

(2000) 03 AHC CK 0093

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 37316 of 1994

Ram Govind Mishra and Others

APPELLANT

Vs

Chief Controlling Revenue Authority, U.P. Allahabad and Others

RESPONDENT

Date of Decision : 01-03-2000

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 32, Order 21 Rule 34
Stamp Act, 1899 — Section 33, 47A
Suits Valuation Act, 1887 — Section 8
Uttar Pradesh Court Fees Act, 1870 — Section 7
Uttar Pradesh Stamp Rules, 1942 — Rule 341

Citation : (2000) 03 AHC CK 0093

Hon'ble Judges : D.K.Seth, J

Final Decision : Dismissed

Judgement

D.K. Seth, J.—The facts giving rise to the present case may be summarised as follows:

2. An agreement for sale was executed on 24th February, 1972 by one Shri Someshwar Nath Bhargava in favour of Smt. Kusum Kumari in respect of an immovable property for a consideration of Rs. 99,879/-. The respondent No. 4 having failed to perform his part of the contract, Smt. Kusum Kumari filed a Civil Suit No. 17 of 1977 before the Learned Civil Judge, Allahabad against the respondent No. 4 on 19th January, 1983. The suit was decreed. Respondent No. 4 preferred First Appeal No. 172 of 1983. By a judgment and decree dated 7th May, 1992, a Division Bench of this Court dismissed the appeal. Respondent No. 4 preferred a Special Leave Petition, which was also dismissed. The decree was sought to be executed through Execution Case No. 8 of 1984. Various objections raised by the respondent No. 4 in the execution having been rejected, he preferred Revision No. 787 of 1990 since dismissed on 7th May, 1992. Since the respondent No. 4 did not execute the sale deed, the Executing Court had executed the sale deed on 4th May, 1990 under Order 21, Rule 34 of the Code of Civil Procedure and was sent for registration to the SubRegistrar, Allahabad

through Court. The SubRegistrar sought a report from the respondent No. 2, who by an order dated 12th September, 1994 had found that the sale deed was insufficiently stamped. On a revision being preferred, the respondent No. 1 by his order dated 13th June, 1994 (Annexure2) affirmed the order of the respondent No. 2. The review sought for before the respondent No. 1 was dismissed by an order dated 12th September, 1994. During the pendency of the execution, Smt. Kusum Kumari having died, the petitioners in this proceeding, being her legal heirs, had stepped into her shoes. The order dated 13th June, 1994 (Annexure2) by respondent No. 1 affirming the order dated 15th July, 1993 (Annexure3) passed by Respondent No. 2, and the order dated 12th September, 1994 (Annexure1) passed on revision in Stamp Revision No. 737 of 1993/1994 by the Respondent No. 1 affirming the order dated 15th July, 1993 (Annexure3) passed by the respondent No. 2 in Case No. 423 under Section 47A read with Section 33 of the Indian Stamp Act (Stamp Act for short have since been challenged in this writ petition.

3. In the present case Mr. Ajit Kumar, learned counsel for the petitioner has taken a point as to the stamp duty payable on the deed that is being executed by the Court in terms of a decree passed in a suit for specific performance of sale. According to him the valuation for the purpose of Court fee and jurisdiction as accepted by the trial Court shall be the valuation for the purpose of payment of stamp duty while registering the document executed by the Court.

It is not open to the registering authority to dispute the valuation accepted by the Court. In elaboration of his contention he submits that when a decree is passed it is open to the Court to examine the valuation of the suit property and decided the sufficiency of the Court fee. In the decree itself it is indicated that the stamps paid are sufficient. Unless such decree is revised or reversed or set aside, it is not open to dispute the valuation of the suit property as has been explained or justified in the decree itself. A decree is binding not only between the parties, but, so far as the valuation is concerned it is based on the deed or agreement, which is sought to be specifically enforced on the Registering Authority. Even if the valuation undergoes changes or enhancement, when a decree is passed or when in execution of the decree the sale deed executed by the Court is sought to be registered even then the same cannot be a ground for consideration of initiation of a proceeding under Section 47A of the Stamp Act. A decree of a Court is capable of being executed. When a decree is being executed, the Court cannot go behind the decree. It is not open to a third party to challenge the valuation of the decree, while it is sought to be executed or in the process of the execution. The question of valuation is also one of the aspect, which has gone into judicially in a judicial proceeding and pronouncement about the sufficiency of the valuation of the Suit is a judicial verdict culminated in the decree upon the judicial pronouncement. The executive has no authority or jurisdiction to sit in appeal on the judicial pronouncement. The Stamp Act has not authorised by means of any provision that the authorities under the said Act shall be entitled to sit on appeal in regard to the valuation confirmed by the

Court decreeing the suit. Admittedly this decree was subjected to appeal upto the highest Court of the country being the Apex Court where the decree stood confirmed. Since a decree had received a stamp of affirmation not only by the High Court but by the Apex Court and having no dispute with regard to valuation, the question of valuation also stood so affirmed by the Apex Court, and as such cannot be reopened by the executives in the manner it has been sought to, as above.

4. He further contents that if such a proposition is accepted then in exercise of power conferred on the authorities under the Stamp Act, under Section 47A, such authority would be entitled to question the valuation by the Court, in that event, the question of valuation would become an unending process and it would be giving a handle to the executives to cast an aspersion on judicial process and an interference with the course of justice. There must be a concept of finality. After the judicial determination culminating into a finality, it cannot be subjected to a further round of uncertainty to? keep the process continuous without bringing an end to it.

5. He further contends that parties had agreed to sell the property at a particular price on the date of the agreement and as such the valuation in the agreement shall the valuation even when the agreement is specifically enforced through Court. The delay in the process cannot be used to the disadvantage of the purchaser. Therefore the decision rendered by the authorities under the Stamp Act through the respective orders dated 157 1993, 1361994 and 1291994.

6. The matter was heard and an order was dictated in open Court on 27101998. Cut before the said order could be signed, certain clarifications were felt necessary on certain questions which necessitated further hearing of the matter. Therefore, the same was placed for orders when the counsel asked for time to address the Court. The matter was head on successive occasions and ultimately the judgment was reserved.

7. Mr. Ashok Mehta, learned counsel appearing for the respondent submitted that the valuation of the suit for the purpose of Court fees and jurisdiction are completely different from the valuation to be made under the Indian Stamp Act. Even if a decree is executed in furtherance of a decree passed in a suit for specific performance still then under Section 47A of the Indian Stamp Act, it is open to the authorities thereunder to determine the valuation for the purpose of the Indian Stamp Act. The valuation of the suit has nothing to do with the valuation of the deed for the purpose of payment of stamp duty. The Court Fees Act and the Indian Stamp Act operate in two different fields with which there is no nexus. As such valuation by the Court can never been binding on the registering authority acting under Section 47A of the Indian Stamp Act. According to him whatever may be the date of the agreement, the stamp duty is payable on the date when the deed is presented for registration. If it is so, in that event, the valuation is also to be made on the basis of rules framed under the said Act on the date when the document is presented for registration, even if

it is in execution of a decree for specific performance in furtherance whereof the deed is presented by the Court. Therefore, the orders passed by the authority under Section 47A of the Act are justified.

8. I have heard the respective learned counsel for the parties at length.

9. In order to appreciate the rival contentions it would be necessary to refer to and find out the distinction between the relevant perceptions under the Suits Valuation Act and the Court Fees Act, as well as those under the Indian Stamp Act.

10. All suits filed before the Civil Court requires to be valued for the purpose of jurisdiction and Court fees. The valuation of the suits are made for the purpose of jurisdiction under the Suits Valuation Act, 1887 (7 of 1887). There is a distinction between the valuation of suit for the purpose of jurisdiction and for the purpose of Court fees. The valuation for the purpose of Court Fees are determined by the provisions of Court Fees Act, 1870. The valuation for the purpose of jurisdiction is distinct from the valuation for the purpose of determining the Court fees. One depends on the value of the subject matter and the other on a certain value fixed by the statutory rules as was held in the case of *Dayaram v. Gordon Das*, ILR 31 Bom 73; *Aukhil Chaunder v. Mohiry Mohan*, ILR 5 Cal 489. The rules laid down under the Court Fees Act cannot be taken, as necessarily a guide for determination of jurisdictional value of a suit of appeal. The two Acts are not *pari materia* same and for that reason it is not permissible to treat them as forming a Code and read together, the one being an Act fixing the value for purposes of jurisdiction and the other being a fiscal enactment prescribing rules to determine the value of a suit for purposes of Court fee *Daya Chand v. Hem Chand*, ILR 4 Bom 515 (F.B.). The law may prescribe for purposes of revenue certain rules for valuation of suits but such valuation cannot be accepted as the value upon which the jurisdiction of the Court depends *Bai Mahkor v. Bulakiah Chakki*, ILK 1 Bom 538. But an exception must be made in cases falling under Section 8 of the Suits Valuation Act, for when a case fall under that section the valuation for purposes of courtfee and jurisdiction is identical (*Shailendra Nath Mitra v. Ram Charan Pal*, ILR 32 Cal 734:24 CLJ 94:25 CWN 763). In such cases the plaintiff is not entitled to put a higher value for the purpose of jurisdiction and a lower value for purposes of Court fees (*Jogeshra v. Durga Prasad*, ILR 36 All 500; *Manni Lal v. Radhey Gopal Ji*, (ILR 47 All 4501:23 LJ 344: AIR 1925 All 6025).

