotation in relation also to "other property having such value". Further, the words "other property having such value" obviously cover immovable property as well and the explanation appended to the section puts that beyond doubt. The only sense in which an instrument may be regarded as securing immovable property is that it makes the title thereto or its possession and enjoyment safe or certain. Even according to the learned Judge who decided the case of Chief Inspector of Stamps v. Jashpal Singh (Supra) "an instrument securing money" obviously means a document intended to "assure" payment of money and the expression "an instrument securing other property" should have, unless the context does not permit it, a similar meaning. He, however, did not regard a sale deed as "an instrument securing property" because it conveys property and transfers the title of the property to the transferee. I may, with great respect to the learned Judge, say that what has been regarded by him as taking away from a sale deed the character of an instrument securing property seems to me as imparting to it that character in the highest degree. A sale deed "assures" in the most effective manner the divesting of the title of the transferor in a property and the vesting of that title in the transferee and where the sale of a property can take place only by means of a deed it is the sale deed alone that "assures" the extinction of the transferor's interest and the acquisition of that interest by the transferee. In my opinion, therefore, a sale deed is "an instrument securing property" within the meaning of Section 7(iv-A) of the Court Fees Act.

10. The next thing to be seen is whether the suits fall within any of the categories mentioned in the first portion of Section 7(iv-A). In what circumstances a suit has to be regarded as one for cancellation of an instrument and in what others as one for merely obtaining a declaratory decree has been a matter on which there has been considerable divergence of views in the decided cases. The divergence has, however, lost its significance in the State of UP, in view of Section 7(iv-A) introduced into the Court Fees Act by UP Act XIX of 1938. The section has a very wide compass. It covers not merely suit for cancellation of instruments described therein but also for adjudging them void or voidable and it goes further and embraces not only suits for cancellation of such instruments or adjudging them void or voidable but also suits involving such cancellation or adjudging. On the scope of the first portion of the section therefore it is not necessary to refer to authorities. I may, however, mention a Divi on Bench case of his Court-- Mt. Jileba Vs. Mt. Parmesra, --where it was held that Section 7(iv-A) has been so worded that even though the Plaintiff has not claimed the relief of cancelling or adjudging void or voidable an instrument, if the suit involves such cancellation or adjudging void or voidable such instrument, court-fee u/s 7(iv-A) is payable.

11. In regard to this aspect of the question the learned Judge before whom these matters initially came up for decision referred to Kishan Lal v. A.S. Higher Secondary School Jahangirabad 1962 ALJ 353 and observed that he was unable to reconcile that decision with Ram Kumar v. Damodar Das (supra). To my mind,

I say so with great respect, there is no conflict between the two decisions. I have already stated the nature of the suit with which the latter decision dealt and there can be little room for doubt that the suit involved adjudging void or voidable the two sale deeds executed in favour of the vendees who were parties to the suit. The Plaintiffs expressly stated in the plaint that the sale deeds were not executed for legal necessity and were not binding on them and they apparently prayed for a partition of their share in the properties which had been sold away. In these circumstances Section 7(iv-A) obviously applied. In *Kishan Lal v. A.S. Higher Secondary School Jahangirabad* the suit was for a declaration that a sale deed and a waqf deed executed by a Hindu widow were not binding on the Plaintiff on her death as the alienations were without legal necessity and not for the benefit of the estate. Ad valorem court-fee u/s 7(iv-A) was paid on one-fifth of the value of the property covered by the two deeds. So far as these deeds went there was no dispute as to the sufficiency of the court-fee. The Defendants contented the suit, inter alia, on the ground that the lady was not a limited owner but an absolute owner, having inherited the property from her husband under a will. Plaintiff, in his plaint had made no reference whatsoever to the will and had completely ignored it. After the filing of the written statement by the Defendants, however, the Plaintiff denied the genuineness of the will alleging; that it was a forgery but he took no other plea in respect of it. The suit was dismissed by the trial court and the Plaintiff then filed a first appeal to this Court. The Chief Inspector of Stamps reported that since the Appellant in effect wanted cancellation of the will on its being adjudged to be void or voidable in addition to the relief of adjudging the deeds of sale and waqf void or voidable he should have paid additional court-fee for being relieved from the will in respect of the property involved in the suit. The Division Bench rejected the report and held that no additional court fee was required. I have already noted that not only was there a total absence of any relief in respect of the will but there was also no reference to it in the plaint. The stand taken by the Plaintiff in reply to the defence based upon the will could not be taken into account in determining the court-fee payable for the suit, but in his reply too he did not say that the will was void or voidable and repudiated the very existence of the will by describing it as a forgery. The nature of the suit in that case was, therefore, essentially different from that of the suit in *Ram Kumar v. Damodar Das* and it cannot be said that the decision in the former case is in any manner opposed to the decision in the latter.

