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**(1978) 01 RAJ CK 0009**  
**In the Rajasthan High Court**  
**Case No : Civil Revision No. 104 of 1977**

Makhan Lal and Another

APPELLANT

Vs

Urban Improvement Trust, Jaipur City and Another

RESPONDENT

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**Date of Decision :** 13-01-1978

**Acts Referred:**

Rajasthan Court Fees and Suits Valuation Act, 1961 — Section 24, 38

**Citation :** (1978) 11 WLN 31

**Hon'ble Judges :** P.D. Kudal, J

**Bench :** Single Bench

**Advocate :** A.K. Bhandari, for the Appellant; S.K. Tiwari, R.K. Sharma, Ajai Purohit, (for No. 1) and S.S. Sharma, (for No. 2), for the Respondent

**Final Decision :** Allowed

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## Judgement

P.D. Kudal, J.—This revision petition u/s 115 of the CPC is directed against the order of the learned Additional Civil Judge, Jaipur City dated 8th Dec. 1976.

2. The brief facts, which are relevant for the disposal of this revision petition, are that the Urban Improvement Trust, Jaipur City filed a suit against Makhan Lal, Rajmal and Kailash Narain for declaration and possession. The suit was valued at Rs. 10,000/-. Defendants Nos. 1 and 2 filed their written statements on 25th March, 1976, while the defendant No. 3 filed his written statement on 3rd April, 1976, Defendants Nos. 1 and 2 raised issue that the valuation of the suit property is Rs. 50,000/-, while the plaintiff has valued the suit at Rs. 10,000/-. It was, therefore, contended that the court-fee paid is insufficient and that if the suit is valued at Rs. 50,000/-, then the subject-matter of the suit is liable to be tried by the District Judge, and the Additional Civil Judge will have no pecuniary jurisdiction to try the suit.

3. On behalf of the defendant No. 3, it was contended that he is an employee of the Urban Improvement Trust, and that the land in question was allotted to him by the Urban Improvement Trust for a sum of Rs. 999/-. It was further

contended that thereafter the defendant No. 3 secured a loan of Rs. 7,720/- from the Urban Improvement Trust for construction purposes. As he was in need of money he executed an agreement for sale in favour of the defendants Nos. 1 and 2, and received Rs. 5,000/- towards the sale consideration. Later on, a suit bearing No. 72/72 was filed in the court of the learned Civil Judge, Jaipur City, Jaipur by the defendants Nos. 1 and 2 against the defendant No. 3, and a decree was obtained in favour of the plaintiffs on 4th Dec. 1972. This suit was for specific performance of the contract. In execution of this decree a registered sale-deed in favour of the defendants Nos. 1 and 2 was executed on 6th May. 1975.

4. The contention of the plaintiff is that the land was allotted to the defendant No. 3 on concessional rates as he was an employee of the Urban Improvement Trust. It is further contended that the defendant No. 3, according to the terms of allotment, could not alienate the plot of land before the expiry of ten years from the date of allotment. The plaintiff has, therefore, instituted the present suit with the prayer that the decree obtained in favour of the defendants Nos. 1 and 2 and against the defendant No. 3, on Dec., 1972, in Civil Suit No. 72/1972, from the Court of the learned Civil Judge, Jaipur City, Jaipur, and the registered sale-deed executed in favour of the defendants Nos. 1 and 2 on 6th May, 1975, be declared as ineffective and inoperative and be accordingly cancelled. The other relief which the plaintiff has sought is that the possession of the property in dispute be restored to the plaintiff, and he be declared the owner of the property in dispute,

5. On the pleadings of the parties, issues were struck on 16th Sept., 1976. Issue No. 9 reads as under:--

^ ^ D;k rk?;qu ukfy" k de fd;k x;k gS rFkk bl dkj.k vnkyl gktk dks lquckbZ dk vf/ kdkj izkIr ugh gS \\\*\*

The learned Addl. Civil Judge, Jaipur City decided the issue in favour of the plaintiffs and held that the Court-fee paid is sufficient and that the Court has jurisdiction to entertain and adjudicate upon the subject-matter of the suit. Defendants Nos. 1 and 2 feeling aggrieved against the order of the learned Addl, Civil Judge have filed the present revision petition.