11. In the case of *Sathappa Chettiar v. Ramanathan Chettiar*, AIR 1958 SC 2345, the Apex Court had held that the effect of the provisions of Section 8 of the Suit Valuation Act is to make the value for the purpose of jurisdiction dependent upon the value determinable for computation of Court fees. Once the plaintiff exercises his option and value his claim for the purpose of Courtfees, that determines the value for jurisdiction. In such a case it is the amount at which the plaintiff has valued the relief sought for the purposes of Court fees that determines the value for jurisdiction in the suit and not vice versa (*Arjun Singh v. Phani Bhushan*, AIR

1948 Cal 200).

12. Section 8 of the Suits Valuation Act provides that wherein suits other than those referred to in the Court Fees Act, 1870 (7 of 1870), Section 7, Paragraphs (v), (vi) and (ix) and paragraph (x) Clause (d), Court fees are payable ad valorem under the Court Fees Act, 1870, the value as determinable for the computation of Courtfees and the value for purposes of jurisdiction shall be the same.

13. By reason of the said provision, the value of the suit for the purpose of jurisdiction and Court fee in respect of suits falling outside the categories mentioned in Section 7, paragraphs (v), (vi), (ix) and (x) clause (d) of the Court Fees Act shall be the same. Whereas in its application in U.P. Section 8 having been provided that suits other than those referred to in Section 4 of the Suits Valuation Act where. Court fees are payable ad valorem the valuation for the purpose of Court fees and jurisdiction, of the suit shall be the same. Thus there appears to be a distinction between Section 8 of the Suit Valuation Act and those of in its application in Uttar Pradesh.

14. Be that as it may. We are now concerned with the suit for specific performance which comes under Section 7 paragraph (x) (a). The suit for specific performance falling under Section 7 (x) (a) having not been excepted in Section 8 of the Suits Valuation Act and Court fee payable on such suit being ad valorem for the purpose of jurisdiction and Court fees, the valuation for the purpose of jurisdiction and Court fees would be the same. Whereas in its application in Uttar Pradesh Section 8 of the Suits Valuation Act having provided that suits other than those referred to in Section 4"of the Suits Valuation Act, where Court fees are payable ad valorem, the valuation for the purpose of Court fees and jurisdiction of the suit shall be same. Thus the only classes of suits which have been excepted under Section 8 of the Suit Valuation Act, in its application in U.P. are the suits mentioned in Section 7 (iv) as application in U.P. viz. (a) a declaratory decree and consequential relief, and (b) for accounts. Therefore, for all other suits where Court fees are paid ad valorem in Section 7 (iv) of the Court Fees Act shall be the same in respect of jurisdiction and Court Fees.

15. The value of a suit for specific performance of a contract of sale is the amount of consideration. (Ashfaq Hussain v. Bunyad Hussain, AIR 1923 Oudh 252). Whereas the Patna High Court in the case of Ram Bahadurv. Banwari, AIR 1929 Pat. 642, had expressed a view that a suit for specific performance of contract and possession would fall to be governed by Section 7 (v) of the Court Fees Act and the market value of the property would be the value for purpose of jurisdiction.

16. Section 7 (x) of the Court Fees Act provides that in suits for specific performance (a) of a contract of sale according to the amount of the consideration;? In its application in Uttar Pradesh Section 7 (x) of the Court Fees Act reads thus: ?In suits for specific performance (a) of a contract of sale

according to the amount of the consideration.....and such value shall be the market value which in the case of immovable property shall be deemed to be the value as computed in accordance with subsection (v), (va) or (vb) as the case maybe.?

17. Section 7 (v) of the Court Fees Act provides for valuation for the purpose of Court fees of a suit for possession of land, house and gardens. Section 7 (v) in clause (e) provides that where the subject matter is a house or garden. In its application in U.P. the clause (e) of Section 7 (v) of the Act provides as follows: ? where the subject matter is a building or garden according to the market value of the building or garden as the case may be.?

18. After Section 7 (v), clause (va) and (vb) has been added in its application in Uttar Pradesh, Section 7 (va) in the U.P. amendment provides for valuation of? Suits for possession... according to the market value of the subject matter and such value shall be determined by multiplying by fifteen the annual rent profits of the superior proprietor;?.....and in case of under proprietary or subproprietary land as such according to the value of the subject matter, and such value shall be determined by multiplying by ten the annual underproprietary or subproprietary rent, as the case may be, recorded in the Collector's register as payable for the land for the year next before the presentation of the plaint. If no such rent is recorded in the Collector's register, the value shall be determined in the manner, laid down in clause (c) of subsection (v) of this section save that the multiple will be ten?. Section 7, clause (vb) deals with possessory suits between rival tenants and by tenants against trespassers with which we are not concerned at the moment. Section 7 (v) of the U.P. Amendment refers to value of the subject matter. Such value naturally means market value which is to be determined in the manner provided in the said section. If it is a land it is to be determined in terms of clause (a), (b) & (c) respectively. Where the value cannot be determined in terms of clause (a), (b) and (c) in that event it is the market value of the land which it is to be determined by multiplying by fifteen the rental value of the land including assumed rent on proprietary cultivation if any. Whereas if the subject matter is a building or garden then it is to be valued according to the market value.

19. The provision as referred to above does not make it clear absolutely as to what should be value of the suit for specific performance. The question as to whether the suit for specific performance of a contract of sale and possession of the property sold fall under Section 7 (x) (a) or not, is not free from difficulty. There are divergences of opinion on this point. The conflict of opinion is based on the question as to whether a suit by the plaintiff to compel the defendant to complete sale deed and have it registered is not a suit for specific performance of a contract if there is also a prayer for possession. According to Calcutta, Patna and earlier Punjab High Courts' view is that such a suit (where possession is sought) is not a suit for specific performance but is simply a suit for possession. Even a suit to enforce a contract of sale of land and for possession thereof with

mesne profit impleading the vendor and subsequent transferee from him as defendant (possession being with the latter) falls under Section 7 (x) and not under Section 7 (v) & (c). Reference may be had to the case of Madan Mohan Singh v. Gaja Prasad Singh, 14 C.L.J. 149; Ram Bahadur v. Banwarilal, AIR 1929 Pat 642; Nathe Klian v. Muhammad Khan, AIR 1918 Lahore 323 and K.P. Tewari v. Baiju, ILR 31 Pat. 269. Whereas the High Courts at Allahabad, Bombay, Madras and later the Lahore cases, the view taken is that such a suit is one for specific performance of a contract of sale and the Court fee is payable on the sale consideration. Reference may be had to the cases Mohiud din v. Majlis Rat, ILR 6 All. 131; Nihal Singh v. Sewa Ram, AIR 1916 All 228; Muljibhai Pitambarardax v. Bal Chanchal, AIR 1945 Bom 81; Narayana v. Kandasami, ILR 22 Mad. 24; Dullabho Sahu v. Adinarayana, AIR 1937 Mad. 831; Sundra Ramanujan v. Sivlingam Filial, AIR 1924 Mad 360; Kundan Lal v. Anand Samp, AIR 1923 Lahore 456; Shiv Dial v. Shiv Ram Das, AIR 1928 Lah. 635; Faquir Chand v. Ram Chandra Dun, AIR 1924 Lahore 439. The Oudh Court does not subscribe to either of the two views mentioned above and has laid down that in a suit for specific performance of a contract of sale and for possession for the property, the relief for specific performance is the main relief and not ancillary to the claim for possession and therefore a separate Court fee under Section 17 of the Act is payable on such relief (Ram Nidh v. Balkaran Singh, AIR 1920 Oudh 167). Dissenting from the view, the Nagpur High Court has held that the addition of a prayer for possession does not make a suit to compel the execution of a sale deed in pursuance of an agreement to sell a suit for possession under clause (x) (c) but is a suit for specific performance within clause (v) (a) and the two reliefs are not distinct Ram Chandra v. Vithal, AIR 1950 Nag. 226.

20. A contract for sale is an agreement to sale or transfer of ownership in exchange for a price paid or promised or partpaid or partpromised. Contract for the sale of immovable property is a contract that a sale of such property shall take place on terms settled between the parties as contemplated in Section 54 of the Transfer of Property Act, 1882. Every sale implies a contract for sale although very often spoken of as a contract of sale. A contract for sale is an executory one creating in jus in rem viz., creating only an obligation attached to the ownership of property as is held in the case of Shiblal v. Bhagwan Das, ILR 11 All 244.

21. Section 7 (x) (a) enacts that in suits for specific performance of a contract for sale, the Court fee is regulated by the amount of consideration money. Specific performance may be decreed either at the instance of the vendor or of the purchaser (Bhashyakarlu Naidu v. Andalammal, AIR 1919 Mad 304.) The clauses covers suits, such where the vendor sues for recovery of the purchase money and expresses his willingness to execute the conveyance, or where the purchaser compels the vendor to execute a sale deed, or where the suit is to have a sale deed executed and completed or for recovery of a sale deed already executed without a prayer for possession of the property sold.