12. The reliefs claimed in the suits which have led up to these appeals make it clear that the suits are for adjudging the sale deed void or voidable. It is true that the relief claimed in suit No. 48 of 1956, unlike the relief claimed in suit No. 3 of 1957, does not mention the word "void" or "voidable" in connection with the declaration sought. But the absence of the word "void" or "voidable" in the relief is a matter of not much consequence in deciding whether a suit is for adjudging a deed void or voidable or involves such adjudging. In suit No. 48 of 1956 also the Plaintiff has prayed for a declaration that the sale deed is "illegal, without

authority and not binding on the Plaintiff or her one-third share." Evidently, that suit too, like suit No. 3 of 1957, is for adjudging the sale deed void or voidable. Both the suits, therefore, fall squarely within the four corners of Section 7(iv-A) and Article 17(iii) of Schedule II which applies only to suits not otherwise provided for does not come into play.

Question 2.--The only provisions in the Court Fees Act which confer finality on decisions on matters affecting the court-fee payable on a document are Section 5 and Section 12. Section 5 can have no application to the decision or order of the Civil Judge and it has, therefore, to be left out of consideration. Section 12 runs as follows:

(i) Every question relating to valuation for the purpose 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.

13. It would be seen that this section is in its application confined to such decisions only as are given on a question relating to valuation for determining the court-fee. A decision on the question whether a suit falls u/s 7(iv-A) or Article 17(iii) of Schedule II is not a decision on a question relating to valuation for determining the court fee payable in respect of it but on a question relating to the basis or mode of the computation of court fee. To what kind of decision Section 12 attaches its finality has been considered by the Supreme Court in *Nemi Chand and Another Vs. The Edward Mills Co. Ltd. and Another*, where, after referring to the decisions relating to the matter, the Supreme Court has given its approval to those decisions in which it has been held that the finality declared by Section 12 is limited only to the question of valuation pure and simple and does not relate to the category under which a certain suit falls. This decision of the Supreme Court settles finally the scope of Section 12.1 may, however, mention two subsequent Division Bench cases of this Court, *L. Chunni Lal v. L. Gur Dial Prasad* 1956 AWR 687 and *Ram Katori v. Chaman Lal* 1961 AWR 717, decided in accordance with the view which received the approval of the Supreme Court so far as Section 12 was concerned. The result, therefore, is that neither of the two Sections, 5 and 12, can provide any finality to the decision or order of the Civil Judge on the question relating to the court fee payable for the two suits. Even if Section 12 had been applicable the decision would have been

final only between the parties to the suit and Sub-section (2) of the section would have not only empowered this Court to direct payment of additional court fee but made it obligatory to do so in case it considered the decision wrong.

14. It is true that it was open to the Chief Inspector of Stamps to move this Court u/s 6-B for revision of the order parsed by the Civil Judge on the report of the Inspector of Stamps. But there is nothing in the section or in the Act to indicate that if the Chief Inspector of Stamps does not move for revision u/s 6-B, the order in respect of which this could have been done becomes final and can no longer be questioned or disturbed. The absence of any provision attaching finality to the order becomes very significant when it is contrasted with the presence in the Act of finality conferring provisions in regard to certain other matters and the conclusion seems irresistible that the order does not finally decide the question of the category in which a particular suit falls and the basis or mode of computing the court-fee payable in respect of it.

15. In *Official Receiver and Another Vs. Makund Das*, a Division Bench of this Court held that there is nothing in Section 12(2) to indicate that if the Chief Inspector of Stamps has not taken any steps u/s 6-B, the matter becomes final and that it cannot be considered again by a court of appeal, reference or revision under that section. The Bench then proceeded to observe that no doubt the Chief Inspector of Stamps, if he has failed to take any action u/s 6-B, would be debarred from raising the question again in a court of appeal, reference or revision when the suit comes before such court at a later stage, but if the court, suo motu, or otherwise e.g. on the report of the Stamp Reporter, finds that a question relating to the amount of court-fee payable on a plaint or memorandum of appeal has been wrongly decided to the detriment of the revenue there is no reason why it should not be able to consider it afresh and direct that such additional fee as may be payable on such plaint or memorandum of appeal be paid by the party from whom it is due. The decision in that case was based entirely on Section 12, but, in the light of what has been laid down by the Supreme Court in *Nemi Chand v. The Edward Mills Co. Ltd.* (supra), it must be said that Section 12 was not applicable.