6. It has been contended on behalf of the petitioners that the learned lower Court has erred in law in deciding the issue No. 9 in favour of the plaintiff. It has been contended that even in para No. 17 of the plaint, it has been stated that the Court-fee is paid as provided u/s 24 (a) of the Rajasthan Court-Fees and Suits Valuation Act, 1961 (hereinafter to be referred to as the Act). It was further contended that as the suit relates to the cancellation of the decree and the registered instrument of sale and as the possession of the suit property is sought along with declaration of its ownership, the suit was liable to be valued in accordance with Section 24 (a) of the Act, and not in accordance with Section 38 of the Act, It was further contended that Section 9 of the Act provides that a document falling within two or more descriptions in this Act shall where the fees chargeable thereunder are different, be chargeable only with the highest of such

fees. It was also contended that as the plaintiff was neither a party to the original suit No. 72/1972, nor was a party to the execution of the registered sale-deed dated 6th May, 1975, the Court-fees shall be chargeable u/s 24 (a), and not u/s 38 of the Act,

7. On behalf of the plaintiff, it was contended that the sale-deed dated 6th May, 1975 was for a sum of Rs. 10,000/-, It is through this instrument of sale that the defendants Nos. 1 and 2 claimed themselves to be the owner and, as such, the Court-fee which has been paid by the plaintiff is sufficient. It was also contended that wrong quoting of section under para 17 of the plaint does not necessarily change or alter the nature of the suit. The allegations contained in the plaint, if taken together, would clearly indicate that the suit falls within the ambit of Section 38 of the Act. It was, therefore, contended that the view taken by the learned lower Court is correct and does not call for any interference on the revisional side.

8. On behalf of the defendant No. 3, it was contended that the suit has been valued correctly and the Court-fee has been correctly paid.

Section 24 (a) of the Act reads as under:--

"24. Suits for declaration.--In a suit for a declaratory decree or order, whether with or without consequential relief, not falling u/s 25.

(a) where the prayer is for a declaration and for possession of the property to which the declaration relates, fee shall be computed on the market value of the property, subject to a minimum fee of twenty rupees:"

(b) to (e) ....."

Section 38 of the Act reads as under:--

"38, Suits for cancellation of decrees, etc. (1) In a suit for cancellation of a decree for money or other property having a money value, or other document which purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest in money, movable or immovable property, fee shall be computed on the value of the subject-matter of the suit, and such value shall be deemed to be -

(a) if the whole decree or other document is sought to be cancelled, the amount or value of the property for which the decree was passed or other document was executed; and

(b) if a part of the decree or other document is sought to be cancelled, such part of the amount or value of the property,

(2) If the decree or other document IS such that the liability under it cannot be split up and the relief claimed relates only to a particular item of property belonging to the plaintiff or in the plaintiff's share in any such property, fee shall be computed on the value of such property or share or on the amount of decree,

whichever is less.

Explanation :-- A suit to set aside an award shall be deemed to be a suit to set aside a decree within the meaning of this section."

9. Learned counsel for the petitioners placed reliance on Sukh Lal and Others Vs. Devi Lal and Others, wherein it was held that there is a difference between a suit for the cancellation of an instrument and one for a declaration that the instrument is not binding on the plaintiff. When the plaintiff seeks to establish a title in himself and cannot establish that title without removing an insuperable obstacle such as a decree or a deed of which he has been a party or by which he is otherwise bound, then quite clearly he must get that decree or deed cancelled or declared void in toto and his suit is, in substance, a suit for the cancellation of the decree or deed notwithstanding the fact that the suit may have been framed as a suit for a declaration. On the other hand, when the plaintiff is seeking to establish a title and finds himself threatened by a decree or transaction between third parties, he is not in a position to get that decree or deed cancelled in toto. The proper remedy in such a case is to get a declaration that the decree or deed is invalid so far as he himself is concerned and, therefore, he may sue for a declaration to that effect and not for the cancellation of the decree or the deed. Consequently, in a case of cancellation of a deed, where the plaintiffs could not establish their title unless they sued to remove an obstruction which would otherwise be insuperable the Court-fee payable would be ad valorem, according to Article 1, Sch. I, Court-fees Act.

10. Reliance was also placed on Shantilal Agarwal Vs. Smt. Ramabai and Others, wherein it was held that suit filed by the son challenging the validity of the will of his father on the grounds that the testator was not in a sound disposing mind at the time of executing the will, that it was got executed by undue influence fraud and coercion and that the property in dispute was ancestral and joint family property and the testator had no right to dispose it of by will. The suit was held to be one for declaration only and not for cancellation. Section 38 was held to be not applicable.