22. Therefore, when a purchaser seeks to enforce a specific performance of a

contract of sale against the vendor, it enforces a contract or agreement between the vendor and the purchases on the terms settled by the contract. When a sale is a simple sale, the value agreed is to be the value of the property in which it was to be sold and would be considered normally the market value. The suit is for specific performance of a contract which is to be performed within the time envisaged and the value would be the value on the date when the contract was entered into even though the sale might be effected later on even voluntarily or through a decree of Court enforcing specific performance. The subsequent increase in the value of the property is immaterial unless there is a substitution of the value by agreement or otherwise.

23. Having regard to the above principles, the valuation of a suit falling under Section 7 (x) (a) is to be made according to the amount of consideration (*Linbaji v. Ahmad Bin Sayeed*, AIR 1956 Hyd. 49). The Court fee is payable on the amount of the consideration of the sale as agreed upon and not on the portion of the consideration which according to the plaintiff is payable at the time of the suit. (*S.P. Gupta v. Sabdul Rahman*, AIR 1958 All851). But the question would be different if the property agreed to be sold for the mortgage money, the Courtfee payable, on the mortgage money due to the date of the contract and not on the date of suit *Naryananaswami v. Venkataswam*, AIR Mad. 372. Similarly where property is sold for Rs. 3,(XX)/and the vendor sued for specific performance of an agreement alleged to have been made on the date of the sale for reconveyance of the property by the purchaser for the amount of Rs. 3,000/ though the consideration was stated in the deed to be Rs. 5,500/ the Court fee payable for the suit is on Rs. 3.000/ and not Rs. 5,500/ (*Sudarsan Rao v. Narasimhan*,1954Andhra 6).

24. The above provisions clearly indicate that the valuation of a suit for the purpose of jurisdiction and Courtfee in respect of a suit for specific performance is in effect the market value of a property on the date when it was agreed to be sold. It is an enforcement of a contract as agreed. The valuation is to be calculated on the basis of such agreement having relevance to the date of institution of the suit.

25. Thus once the valuation is determined by the Court, the same valuation is the market value. The mode and method provided in Section 7 (v) and the U.P. amendment in clause (va) and (vb) appears to be a just and proper mode of valuation for determining the market value which procedure is also followed for determining such market value while acquiring land under the Land Acquisition Act for determining the market value as well as for the purpose of payment of compensation in respect of the lands vested in the State by reason of acquisition of interest of intermediaries through U.P. Zamindari Abolition and Land Reforms Act, 1950 and such other provisions of different acquisition act promulgated in different States. Thus there cannot be a different method of valuation of the property other than as acceptable for the purpose of determining the value of the suit or Court Fee in respect of the suit for specific performance.

26. In the present case, the valuation for the purpose of Court fee and jurisdiction has since been accepted right from the trial Court upto the Apex Court after having been proceeded through different stages of appeal before the High Court and the Apex Court. It has not been disputed that the valuation was not the market value. It is not the case because of collusion between the parties the suit was fought for long time and no stone appears to have been left unturned as is apparent from the history of the proceeding of the suit which was contested by the vendor till he could fight.

27. In this case in the suit for specific performance of an agreement for sale, decree was passed on 1911983. Pursuant to the said decree the judgmentdebtor having not executed the deed, a deed was executed by the Court, which was sent for registration. This deed was presented for being registered. At this stage, a proceeding was initiated to reevaluate the valuation of the suit property sought to be determined in the deed under Section 47A of the Stamp Act.

28. Now the question remains as to whether the valuation determined by the Court for the purpose of Court fee and jurisdiction in respect suit for specific performance can be acceptable by the authorities under the Indian Stamp Act when the document is presented for registration. Or in other words, the stamp duty chargeable on the document is to be charged on the basis of the valuation of the suit since affirmed in the decree or it is to be decided by the authorities under the Indian Stamp Act under the provisions thereof. If it is so then what should be the valuation on which the stamp duty, as applicable, would be payable? Is it to be made on the basis of the valuation to be made on the date of the execution of the document or on the basis of the agreement since specifically enforced. To put it differently it is the valuation that was agreed in the agreement since specifically enforced, is to be adhered to or it would be chargeable on the date of the execution and the authorities under the Indian Stamp Act could question the same under Section 47A of the Stamp Act.

29. There cannot be any doubt that while Suits Valuation Act and the Court Fees Act operate in the field relating to judicial proceeding before a Civil Court and are related to the purpose of determining the jurisdiction of the Court as well as for payment of Court fees for the purpose of prosecuting a suit before the Court. While Suits Valuation Act are related to the determination of the Court before which such suits are to be brought, the Court Fees Act relates to the determination of the Court fee to be paid. The main purpose for payment of Court fees is to levy fees for the services to be rendered by the Courts and public offices. Admittedly the Court Fees Act does not have any preamble from which the purpose could be ascertained. The statement of objects and reasons are as appears from the Gazette of India, 1869 Part V p 57. In the case of Gouranga Sahu v. Botokrishna Prasad & others, ILR 32 M 305 (310), the object and purpose was also so explained. Thus the valuation for the purpose of Court fee and jurisdiction is related to the services rendered by the Courts on the basis of the provisions contained in the respective Act. It is a fee prescribed for a

particular purposes in lieu of the services rendered by particular forum on the basis of the system of its valuation provided therein. Thus these two Acts are operating within the fields confined to the judicial process before the Civil Court. It has no manner of application beyond or except within the scope and extent as confined to the judiciary.

30. On the other hand, Stamp Duties are taxes or taxation levied in the shape of stamps of instrument. The revenue derived from such duties form considerable part of the revenue of the States.

31. The stamp duty becomes chargeable on an instrument by reason of Section 3 of the Indian Stamp Act. It is the charging Section that provides that: (a) every instrument mentioned in the schedule (1) which, not having been previously executed by any person, is executed in India on or after 1st July, 1889 shall be chargeable with duty of the amount indicated in that schedule as the proper duty therefore respectively. Admittedly, the sale deed sought to be executed through Courts is also an instrument and is chargeable to duty as conveyance under Article 23 Schedule 1 B of the schedule applicable to Uttar Pradesh.

32. It is pertinent to note that the chargeable Section refers to the chargeability of the duty when the instrument is executed. Thus the date of execution is the relevant date when the duty is chargeable and as such the rate of duty as applicable on the date of execution is the proper duty.

33. It is sought to be contended, by Mr. Ajit Kumar, that because of the failure on the part of the respondent No. 4, the deed could not be executed. The deed ought to have been executed in terms of the agreement within a reasonable time and at best the same could be treated to be the date on which the suit was filed or at the least, it could be the date when the suit was decreed. The continuation of the proceedings cannot take away the right of the petitioners. When a deed is executed in terms of a decree, the execution of the deed shall be deemed to be the date of filing of the suit. The valuation of the property having been taken to be the valuation of the suit accepted by the Court. As such the same cannot be questioned. Such a case does not come within the purview of Section 47A of the Stamp Act.

34. This contention appears to have been settled long before. The crucial date, which determines the stamp law in force, is the date of execution of the instrument. It is so held in *re. Kirthi Ram, Advocate*, AIR 1954 HP 51. Section 17 of the Stamp Act provides that all instruments chargeable with duty and executed by any person in India shall be stamped before or at the time of execution. The word "executed" and "execution" "has been defined in Section 2 (12) of the Indian Stamp Act to mean "signed and signature." The chargeability is also defined in Section 2 (6) with the expression chargeable "means as applied to an instrument executed or first executed after the commencement of this Act, chargeable under this Act and as applied to any other instrument, chargeable under the law in force in India when such instrument was executed or where

several persons executed the instrument at different times, first executed.?

35. Thus the chargeability is dependent on execution which means the date of signing the document or the instrument. At a time when the term execution was not defined in the case of *Bhawanji Hari v. Devi Punja*, ILR19 Bom 635, it was held that the term "execution means the last actor series of acts which completes it or in other words formal completion. However, under the present Act, the expression "execution" having been defined, it means the date when the document is signed. A document has to be considered as chargeable to stamp duty when it is executed. The "executed" itself has to be interpreted in the light of the definition embodied in Section 2 (12) of the Act. Since "executed" means "signed" and execution means "signature", therefore, it is clear that the stamp duty is payable at the time of execution of an instrument. Section 3 read with Section 17 having regard to the definition of the expression "chargeable" and "executed" or "execution" defined in Section 2 (6) and Section 2 (12) makes it abundantly clear and unambiguous to the extent that the stamp duty is payable only at the time of execution whether it is at the volition of the parties or it is executed through Court in pursuance of a decree for specific performance. In effect the Stamp Act being a taxing statute, it has a relevance with time and the expression used being clear and unambiguous, it can be interpreted according to the principle of Golden Rules of interpretation namely, strict grammatical meaning. The expression used is so clear and unambiguous that one and only one interpretation is possible. There is no scope of ambiguity or possibility of a second view being taken having read Sections 3 and 17 together alongwith Sections 2 (6) and 2 (12). A combine reading of these Sections reconciles each other to an extent that no conflict in between them could be conceived of. Since there is one interpretation possible, it is not necessary to take any extrinsic aid for the purpose of interpreting of the said provision. The intrinsic aid only with regard to the reading of these sections together may be necessary and no further. Adhering to the Golden Rule of Interpretation, there appears to be no doubt or an iota of confusion with regard to the meaning of these Sections which in unequivocal terms expressed the intent of the legislation expressed through the exactitude of the words used.