16. Sections 4, 5 and 6 of the Act, however, make it abundantly clear that it is for the court to which a memorandum of appeal is presented to decide whether or not the memorandum is sufficiently stamped, irrespective of the fee paid on the plaint and irrespective also of any decision given or order passed by the trial court or a lower court of appeal in regard to the provision under which court-fee is chargeable for the suit. The fact that it was open to the Chief Inspector of Stamps to move this Court u/s 6-B for revision of the order passed by the Civil Judge on his objection cannot change the situation. Appeals having been filed in this Court, it is now for this Court to decide the amount of court-fee payable in respect of the suits out of which the appeals have arisen and neither the decision of the Civil Judge on the issue relating to court-fee nor his order on the objection raised by the Chief Inspector of Stamps has become final.

Question 3.--The power of this Court to direct payment of additional court-fee on the memorandum of appeal on the ground that court-fee is payable on a basis different from that basis on which it was paid on the point does not, in my opinion, imply the existence of a power to demand payment of additional court-fee on the plaint on the same ground. In order that such a power may be exercisable it must have a clear statutory basis. In *Official Receiver v. Makund Das* (supra) Sub-section (2) of Section 12 was regarded as giving that power. Sub-section (2) of that section, however, applies only when the question referred to in Sub-section (1) has been wrongly decided and since according to the Supreme Court decision in *Nemi Chand v. The Edward Mills Co. Ltd.* Sub-section (1) is limited in its application to cases where only the question of valuation pure and simple has been decided, Sub-section (2) cannot give the aforesaid power. Really, that power has been conferred by Section 28 of the Court Fees Act. The section runs as follows:

No document which ought to bear 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 being 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.

17. Broadly speaking Sections 4 and 6 of the Act provide that no document of any of the kinds specified in the first or second schedule of the Act shall be filed, exhibited or recorded in or shall be received or furnished by the Court or the office respectively mentioned in the aforesaid sections unless the proper court-fee has been paid On such document. Section 28 lays down that unless and until a document bears the proper court-fee stamp it shall not be of any validity. The combined effect of these sections, therefore, is that a plaint which is not properly stamped cannot be filed or received and even if such a plaint is filed and received it will remain invalid unless and until it is properly stamped. The validity of the plaint has to be determined even in appeal, whether the suit instituted by means of such a plaint has been decreed or dismissed. If the suit has been decreed, the court seized of the suit in appeal is to see whether it could have been decreed and if the suit has been dismissed the court is to see whether it can be decreed in appeal. In either "case the validity of the plaint which is the" very foundation of the suit has to be examined. The fact that the plaint was held to be a valid document by the court receiving it neither precludes the court of appeal from judging its validity nor absolves it from the duty of doing so. If the court of appeal finds that the plaint is invalid by reason of not being properly stamped it has to ignore the plaint altogether unless and until it is properly stamped.

18. The second paragraph of Section 28 allows the invalidity of a document to be

cured and invests the court with the power of directing the person concerned to make good the deficiency in court-fee which creates the invalidity. According to the provisions of the paragraph the document and every proceeding taken thereon shall stand validated if the deficiency is made good. The result that would follow if the direction of the court in regard to a document is not complied with is not indicated in that paragraph but the reason therefor is evident. The document will remain invalid under the first paragraph of the section unless the invalidity gets removed under the second paragraph. In the case of a plaint, therefore, if the direction given by the court under the second paragraph is not complied with the invalidity of the plaint continues and such consequences as may follow from the plaint being invalid will ensue.