11. In Joseph Lazarus Vs. Isha Khan, , it was held that a suit for a declaration that the sale-deed executed and registered in favour of the defendant by the plaintiff's mother with respect to the suit property is void ab initio having been got executed fraudulently, and, that the defendant has not acquired any right, title or interest to the said property by virtue of the sale, is not a pure declaratory suit requiring a fixed Court-fee under Article 17 (iii) of Schedule II of the Court-fees Act, but is a suit for declaration and consequential relief of avoiding the effect of the sale-deed in question in the garb of a mere declaratory suit and requires ad valorem Court-fee u/s 7 (iv) (c),

12. On behalf of the plaintiff, reliance was placed on Lal Singh and Others Vs. Tejsingh and Another, wherein it was held that in a suit by sons to get a declaration of their title to the property and avoid its sale by their father during

their minority in contravention of Sub-section (2) of the Hindu Minority and Guardianship Act (1956) and voidable under Sub-section (3) at their instance, they must get the sale-deed cancelled. Such a suit though for declaration is in substance a suit for cancellation of sale-deed and falls under this section and not u/s 7 (2) (a) of the Act and where the value of the property sold is Rs. 24,000/- it falls beyond the pecuniary jurisdiction of Civil Judge and has to be filed in the Court of the District Judge.

13. Reliance was also placed on *Bishwanath Agarwalla Vs. Smt. Nathi Bai Sharma and Others*, wherein it was held that it is well established that in order to determine whether a suit is one for a mere declaration or for a declaration and consequential relief, the Court must look to the real nature of the plaint, shorn of its verbiage, and decide what is its real substance, as opposed to its ostensible form. Even where a mere declaration is sought, the Court must look to the real nature of the plaint and consider whether or not the plaintiff has also sought some consequential relief by necessary implication, because in such cases, the plaintiff cannot get any relief unless the Court comes to the conclusion that the impugned document or decree is not binding upon the plaintiff.

14. Reliance was also placed on *Shyam Lal v. Kesar Devi* 1969 RLW 348, wherein it was held that the relief of possession is a consequential relief of the cancellation of the sale-deed and is, therefore, ancillary to it,

15. The learned counsel for the non-petitioner No. 2 placed reliance on the case law cited by the learned counsel for the non-petitioner No. 1.

16. The respective contentions of the learned counsel for the parties have been considered and the record of the case carefully perused.

17. The learned counsel for the plaintiff-respondent basically relies on Section 38 (a) of the Act, which provides in a suit for cancellation of a decree for money or other property having a money value, or other document which purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest in money, movable or immovable property, fee shall be computed on the value of the subject-matter of the suit, and such value shall be deemed to be (a) if the whole decree or other document is sought to be cancelled, the amount or value of the property for which the decree was passed or other document was executed. His contention is that the sale-deed dated 6th May, 1975 was executed for Rs. 10,000/- and accordingly the suit valued and court-fees paid by the plaintiff before the trial Court are correct. The learned counsel for the defendant-petitioners contended that as the plaintiff was not a party to the decree dated 4th Dec. 1972, or a party to the document, or a party to the registered sale-deed dated 6th May, 1975, the plaintiff can bring a suit only for declaration and not for cancellation of the decree or the instrument of sale. In *Sukh Lal and Others Vs. Devi Lal and Others*, it was held that where the plaintiff is a party to a decree or to the instrument of sale, then he is to pray for the cancellation of the decree or the deed, as the case may be. But in a case in

which he is not a party, then he has to seek declaration to the effect that the document or the decree is void ab initio and ineffective as against him. This very view has been adhered to in *Shantilal Agarwal Vs. Smt. Ramabai and Others*, and *Joseph Lazarus Vs. Isha Khan*, If the plaintiff was a party to the sale-deed, or to the decree, then the court-fees would have been payable u/s 38 of, the Act, but where the plaintiff is not a party either to the decree or to the sale-deed, the court-fees shall be payable u/s 24 (a) of the Act. The learned trial Court has held that Section 38 of the Act is applicable in the instant case. In my considered opinion, the learned trial Court fell into an error of law, and wrongly held that the court-fee was payable u/s 38 of the Act.

18. For the reasons stated above, the, learned lower Court has committed illegality and material irregularity in exercise of its jurisdiction. Court-fees shall be chargeable, in the instant case, according to the provisions of Section 24 (a) of the Act. The Court-fees shall be payable on the market value of the property. The learned lower Court is, therefore, directed to fix the market value of the property and charge the court-fees accordingly. If, on such an inquiry, the learned trial Court comes to the conclusion that the market value is beyond the pecuniary jurisdiction of the learned trial Court, then the plaint shall be returned to the plaintiff for presentation in the proper Court.

19. In view of the above, the revision petition is hereby allowed. Looking to the facts and circumstances of the case, the parties shall bear their own costs.