36. The first and most elementary rule of construction is that it is to be assumed that the words and phrases of technical legislation are used in their technical meaning if they have acquired one and otherwise in their ordinary meaning as has been held in *Rex v. Commissioner of Income Tax*, (1888) 22 Q.B.D. 296. In *Rex v. Ramsgate (Inhabitants)* (1827) 6B & C 712, that the phrases and sentences are to be construed according to the rules of grammar. This rule of interpretation is generally known as Golden Rule, namely, to adhere to the ordinary meaning of the words used, and to the grammatical construction, unless that is at variance with the intention of the Legislature to be collected from the statute itself, or leads to any manifest absurdity or repugnance, in which case the language may be varied or modified so as to avoid such inconvenience but no further. In *Grey v. Pearson*, (1857) 6 HL Gas 61,106, Lord Wensleydale called

this principle as "Golden Rule". In *Satyanarain v. Bishwanath*, AIR 1957 Pat 550,554, the Court had quoted Maxwell in *Interpretation of Statutes* to the extent as was quoted by Maxwell from *Nokes v. Doncaster Amalgamated Collieries*, (1940) AC 1044,1022, as follows:

"The golden rule is that words of a statute must prima facie be given their ordinary meaning. We must not shrink from an interpretation which will reverse the previous law, for the purpose of a large part of our statute law is to make lawful that which would not be lawful without the statute, or conversely, to prohibit results which would otherwise follow. Judges are not called upon to apply their opinions of sound policy so as to modify the plain meaning of a statutory word but where, in construing general words the meaning of which is not entirely plain there are adequate reasons for doubting whether the Legislature could have been intending so wide an interpretation as would disregard fundamental principles, then we may be justified in adopting a narrower construction. At the same time, if the choice is between two interpretations the narrower of which would fail to achieve the manifest purpose of the legislation, we should avoid a construction which would reduce the legislation to futility and should rather accept the bolder construction based on the view that Parliament would legislate only for the purpose of bringing about an effective result."

37. The Supreme Court in *Jugal Kishore v. Ram Cotton Co. Ltd.*, MR1955SC 376,381, had laid down that the cardinal rule of construction of statutes is to read the statute literally that is giving to words used by the Legislature their ordinary, natural and grammatical meaning. If, however, such a reading leads to absurdity and the words are susceptible of another meaning the Court may not adopt the same. But if no such alternative construction is possible, the Court must adopt the ordinary rule of literal interpretation, as held by...

their Lordships of the Privy Council in *Corporation of the City of Victoria v. Bishop of Vancouver Island*, AIR 1921 PC 240242, speaking through Lord Atkinson:

"In the construction of statutes, their words must be interpreted in their ordinary grammatical sense, unless there be something in their context, or in the object of the statute in which they occur, or in the circumstances with reference to which they are used, to show that they were used in a special sense different from their ordinary grammatical sense."

38. His Lordship Malik, C.J. in *Mahmud Hasan Khan v. Narain*, AIR 1949 All 210, 211, had expressed the view that the Courts have to interpret the language used by the Legislature in the plain, grammatical sense. This view was reiterated by Hon'ble Malik, C. J. in *Jadu Rai v. Kanizak Husain*, ILR 3 All 576 at 600 (FB).

39. The proposition advanced by Mr. Ajit Kumar, that it will work hardship and lead to absurdity if in enforcing a contract the consideration agreed can be deviated from by reason of its extension of time through prolonged litigation, does not appear to be a sound proposition. In as much as it was a contract between

the parties which is being enforced. Thus the consideration as agreed in the contract remains the same and is not being deviated from. So far as the consideration for the purpose of the contract is concerned that remains confined to the agreed contract. In the said contract, the vendor and the purchaser were the parties who are bound by it. The vendor may agree to sell the property at a throwaway price or the parties in order to evade payment of stamp duty may show the consideration at a very lower rate. But that is binding between the parties. Stamp duty is charged by the State. The State was never a party into the said agreement and no part of it can be binding on the State. The State was in no way responsible for the delay in the process. Therefore, such a proposition does not seem to be a sound one.

40. Be that as it may. If we stick to the rules of the interpretation, then such proposition cannot be accepted. In as much as if the words of an Act are clear, the Court must follow them. Even though, they lead to manifest absurdity. The Court has? nothing to do with the question whether the Legislature has commuted an absurdity *Regina v. Judge of the City of London Court*, (1892) 1 QB 273, is not providing such provision in the Act as to what would be the stamp duty if the document is executed through Court in pursuance of decree passed in a suit for specific performance. The cardinal rule of construction of statutes is to read the statute literally, that is by giving to the words used by the Legislature, their ordinary, natural and grammatical meaning; if however, such a reading leads to absurdity and the words are susceptible of another meaning, the Court may adopt the same; but if no such alternative construction is possible, the Court must adopt the ordinary rule of literal interpretation as has been held in *Vcerappa v. State of Mysore*, AIR 1965 Mys 227. It matters not in such a case what the consequence may be. When by the use of clear and unequivocal language capable of only one meaning anything is enacted by the Legislature, it must be enforced, even though it is absurd or mischievous as has been held in *Ghulam Mohd. v. Panna Ram*, AIR 1924 Lah 374. In *Masunath Kaulapati v. Ram Baran*, ILR 54 All 954: AIR 1932 All 494,498 (FB), it was held that where the language of law is clear, it is not necessary to see whether the interpretation put on law is likely to lead or not to hardships and to absurdities. Though the test may be applied to see whether the interpretation is a sound one or not. In *Ajit Kumar Ray v. Surendw Nath Ghosh*, AIR 1953 Cal 733 (FB), it was held that the canons of construction of statute do not permit the Court to take the reasonableness or unreasonableness of the consequences of a particular interpretation, as it is in substance a question of expedience for the Legislature. In *Venugopalan v. Vijayawada Municipality*, AIR 1957 Andhra Pradesh 833, it was held that it is not the duty of the Court to make the law reasonable but it is its duty to expound it as it stands according to the real sense of the words and leave the remedy to others. In *Amarnath v. Tekchand*, 1972 RCR 380,383 (SC), it was held that when the language of a section of an Act is not ambiguous in interpreting the plain words of Such a positive enactment any suggestion of hardship is out of place. In *Gulam Mohd. All v. Corporation of Madras*, ILR 52

Mad 866, it was held that when the words of an enactment are clear and imperative, considerations of inconvenience or hardships have no place in its application to circumstances falling within the words. But where there is no express indication in an enactment as to whether the powers given by it were meant to be used in particular circumstances, the fact that great hardship and inconvenience would result thereby is a reason for so construing the words as to meet all attempts to abuse the power either by exercising them in cases not intended by the statute or by refusing to exercise them when the occasion for their exercise has arisen. In *Satyanarayana Murthi v. Papayya*, ILR 1941 Mad 824, it was held that the "*argtumentum ab inconvenienti*", is only admissible in construction where the meaning of the statute is obscure. When the language is explicit, its consequences are for Parliament and not for the Court, to consider. In *Daryabi v. Surajmal*, 1979 MPLJ 413, it was held that if the language employed is plain and unambiguous, the same must be given effect to irrespective of the consequences that may arise.

41. Having regard to the above principle of interpretation of statute in the present case, the reading of Sections 3, 17 read with 2 (6), 2 (12) of the Stamp Act does not leave any scope of two interpretations and the language being clear and unambiguous and alternative construction being impossible, it has to be given its plain grammatical meaning whatever might be the consequences irrespective of the fact whether it works hardships or it appears to be unreasonable or it results into inconvenience. Thus even if the deed is executed in terms of a decree for specific performance of a contract entered into in 1972 is chargeable to stamp duty on the date of execution either by the parties or by the Court as the case may be. No other alternative interpretation is possible.

42. If it is so in that event when a deed is presented, it becomes subject to Section 33 of the Act and as well as Section 47A as the case may be. Section 3.3, subsection (ii) empowers the Registering authority to examine the instrument as to whether it has been duly stamped.

43. In order to appreciate the situation it would be necessary to refer to Section 33 which is as follows:

?(1) Every person having by law or consent of parties authority to receive evidence, and every person in charge of a public office, except an officer of a police, before whom any instrument, chargeable, in his opinion, with duty, is produced or comes in the performance of his functions, shall, if it appears to him that such instrument is not duly stamped, impound the same.

(2) For that purpose every such person shall examine every instrument so chargeable and so produced or coming before him in order to ascertain whether it is stamped with a stamp of the value and description required by the law in force in India when such instrument was executed or first executed.:

Provided that

(a) nothing herein contained shall be deemed to require any Magistrate or Judge of a Criminal Court to examine or impound if he does not think fit so to do any instrument coming before him in the course of any proceeding other than a proceeding under Chapter XII or Chapter XXXVI of the Code of Criminal Procedure, 1898.

(b) in the case of a Judge of a High Court, the duty of examining and impounding any instrument under this Section may be delegated to such officer as the Court appoints in this behalf.

(3) For the purpose of this section, the State Government may in cases of doubt, determine what offices shall be deemed to be public offices and who shall be deemed to be persons in charge of public offices.

(4) Where deficiency in stamp duty paid is noticed from the copy of any instrument, the Collector may suo motu or on a reference from any Court or from the Commissioner of Stamp or an Additional Commissioner of Stamps or a Deputy Commissioner of Stamps or an Assistant Commissioner of Stamps or any officer authorized by the Board of Revenue in that behalf, call for the original instrument for the purpose of satisfying himself as to the adequacy of the duty paid thereon, and the instrument so produced before the Collector shall be deemed to have been produced or come before him in the performance of his functions..