19. In *L. Chunni Lal v. L. Gur Dial Prasad* (supra) Section 28 has also been dealt with and there is an observation to the effect that an appellate court has power under the second paragraph of Section 28 to direct that deficiency in court-fee may be made good if a document is to be "used" in the appellate court, but not otherwise. The document involved there was a written statement filed by certain Defendants which required court-fee because of a claim made in it. In my opinion, the power of an appellate court to direct payment of court-fee on a document is not dependent upon whether the document may be or is intended to be "used" in the appeal. The second paragraph of Section 28 does not speak of future use but of use already made in the part. The power to demand payment of the deficiency in court-fee arises if the document has been "used" or even received or filed although it is not intended to be used in appeal. Of course the power is only a curative power and the failure to pay up the deficiency would only result in the document remaining invalid. With great respect to the learned Judges who decided the above case, I am unable to subscribe to the proposition that if the document is not to be used in appeal, the court of appeal cannot make a direction under the second paragraph of Section 28. However, in the appeals before us there can be no doubt that the invalidity of the plaints filed, received and used in the court below if not cured may destroy the very basis on which the decrees under appeal were passed and its "use" at the hearing of the appeal cannot be dispensed with.

20. In *Chedi Lal and Anr. v. Kirath Chand and Ors.* ILR 2 All. 682, which is a Full Bench decision of this Court, all the four learned Judges composing the Bench agreed in holding that u/s 23 of the Court Fees Act this Court has the power to direct the deficiency in court-fee on a plaint to be made good. Spankie, J. who delivered a separate and detailed judgment referred to both paragraphs of Section 28 and then observed:

Section 28 provides that no document which ought to bear a stamp under the Act shall be of any validity, until it has been properly stamped. The section deals with the case in which a document through mistake or inadvertence has been received, filed or used in any Court, without being properly stamped. Such a document may be returned at the outset by the Presiding Judge of the Court in

which it has been so received or filed or used, or if the document has been received, filed or used in a High Court, any Judge of that Court, may, if he thinks fit, order that such document may be stamped as he may direct. But the section does not say that the High Court Judges can interfere only when this document has actually been filed in his court. If the document has been used in the High Court and the original mistake or inadvertence which permitted its reception in a lower Court, without being properly stamped, comes to light in the High Court, any Judge of that Court may direct that it should be properly stamped, always having regard to the fact that it must be a document chargeable under the Court Fees Act. This construction appeals to be quite reasonable and consistent with the concluding provision of the section 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.

21. It is true that in that case the Plaintiff was the Appellant but that does not make any difference in the principle. Both on the wording of Section 28 and on the authority of the above mentioned Full Bench decision it must be held that this Court has the power to direct payment by the respective Plaintiffs of the two suits of the deficiency in court-fee on the plaints filed by them.

22. In *Ram Katori and Anr. v. Chaman Lal* (Supra) Section 28 also came up for consideration and the learned Judges constituting the Bench which decided that case, after referring to the section said:

The plaint in the present case has not been received, filed or used in the High Court. It was filed and received 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.

23. With great respect, I am not able to give assent to the above observation. It has to be noticed that the paragraph speaks both of mistake and inadvertence and that it does not limit either mistake or inadvertence to mistake or inadvertence of any of the parties to the suit but includes mistake or inadvertence of the court as well. Even if the use or reception of an insufficiently stamped document by a court has not been due to inadvertence and the document has been used or received after deliberation the use or reception is suit "through mistake". The court using or receiving the document may have fully applied its mind to the question relating to the Court-fee payable on the document and may have given a finding that the court-fee paid was sufficient but if the court-fee is subsequently found to have been insufficient the use or reception or use of the document must be regarded as having been due to mistake.

24. Reference is this connection must be made to a decision of this Court by a

Full Bench of five learned Judges in *Hari Ram and Anr. v. Akbar Hussain* 4 ALJ 636. The case involved a number of questions which were bound up with the interpretation of Section 28 of the Court Fees Act. Most of those questions are only of academic interest now, because they were connected with some provisions in other enactments also which have since been replaced by enactments having different provisions. There are, however, in that case some observations of great authority and value by Knox, A.C.J. on Section 28 and the meaning of the word "mistake" therein. But the observations of the learned Judge are to be read in the context of certain important features of the case. Firstly, the deficiency in court-fee was connected only with an incorrect valuation of the subject matter of the suit and not with the category in which the suit fell and was chargeable under the Court Fees Act. Secondly, the argument on behalf of the Defendant who was the Appellant before the Court was that the Plaintiff who had been allowed the benefit of the second paragraph of Section 28 by the lower appellate court was not entitled to the benefit because the insufficiency in court-fee was due to his own mistake or inadvertence and the paragraph applies only in cases of mistake or inadvertence of the court. Thirdly, it was contended on behalf of the Defendant that if there was nothing in the plaint to put the court or the Munsarim of the court on its or his guard, there was no mistake or inadvertence so far as the Court or the Munsarim was concerned. The argument that the second paragraph of Section 28 applies only in cases of mistake or inadvertence of the court was not accepted and it was held that the paragraph is subject to no such limitation. As to the contention noted above as constituting the third important feature of the case, Knox, A.C.J. observed:

I was at first impressed by the contention that if there be nothing in the plaint to put the Court or the Munsarim of the Court on its or his guard, there can be no mistake or inadvertence so far as the Court or Munsarim is concerned. But what is a mistake? It is not mere forgetfulness, it is a slip, made, not by a design but by mischance *Esher, M.R. in Barrow v. Issac* (1891) 1 QB 417; *Russell, C.J., in Stampford v. Beal* 65 LJ, QB 74 and mistake or inadvertence as interpreted in *Doed, Blewitt v. Philips* (1 QB 96).

25. The observation quoted above cannot, however, be interpreted as laying down that the reception of a plaint as a result of an incorrect finding given by a court after deliberation is not a reception through mistake. It has to be borne in mind that the second paragraph of Section 28 was enacted primarily for relieving the hardship which might result on account of the first paragraph of the section and not in the interest of revenue. It is not an independent provision but a provision connected with the preceding provision in the first paragraph as the word "But at its beginning would show. If the reception of a plaint as a result of a deliberate finding or order on the question of court-fee is not a reception through mistake, the result would be that the benefit of the second paragraph of Section 28 would not be available in such a case and even if the deficiency in court-fee is made good the proceedings taken on the basis of the plaint prior to the payment of the deficiency would not be validated. The legislature could not have intended

such an inequitable result. Where a court has by a deliberate finding or order held that the plaint has been sufficiently stamped and has proceeded with the suit on that basis there is all the more reason for the extension of the benefit of the said provision. It would, therefore, be incorrect to regard the above observation of Knox, A.C.J. as lending support to the view that if a court receiving a plaint has recorded a finding and an express order to the effect that the plaint is sufficiently stamped there is no reception through mistake. On the words of the section itself, "mistake" stands distinguished from "inadvertence".

26. In my opinion, therefore, both the first and the second paragraphs of Section 28 are applicable in the present case. Under, the second paragraph of the section this Court may, if it thinks fit, direct that the deficiency in the court-fee on the plaint be made good. The result of a noncompliance with that direction would be that the plaint would remain invalid.

27. As a result of my answers to the questions formulated above my conclusions in regard to the position relating to court-fee in these appeals are: The decision of the Civil Judge on the issue relating to court-fee has not become final. Likewise, the order passed by the Civil Judge on the objection of the Inspector of Stamps as to insufficiency of the court-fee on the plaint has not become final, inspite of the fact that no application for revision u/s 6-B of the Court Fees Act was made. The suits fall u/s 7(iv-A) and not Under Article 17(iii) of Schedule II of the Court Fees Act and court-fee ought to have been paid both on the memorandum of appeal and the plaint on that basis. If on a computation of court fee made on that basis it is found in either of these appeals that the plaint is insufficiently stamped such plaint has to be treated as invalid unless and until it is properly stamped. But this Court may, if it thinks fit, direct the Plaintiff or the Plaintiffs to make good the deficiency in court fee on the plaint and upon the deficiency being made good the plaint and every proceeding relative thereto would become as valid as if the plaint had been properly stamped in the first instance. If the deficiency is not made good the deficiently stamped plaint will remain invalid. How the invalidity of the plaint will affect the appeal or the decree under appeal is a matter to be decided by the Bench hearing the appeal.

V.G. Oak, J.

28. I agree.

S.N. Dwivedi, J.

29. I concur with the conclusions.

30. By The Court--The suits fall u/s 7(iv-A) and not Under Article 17(iii) of Schedule II of the Court Fees Act and court-fee ought to have been paid both on the memorandum of appeal and the plaint on that basis. If on a computation of court-fee made on that basis it is found in either of these appeals that the plaint is insufficiently stamped, such plaint has to be treated as invalid unless and until it is properly stamped. But this Court may, if it thinks fit, direct the Plaintiff or

the Plaintiffs to make good the deficiency in court-fee on the plaint and upon the deficiency being made good the plaint and every proceeding relating thereto would be-come as valid as if the plaint had been properly stamped in the first instance. If the deficiency is not made good, the deficiently stamped plaint will remain invalid How the invalidity of the plaint will affect the appeal or the decree under appeal is a matter to be decided by the Bench hearing the appeal.