(5) In case the instrument is not produced within the period specified by the Collector, he may require payment of deficit stamp duty, if any, together with penalty under Section 40 on the copy of the instrument:

Provided that no action under subsection (4) or subsection (5) shall be taken after a period of four years from the date of execution of the instrument.?

44. A plain reading of the Section indicates that whenever a document is produced before any authority including the Registering Authority, he has to examine the same and if he is of the opinion that it has not been properly stamped in that, event, he may impound it. In the process of impounding, the authority has to examine the instrument produced before him to ascertain whether it is stamped with the stamp as is required in law for the time in force when such instrument was executed or first executed. There is no doubt that the Registering Authority is one such Office which is empowered to exercise its power under Section 33 of the Stamp Act. Therefore, there is no infirmity in the order of the Registering Authority to seek a report from the respondent No. 2 and if the respondent No. 2 while exercising power under Section 33 of the Act finds that it is not properly stamped, then he may pass appropriate order and invoke Section 47A as amended in U.P.

45. In the present case, the stamp having been paid on the valuation as agreed between the parties on which the decree for specific performance was pronounced, the same cannot be treated to be a compliance of Section 17 read

with Section 3 of the Stamp Act. Inasmuch as the consideration being fixed by reason of the agreement, the rate of duty payable on the date of execution is surely applicable on the value of the deed. It is admitted that the stamp duty paid at the rate on the consideration of Rs. 99,879/. If there was no amendment incorporating Section 47A then there would have been no difficulty in registering the document since the stamp has been paid duly on the said consideration at the prevailing rate. But the question acquires new dimension because of incorporation of Section 47A as amended in U.P.

46. In order to appreciate the situation, it would be beneficial to refer to Section 47Aas amended in U.P.:

(1) If the market value of any property which is the subject of any instrument of conveyance, exchange, gift settlement, award or trust, as set forth in such instrument is less than even the minimum value determined in accordance with any rules made under this Act. the registering officer appointed under the Indian Registration Act, 1908, shall refer the same to the Collector for determination of the market value of such property and the proper duty payable thereon.

(2) Without prejudice to the provisions of subsection (1), if such registering officer while registering any instrument of conveyance, exchange, gift, settlement, award or trust, has reason to believe that the market value of the property which is the subject of conveyance, exchange, gift, settlement, award or trust, has not been truly set forth in the instrument, he may, after registering such instrument, refer the same to the Collector for determination of the market value of such property and the proper duty payable thereon.

(3) On receipt of a reference under subsection (1) or sub section (2) the Collector shall, after giving the parties a reasonable opportunity of being heard and after holding an inquiry in such manner as may be prescribed by rules made under this Act, determine the market value of the property which the subject of conveyance, exchange, gift, settlement, award or trust and the duty as aforesaid. The difference, if any, in the amount of duty shall be payable by the person liable to pay the duty.

(4) The Collector may, suo motu, or on a reference from any Court or from the Commissioner of Stamps or an Additional Commissioner of Stamps or Deputy Commissioner of Stamps or an Assistant Commissioner of Stamps or any officer authorized by the Board of Revenue in that behalf, within four years from the date of registration of any instrument of conveyance, exchange, gift, settlement, award or trust not already referred to him under subsection (1) or subsection (2), call for and examine the instrument for the purpose of satisfying himself as to the correctness of the marketvalue of the property which is the subject of conveyance, exchange, gift, settlement, award or trust and the duty payable thereon, and if after such examination he has reason to believe that the marketvalue of such property has not been truly set forth in the instrument, he may determine the marketvalue of such property and the duty payable thereon

in accordance with the procedure provided for in subsection (3). The difference, if any, in the amount of duty, shall be payable by the person liable to pay the duty.

Section 47A (1) as inserted in U.P. refers to minimum value to be determined in accordance with the Rules and directs that if the value set forth by the parties is less than the value so determined, the registering officer shall refer the same to the Collector as provided in Rule 341 of the U.P. Stamp Rules.

47. Section 17 makes it abundantly clear that the chargibility of the duty is relevant to the date of execution of the instrument relating to a property, the market value whereof is to be ascertained also on the date of execution for the purpose of calculation of the stamp duty that becomes chargeable for the instrument. Thus the chargibility has a relevance with regard to the point of time. Though the purchaser may not be liable to pay any enhanced amount as consideration to the vendor but yet for the purpose of registering the instrument the chargibility thereof is to be ascertained with reference to the market value on the date of its chargibility of the duty that is the date of execution, however absurd, unreasonable inconvenient the proposition maybe.

48. Section 47A casts an obligation on the registering officer to examine the valuation set forth in an instrument that is presented for registration before him and to find out as to whether it is less than the minimum value determined under the Rules. If it is less than it has to refer the same for determination of market value to the Collector in order to ascertain the duty payable thereon. It is a device to put a check on evasion of payment of duty. Since it is fiscal in nature and has relation to the event of time the Act has to be interpreted on the basis of the intention of legislature as is evident on a reconciliated reading of Sections 2(6), 2 (12), 3, 17, 33 and 47A. The chargeability having nexus with the point of execution and registration being compulsory within 4 months from execution S47 cannot be interpreted in oblivion of Section 17 read with Sections 3, 2 (6) and 2 (12) respectively. Such determination of the market value is to be made by the registering authority whenever the deed is presented to it, in terms of Section 47A.

49. Such market value is to be determined in the manner prescribed in the rules which are specifically provided by the statutes and which are completely different from those of the Suits Valuation Act and the Court Fees Act and operating altogether on a different field. The provisions of Suits Valuation Act or those of Court Fees Act neither do override nor do overlap the provisions of the Stamp Act. The respective Acts operating altogether on different fields, the area for different purposes the valuation made under the Suits Valuation Act or the Court Fees Act can neither supercede nor eclipse those of the Stamp Act. Even on the face of acceptance of the valuation by the Court, the authorities under the Stamp Act are empowered to exercise their jurisdiction conferred on them by the Stamp Act.

50. The valuation for the purpose of Court fees and jurisdiction is the value of the subject matter at ten times the annual (under proprietary or subproprietary) rent recorded in the Collector's Register as payable for the year next before presentation of plaint. Thus the time factor is related to the presentation of the plaint while the mode is based on the rent recorded in the Collector's Register. Whereas Rule 341 of the Stamp Rules provides for a different mode of valuation and the time factor is related to the execution of the document which can never precede four months of presentation for registration. Thus the two modes are diametrically different and one cannot be imported to or adapted in the other.

51. Thus there being jurisdiction conferred on the registering authority and the authorities under the Stamp Act to deal with the question as crops up through the provision of Section 33 read with Section 47A, there is no infirmity in the orders passed by the respondent Nos. 2 and 1 respectively as has been mentioned in this petition so far as the question of jurisdiction is concerned. Whether the value arrived at is in consonance with the rules or not is a different question altogether but there is no infirmity in the exercise of the jurisdiction and to enter into the question and in determining the market value for the purpose of ascertaining the duty payable is wholly within jurisdiction. It is not, however, contended by Mr. Ajit Kumar that the calculation is not in accordance with rules or that there has been an infraction in the ascertainment of the market value. Therefore, such question need not be gone into.

52. However, in the present case, the consideration having been paid on the basis of agreement the specific performance whereof had been decreed, and the vendor being bound by the decree can not claim any amount in excess even when the deed is executed after long lapse of time within which the value might have increased, the petitioner can not be subjected to any penalty in giving the valuation in the instrument since that has been given by the Court executing the decree and not by the petitioner. Section 47A however, does not provide for imposition of any penalty. Since it is not a deliberate act of under valuing and evasion of stamp duty, the question of penalty does not arise. However, Section 47A does not postulate any concept of imposition of penalty nor even by implication, it confers any jurisdiction on the authority exercising the power to impose a penalty. Though aid of Section 33 is taken but it is in fact not a proceeding within the meaning of Section 33 alone in the absence of Section 47A. In the present case Section 33 could not have been invoked. Since it is in effect a case falling within the scope and ambit of Section 47A even if the proceeding is initiated having regard to Section 33 still then it remains a proceeding under Section 47A which does not presuppose imposition of penalty. Therefore, that part of the order which imposes penalty cannot be sustained and is liable to be quashed. So far however, the determination of market value is concerned, if there are no infraction in the rules for determining such market value, it can not be substantiated that there is any infirmity.

53. Rule 341 of U.P. Stamp Rules provides that ?for the purpose of payment of

Stamp duty, the minimum value of an immovable property forming the subject of an instrument of conveyance referred to in Section 47A (1) of the Act shall be deemed to be not less than that as shall be given on the basis of the multiples given below:

?(i) where the subject is land,

(a) in case of Bhumidhari eight hundred times the land revenue;

(b) in case of Sirdari landfour hundred times the land revenue;

(c) where the land is not assessed to revenue but net profits have arisen from it during the three years, immediately preceding¹ the date of the instrument, twentyfive times the annual average of such

profits;.....?

Whereas in Section 8 (v) of the Court Fees Act, the multiple of such land is fifteen only. Thus it appears that the standard for determination for valuation for the purpose of Court Fees Act is altogether different than the valuation to be made under the Stamp Rules. Since two different standards are provided in two different Acts, therefore, the determination made under the one cannot be attracted. (AIR 1990 SC 485, para 5).

54. Under Section 8 of the Suits" Valuation Act, in respect of suits where Court fees are payable at ad valorem under the Court Fees Act, the sufficiency of such value as detrimental for the computation of the Court fee and the value for the purpose of jurisdiction shall be the same, fn Section 7 (v) the valuation of the land is to be assessed for the purpose of Court fees ten times the revenue payable in respect of the land as applicable in, U.P. whereas in Section 7 (x), in a suit for specific performance of a contract of sale according to the amount of the consideration. Thus the valuation of the suit for the purpose of Court fees payable ad valorem would also be the same for the purpose of jurisdiction. By reason of U.P Amendment Act XIX of 1938 such valuation on the basis of the consideration in suit for specific performance under Section 7 (x) would be deemed to be the market value in respect of an immovable property as computed in accordance with subsection 7 (v).

55. Thus we see that the valuation made in the suit is on the basis of the amount of consideration agreed between the parties. Such consideration is the consideration for the contract as is defined in Section 2 (d) of the Contract Act since the vendor had promised to sell the property to the vendee for the consideration mentioned in the agreement. Whether such consideration is adequate or inadequate cannot be a question to be gone into for the purpose of determining the validity of the contract. Under Section 25, an agreement without consideration is void unless it comes within the exceptions provided in subsections (1),(2) and (3) of Section 25 of the Contract Act. In any case even those agreements coming within the exception provided are also contract. Explanation 11 provided in Section 25 renders a contract valid even if the

consideration is inadequate provided the consent of the promisor is freely given or in other words, inadequacy of consideration would make the contract void if the consent of the promisor is freely given. In the present case, it was not found that the promisor had given his consent freely. Therefore, in a suit for specific performance, inadequacy of the consideration cannot be the ground for denying the relief even though the market value may be higher, that too assessed on the basis of Section 7 (x) of the Court Fees Act and as such cannot be taken to be the market value within the meaning of the Stamp Act for which a different mode and method is provided for assessing such market value as obtainable under Section 341 of the Stamp Rules.

56. In *Ram Chandra Singh v. Basdeo Singh and another*, AIR 1982 All. 437, this Court had held that inadequacy of consideration will not make the agreement void as would appear from paragraph 3 of the said judgment.

57. Section 10 of the Specific Relief Act provides that contracts which are enforceable for specific performance are those in which there exists standard in ascertaining the actual damage on the ground of nonperformance of the Act agreed or where money would not be the adequate compensation for nonperformance thereof. Explanation to Section 10 of the Specific Relief Act provides that the breach of contract to transfer immovable property, unless contrary is proved, the Court shall presume that the breach of a contract to transfer immovable property cannot be adequately relieved by compensation in money. However, the Court while enforcing specific performance of such contract in terms of Section 10 has a discretion conferred on it by reason of Section 20 of the Specific Relief Act. But those discretions shall not be arbitrary but shall be sound and reasonably guided by judicial principles and capable of correction by a Court of law. Sub section (2) of Section specifies the cases in which the Court may exercise discretion without decreeing specific performance (a) where the contract though not voidable gives the plaintiff an unfair advantage over the defendant; or (b) it would involve hardship on the defendant which he did not foresee and non performance would involve no such hardship on the plaintiff (c) where the contract was entered into in a circumstance which would render the contract voidable but makes it inadequate if specifically enforced. At the same time, through Explanation 1 in Section 20, unfair advantage had been specified to exclude mere inadequacy of consideration for the contract being onerous to the defendant or its being made improvident in nature within the meaning of clause (b). Thus also the inadequacy of the consideration when it was found in the judgment in the suit to be an exception within the meaning of Section 20 for exercising discretion with regard to a decree for specific performance, it is not open to rely on the valuation for the suit accepted by the Court for the purpose of payment of stamp duty payable under the Stamp Act, particularly when Section 22 of the Specific Relief Act, prescribes that in such a suit relief with regard to possession, partition or refund of earnest money can also be asked for even if it is not permissible under the provisions of the Code of Civil Procedure while under Section 21, the Court is empowered to compensation as well in

addition. But these question did not find favour with the Court as against the defendant and the plaintiff had obtained a decree for specific performance.

58. Under Order 7, Rule 11 (b), of the Code if it appears to the Court that the relief claimed is undervalued, then the Court may call upon the plaintiff to correct the valuation within the time and if not done, to reject the plaint. While Order 13, Rule 8 of the Code vests the Court with the power to impound a document if it finds sufficient causes for the same. Thus the Court may reject a plaint if it is insufficiently valued or impound a document for the reasons which includes insufficiency of stamp payable on such instrument. Similar power is also available to the authorities under the Indian Stamp Act under Sections 31,32,33 and 34 respectively. Section 32 requires the Collector to certify that the instrument is fully stamped while Section 31 empowers the Collector to determine the stamp duty payable when his opinion is sought by any person. Whereas Section 33 empowers all officers having the power to receive evidence and every person incharge of a public office before whom any instrument chargeable to stamp duty is presented and in his opinion such instrument is not duly stamped, he is to impound the same with the exception provided in Section 34 in respect of unstamped receipts which may be substituted by a duly stamped receipt. Thus it is apparent at every stage the Court fees and stamps are altogether two different fields covered by two different acts.

59. Under Order 21, Rule 32 of the Code, a decree for specific performance of a contract can be enforced if disobeyed by the judgmentdebtor by his detention in civil prison or by the attachment of his property or by both. Under Order 21, Rule 32 (5) in case of decree for specific performance of contract in addition to or in lieu of either of the mode and method referred to above as contained in subsection (1), the Court may direct that the act required to be done may be done as fair as practicable by the decreeholder or some other person appointed by the Court at the cost of the judgmentdebtor which may be recovered as if they were included in the decree. Therefore, when a document is registered in execution of a decree of specific performance by an officer appointed by the Court, the Court or the officer performs the duty as an agent of the decreeholder or the judgmentdebtor, as the case may be. Specific provision has since been provided in Order 21, Rule 34 in respect of specific performance relating to execution of documents. Thus the provision is very specific and a specie out of the genus of Order 21, Rule 32. Rule 34, Order 21 prescribed the manner in which a decree for specific performance in respect of an agreement for sale through execution of document is to be executed. Under subrule (1), if the judgmentdebtor neglects or refuses to pay the decree, the decreeholder may prepare a draft of the document and deliver the same to the Court. Under subrule (2), the Court thereupon shall serve the draft on the judgmentdebtor with a notice requiring him to submit his objection, if any, within time fixed. While under subrule (3), if the judgmentdebtor objects to the draft in writing then such time the Court has to make an order approving or altering the draft as it may think fit. Thereupon by reason of subrule (4), the decreeholder shall

deliver to the Court a copy of the draft with such alteration, if any, as the Court may have directed. Such draft is to be printed upon proper stamp paper if a stamp is required by the law for the time being in force. The Judge or such officer as may be appointed in this behalf shall execute the document so delivered. The expression used in subrule (4) of Rule 34 of Order 21 is clear and specific to the extent when it provides that 'the decree holder shall deliver a copy of the draft....upon the stamp paper as required by the law for the time being in force.....?' Thus whatever might be the value of the suit either for the purpose of jurisdiction or for the Court fee the same is immaterial for the purpose of execution of a document chargeable under Section 3 of the Indian Stamp Act while such document is Act or it may present the same for registration before the property authority. Even if the Court had examined the sufficiency of the stamp still then it is open to the registering authority either to seek the opinion of the Collector under Section 31 or may resort to Section 47A of the Stamp Act. If the Court had sought for the opinion of the Collector under Section 31 and the Collector had issued a certificate under Section 32 of the Stamp Act in that event the situation might have been otherwise. But Section 31 and Section 32 of the Stamp Act having not been resorted to is not necessary for our present purpose to enter into the question. When a document is executed by the Court and presented for registration, the Court is acting as an agent of the parties and, therefore, there cannot be a different treatment or standard when the 'document is presented for registration by the Court in execution of the decree for specific performance under Rule 34, Order 21 of the Code. Inasmuch as subrules (4), (5) and (6) of Rule 34, Order 21 clearly and unambiguously attracts application of the law for the time being in force relating to chargeability of stamp duty and the registration of the instrument executed and registered in execution of a decree for specific performance through the Court. There cannot be any scope of harbouring a different opinion or view.

62. My above view finds support in the case of Balbir Singh and others v. Killwant Singh and others, AIR 1965 Punjab 346, wherein it was held that it would make no difference even if the sale deed in execution of a decree for specific performance is executed by the vendor himself or by some other person appointed by the Court for the purpose. According to subrule (5) of Rule 34 of the Order 21 of the Code of Civil Procedure the execution by the Court shall have the same effect as the execution of the document by the party ordered to execute the same. Similar view was taken in Gopi Nath Das v. Namal Charan Das, AIR 1951 Cal551. In that case a chain for preemption was made in respect of a sale about which a sale deed had been executed by the Court in execution of a decree for specific performance. Harris, C.J. held that where after the refusal of the defendant to carry out a decree for specific performance the Court executes the sale deed, it does so as the agent of the defendant and the transfer is in fact and law a transfer by the defendant.

63. Conveyance being a nontestamentary instrument purporting to create right, title or interest in immovable property within the meaning of clause (b) of

subsection (1) of Section 17 is compulsorily registrable under the Registration Act. By reason of Section 23 of the Registration Act, such document is to be presented for the purpose of registration to the proper officer within four months from the date of its execution. Therefore, according to Section 17 of the Stamp Act, the stamp duty is to be payable at the time of execution when it is being sought to be registered. Under Section 32 of the Registration Act, all documents are to be presented by the person executing the document or claiming under the same or by the representative or assignee of such person or by the agent of such person, representative or assigned, duly authorised by power of attorney executed and authenticated in the manner provided in the said Act. Here the document is being presented on behalf of the parties though executed through Court in execution of the decree for specific performance.

64. Section 47A of the Stamp Act empowers the registering authority to examine and determine the chargeability of the instrument to stamp duty and the amount payable thereon.

65. In the case of *Jawajee Nagnatham v. Revenue Divisional Officer, Adilabad A.P. and another*, 1994 (4) SCC 595, the Apex Court had held that all the State Legislatures enacted Section 47A empowering the registering officer to levy stamp duty on instruments of conveyance, etc., if the registering officer has reason to believe that the market value of the property, covered by the conveyance, exchange, gift release of right or settlement, has not been truly set forth in the instrument, he may refuse registering such instrument and refer the same to the Collector for determination of the market value of such property and the property duty payable thereon. On receipt of such opinion, he may call upon the vendor as per the rules prescribed, to pay the additional duty thereon. If the vendor is dissatisfied, he has been given the right to file an appeal and further getting reference made to the High Court for decision in that behalf. Section 47A would thus clearly show that the exercise of the power thereunder is with reference to a particular land covered by the instrument brought for registration. When he has reasons to believe it to be undervalued, he should get verified whether the market value was truly reflected in the instrument for the purpose of stamp duty; the Collector on reference could determine the same on the basis of the prevailing market value. The market value of the land for proper stamp duty has to be determined as per the law under Section 47A itself.

66. Mr. Ajit Kumar had referred to Stamp Rules particularly to Rules 330, 334, 347, 351 and 351 respectively. A plain reading of the said Rules show that no assistance could be had from the said rules for our present purpose. Inasmuch Rule 324 has nothing to do with the question with which we are concerned. Similarly Rule 330 relates to procedure regarding inspection notes which are also not material for our present purpose. Rule 334 provides for facilities to be accorded to the Inspector which is also of no relevance for the question involved in this case. Rule 347, however, provides the procedure for the purpose of deciding a reference under Section 47A of the Stamp Act, requiring

the person responsible to pay the stamp duty or to show cause. While Rule 350 prescribes that if on enquiry the market value appears to have been fully set forth in the instrument and is duly stamped according to such value, it should certify the same; if it appears to be undervalued and not duly stamped, it may be impounded by the Collector and necessary action may be taken according to the Act. While Rule 351 deals with the cases where the value of the instrument was set forth with an intent to defraud the Government then the same may be dealt with under Section 54 of the Act.

67. However, Mr. Ajil Kumar had stressed on the expression 'market value as expressed in the instrument..... appears to be fully and truly set forth, and the instrument is found to be duly stamped according to such value. It shall be returned to the person who made the reference with a certificate to that effect.' Relying on these expressions, he contends that, as soon as the market value on the basis of the agreement for sell is expressed pursuant to the decree for specific performance, it cannot be said that the market value was not set forth fully and truly. In such circumstances, no other opinion can be formed that the instrument was undervalued and not duly stamped.

68. The above arguments appear to be fallacious. Section 47A (1) require determination of the market value. If the market value set forth in such instrument is less than even the minimum value determined in accordance with the rules under the Stamp Act then the registering officer appointed under the Registration Act shall before registering the instrument refer the same to the Collector for determination of the market value of such property and the proper duty payable thereon. Section 47A makes it incumbent on the registering officer to seek the opinion of the Collector whenever it seems that the market value is less than the minimum value determined in accordance with Rules framed under the Stamp Act. Rule 341 prescribes as to how the minimum market value is to be determined for the purpose of Section 47A (1). When a reference is made under Section 47A, it is incumbent on the Collector to determine the market value in accordance with Rule 341. Rule 344 also makes it incumbent on the registering officer or any person mentioned in Section 33 whenever the market value stated in the instrument is less than minimum value worked out in accordance with the manner laid down in Rule 341, he is bound to refer the same to the Collector for determination of the actual market value of the property which is subject matter of the instrument and the proper duty payable thereon. Rule 345 further provides that even when the registering officer has reason to believe when market value has been stated in accordance with the multiples concerned when the correct valuation of the immovable property cannot be arrived at without having recourse to local inquiry or extraneous evidence, he may after registering such instrument, refer the same to the Collector for determination of the actual market value for the instrument and the proper duty payable thereon. Rule 346 provides that whenever Inspector discovers that any instrument of any kind had been undervalued then also he may refer the same with his opinion to the Collector .within four years from the date of registration of an instrument for

determination of the actual market value and the proper duty payable in respect of an instrument. Thus the above rules specifically provide that a document is to be valued according to the market value and the stamp duty is to be payable on the basis of such value even if it is registered, it can be reopened and evaluated either under Rule 341 or under Rule 346, as the case may be. Whereas Rules 347, 350 and 351 provides the procedure through which such value is to be determined and after such determination what would be the steps to be followed thereafter and the manner in which the further proceeding is to be carried on. Rule 350 provides the outcome of the inquiry and the mode in which the instrument is to be valued. The inquiry that ensued under Section 47A is an inquiry for determination of the value of the instrument in terms of Rule 341 in the manner provided in Rule 347 and the consequence of the proceedings in Rules 350 and 351 respectively. Thus the expression used in the first part of Rule 350 is one of the alternative where the valuation set forth in the instrument is found to be correct while the second part is relevant where the valuation set forth in the instrument is found to be incorrect. Two alternatives having been incorporated in one Rule, it is not safe to rely upon one part. Section 47A has to be read with Rules 341 and 342 providing the entire procedure for verifying the intention of the Legislature in Section 47A. Thus the whole procedure right from Rule 340 till Rule 352 are to be read together and reconciled. These Rules contained in Chapter XV of the Stamp Rules are to be read as a whole. No part of it can be singled out to give a different meaning without the context. Each Rule has to be read in the context as contained in Chapter XV of the Stamp Rules, which has been specifically incorporated along with Section 47A for the purpose of determination of the market value on the basis of the minimum value conceived and provided in Chapter XV of the Stamp Rules. Therefore, the contention of Mr. Ajit Kumar to the extent relying on the expression used in the first part of Rule 350, appears to be misconceived.

69. Mr. Ajit Kumar's contention that the authorities under the Stamp Act or the Registration Act cannot reopen the order of the Court while registering a document and if it is so done, then it would amount to indirect interference with the judicial process of the Court, does not appear to be well founded in view of the specific provision provided in Order 21, Rule 34 which abundantly makes it clear even when the document is registered through Court it is subject to the law relating to payment of stamp duty and registration for the time being in force.

70. Mr. Ajit Kumar contended that the respondents had resorted to the documents executed in 1992 and 1993 when the document was executed in 1990. With regard to the said question, the relevant date for calculation of the market value and the chargeability to stamp duty is to be determined as was prevalent on the date of execution of the document by the officer authorised by the Court. If it is executed in 1990, in that event documents related to the 1990 would be relevant. This question, however, is dependent on the question as to whether the minimum value has been determined under Rule 341. If it is so determined, in that event, the valuation may be the minimum value so

determined or the value that might be determined on the basis of transaction made during the said period in respect of the area in which the property is so situated. The order dated 15th September, 1994 contained in Annexure 1 is an order passed on review. Having gone through the order contained in Annexure 1, I do not find any infirmity particularly in view of the observation made hereinbefore, which was the main contention on the review application. So far as the order dated 13th June, 1994 is concerned, it had upheld the authority to determine the valuation under Section 47A. But it had found that the valuation made by the Collector or the Deputy Stamp Commissioner as incorrect and, therefore, had set aside the valuation made by the Collector and had directed to evaluate the valuation according to the direction contained in the order dated 13th June, 1994. Since the order dated 15th July, 1993 is no more in existence, as such the said order cannot be challenged since the order has already been merged in the order dated 13th June, 1994. This question, therefore, can very well be agitated before the appropriate authority which has to evaluate the valuation as was in force on the date of execution of the deed by the officer authorised by the Court in execution of the decree and was so presented for registration according to the direction as contained in the order dated 13th June, 1993 contained in Annexure 1. Therefore, it is not necessary for this Court to go into those questions at this stage.

71. Mr. Ajit Kumar further contends that he had not purchased the land but has purchased a litigation and there should be an end of the litigation which culminated in the decree and its execution. The said litigation cannot be reopened by the registering officer or the authorities under the Stamp Act and continue the litigation further. Therefore, the consideration that the litigation shall come to an end should be the main factor on which the interpretation of the Statutes are to be made by accepting the valuation made by the Court or accepting the decree and the same cannot be deviated from. For the foregoing reasons as discussed above, this proposition though sound equitable, but it is absolutely fallacious and unfounded in law as well as misconceived and misplaced.

72. While assailing the orders contained in Annexures 1, 2 and 3 respectively, Mr. Ajit Kumar had relied on the decision in the case of *Mohinder Singh Gill v. Chief Election Commissioner, New Delhi*, AIR 1978 SC 851, para 8. This decision does not help Mr. Ajit Kumar. Inasmuch as in the said decision, it was held as follows :

"The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to Court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of *Hose*. 1, in *Gordhandax Bhanji*. AIR 1952 SC 16 (at p. 18):

"Public orders publicly made, in exercise of a statutory authority cannot be

construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the acting and conduct of house to whom they are addressed and must be construed, objectively with reference to the language used in the order itself.?

Orders are not like old wine becoming better as they may grow older.?

73. The observation as quoted above has no reasonable nexus with the proposition with which we are now concerned and as such it does not help Mr. Ajit Kumar. Mr. Ajit Kumar had also relied on Section 55 of the Transfer of Property Act and contended that even if the property is sold once again, it is the liability of the vendor to disclose the properties as provided in Section 55 of the Transfer of Property Act to the extent that it is subject matter of litigation. Even if the decreeholder wants to sell the said property in the market, he is also bound to disclose the involvement of the property in litigation. According to him, such litigated properties cannot be valued according to market value since it would not attract any buyer to purchase the said property at the market value and as such the involvement of the property in litigation should be one of the factor for determining the market value which might have for less than the minimum value decided under Rule 341.

74. The argument seems to be wholly misconceived and misplaced. Inasmuch as the Order 21, Rule 34 makes it abundantly clear whether it fetches the market value from a third party or not it is immaterial by reason of the clear and explicit reasons used in subrules (4) and (6) respectively making the instrument chargeable to the stamp duty according to law for the time being in force, There is nothing that litigated property may have a different consideration when considered under Section 47A of the Stamp Act, read with Rule 341 of the Stamp Rules. Chapter XV of the Stamp Rules does not provide any such provision as the litigated property should be considered differently. Thus having regard to the provisions contained in subrules (4) and (6) of Rule 34 of Order 21 of the Code, there is no such conception.

75. In support of his contention, Mr. Ajit Kumar had relied on the decision in the case of *Periyar and Pareckanni Rubers Ltd. v. State of Kerala*, 1991 (4) SCC 195, paras 10, 17 and 18; *P. Rama Reddy & others v. Land Acquisition Officer v. Hyderabad, Urban Development Authority and others*, 1995 (2) SCC 305 paras 9; *Land Acquisition Officer Eluru & others v. Jasti Rohini (Smt.) & another*, 1995 (1) SCC 717, para 6; *Pruhiviraj Taneja v. The State of Madhya Pradesh and another*, 1977 (1) SCC 684, para 6; *Painder Singh & others v. Union of India*, 1995 (5) SCC 310; *Bai Dosabai v. Mathuradas Govinddas*, AIR 1980 SC 1334, para 6; *Sathappa Chettiar v. Ramanathan Chettiar*, AIR 1958 SC 245, paras 14, 15 and 16 ; *Smt. Bibi & another v. Shugan Chand and others*, AIR 1968 All. 216 (FB) paras 9,10,13 and 24; *Devendra Singh v. Bholu Singh*, 1991 (1) AWC 281, para 4, But none of these decisions throw any light on the question with which

we are now concerned.

76. He then contends that the question of valuation was never agitated in the appeal. But that contention is of no avail to him in view of the discussions made above. He further contends that the Court having accepted the valuation under Order 21, Rule 31 when presented before it, the power under Section 33 of the Stamp Act can be exercised by the Court itself and, therefore, this acceptance by the Court amounts to be a determination in exercise of the power under Section 33 of the Stamp Act, which cannot be reopened. For the reasons discussed above, this submission of Mr. Ajit Kumar appears to be wholly unsound and untenable.

77. He then contends that the valuation accepted by the Court is binding on the Government and the registering authority and the authorities under the Stamp Act being officers of the Government are bound by the decision given by the Court as soon as the valuation is accepted by it under Order 21, Rule 33, read with Rule 34, subrule (4), whether there was a lis or no between the decreeholder and the Government. He also contends that the decision would be different in view of Rule 330 read with Rule 334 of the Stamp Rules. He also refers to Section 24A of the Court Fees Act read with Section 6 of the Court Fees Act as introduced by U.P. Act No. 19 of 1938 applicable to U.P. having regard to the Stamp Rules 327, 328, 329, 340, 346, 347, 348, 349, 350, 351 and 352. All these submissions appear to be wholly misplaced. Inasmuch as Section 6 of the Court Fees Act has no relevance with regard to the question within which we are concerned. Whereas Section 24A prescribes that the levy of fees under the Court Fees Act shall be under the general control and superintendence of the Chief Controlling Officer of the revenue department who may be assisted by the Commissioner of Stamps and by Additional Commissioner of Stamps and Deputy Commissioner of Stamps and Assistant Commissioner of Stamps as the State Government may appoint in this behalf or by any other subordinate agency appointed for the purpose. Such officers and agency shall have access to all records and shall be furnished with such information as may be required by them for the performance of their duties under the Court Fees Act. Section 24A conceives of administration in the manner in which the levy of fees are to be administered. It has nothing to do with the valuation made by the Court or accepted by the Court or anything else. Since the Court Fees Act and the Stamp Act operate in different fields, appointment of the Chief Controlling Revenue Authority under the Stamp Act by reason of Section 24A of the U.P. amending the Court Fees Act or the Suit Valuation Act rendered thereto cannot eclipse or over shadow or supercede the provisions of the Stamp Act nor can it over step the field by its operation or out step into that of the field covered by the Stamp Act.

78. Mr. Ajit Kumar contends further that if the Court had accepted then in that event the authorities under the Stamp Act or the Registration Act are not supposed to oppose such valuation. If they had any difficulty in accepting it, in

that event it was open to them to approach the Court. This contention is wholly misplaced and misconnected. There is no provision provided either in the Stamp Act or in the Registration Act under which these authorities can approach the Court while registering the document in execution of a decree for the purpose of valuation or payment of stamp duty or otherwise. On the other hand Order 21, Rule 34 being specific and clear having recognized the domain of the registering authority or the authorities under the Stamp Act as free from any embargo in view of subrules (4) and (6), there cannot be any scope of their approaching the Court. These authorities are not parties to the proceedings and it is not bound by it and particularly when the application of the Stamp Act and the Registration Act are excluded by subrules (5) and (6) of Order 31, Rule 21 of the Code. Nowhere in Order 21 any procedure is provided for such authorities to approach the Court. The execution of the decree is executed in the manner provided in Order 21. Unless Order 21 prescribe any procedure or method or mode or confers right on a party, no person other than the parties of the proceedings or claiming under the parties are entitled to intervene except in the manner provided in Order 21. There being no provision provided in Order 21 to entertain such a situation as contended by Mr. Ajit Kumar, the contention appears to be wholly misplaced and misconceived and unfounded in law. According to him by friction of law for limited purpose, the authorities under the Stamp Act and the Registration Act are parties to the proceedings by reason of Sections 6 and 24A of the Court Fees Act and Section 36 of the Stamp Act and Chapter XIV and XV of Stamp Rules particularly Rules 330 and 334 and, therefore, these authorities have a right to revision with regard to valuation in terms of Section 6C of the Court Fees Act, in view of the fact that the Court had accepted the draft to have been engrossed on properly stamped paper, and that the document was signed by the officer authorised by the Court. Therefore, it was incumbent on such authorities to seek a revision with regard to the acceptance of the valuation and the chargeability of the stamp duty on the ground that the document was prepared on properly stamped paper. According to him since the decree has not been alleged to have been obtained by fraud, the value set forth in the instrument by the Court in terms of the decree cannot be questioned and if questioned, it will be alteration of the decree and as such cannot be affected by Section 47A of the Stamp Act since Section 27 of the Stamp Act requires setting forth in the instrument the consideration and the chargeability of the duty. In view of the discussion made hereinbefore, this proposition also does not seem to have any leg to stand and falls through. The question of fraud is wholly immaterial. It is the provision of the Stamp Act and the Registration Act that has been set free by reason of subrule (6) of Rule 34 of Order 21 of the Code.

79. Lastly, Mr. Ajit Kumar had contended that an issue had been framed with regard to the sufficiency of the Court fee paid and that such a finding having been arrived at, the question appears to have been decided collaterally and as such cannot be reopened. Again for the same reason mentioned hereinbefore, the contention appears to be misplaced and misconceived since the two cases

operate in two different fields. Both cannot be confused together.

80. For all these reasons, I am not inclined to accept the contention of Mr. Ajit Kumar.

81. This writ petition, therefore, fails and is accordingly dismissed. However, it will be open to the authorities concerned to proceed to determine the valuation in terms of the Order dated 13th June, 1994 contained in Annexure 11 to the writ petition having regard to the observation made hereinbefore in respect of the date forming the basis of such valuation, namely, the date of execution and presentation of the deed for registration by the officer authorised by the Court in execution of the decree. Such determination is to be made in accordance with law as early as possible, preferably within a period of three months from the date a certified copy of this order is produced before the concerned authority after giving opportunity to the petitioner having regard to the direction contained in the order dated 13th June, 1994 (AnnexureII) to the writ petition. There will, however, be no orders as to costs. Petition dismissed.