

(2005) 08 AHC CK 0001
In the Allahabad High Court
Case No : F.A.F.O. No. 1704 of 2005

Smt. Veena Bahl (deceased) and Others	APPELLANT
Vs	
Vishnu Kumar and Others	RESPONDENT

Date of Decision : 16-08-2005

Acts Referred:

Court Fees Act, 1870 — Article 17, 7

Citation : (2006) 1 AWC 598

Hon'ble Judges : Yatindra Singh, J; R.K. Rastogi, J

Bench : Division Bench

Advocate : R.K. Pandey and Satya Prakash Pandey, for the Appellant; Kshitej Shailendra, for the Respondent

Final Decision : Dismissed

Judgement

R.K. Rastogi, J.—This is an appeal against the order dated 23.4.2005, passed by Sri Akhilesh Chandra Sharma, learned Additional District and Sessions Judge Court No. 10, Moradabad in Original Suit No. 319 of 1982, Smt. Veena Bahl and Ors. v. Sri Vishnu Kumar and Ors..

2. The facts relevant for disposal of this appeal are that the plaintiffs Smt. Veena Banal, Smt. Rarnwati Devi and Smt. Rajeshwari Devi Rastogi (now all deceased) filed O.S. No. 319 of 1982 in the court of Civil Judge, Moradabad, against the defendants Sri Vishnu Kumar and Ors. with these allegations that the properties specified in Schedule "A" and "B" were owned by Raja Krishan Kumar and his son Raja Raj Kumar who jointly executed a registered deed of transfer on 6.8.1896 in favour of Anirudh Kumar and Lal Kumar. It was further provided in that deed that the property shall not be transferred to any non-member of the family so long as the members of the family were ready to take it. Sri Lal Kumar died unmarried and thereafter Sri Anirudh Kumar also died and so the property was inherited by his son Jagdish Kumar. Jagdish Kumar also died on 22.3.1932 and he was succeeded by his widow Smt. Surendra Bala Devi. She executed her last Will in favour of her daughter Smt. Rajeshwari Devi Tandon (mother of

plaintiff No. 1 on 18.5.1964) narrating therein that her Manager Pt. Shymal Lal Chaubey had obtained a Will of this property on 23.12.1963 in his own favour which was written in a language not known to her and she was wrongfully made to sign it without explaining its contents to her. Under the said Will dated 18.5.1964, the properties described in Schedule "A" of the plaint were bequeathed to Smt. Rajeshwari Devi Tandon who died on 17.12.1980, leaving behind plaintiff No. 1 as her sole heir and thus plaintiff No. 1 became owner in possession of the properties left by her. Smt. Surendra Bala had filed Suit No. 17 of 1944 against her mother-in-law, Smt. Ginda Kunwar widow of Sri Anirudh Kumar in the court of Civil Judge, Moradabad and aggrieved with the order of the Civil Judge, Smt. Ginda Kunwar filed Civil Revision No. 338 of 1945 before High Court at Allahabad and in this revision a compromise was filed by Smt. Ginda Kunwar and Smt. Surendra Bala on 16.12.1947 and according to this compromise Smt. Ginda Kunwar was given a life interest in the property specified in Schedule "B" of the plaint in lieu of her maintenance allowance and she was put in actual possession of that property and after enforcement of the Hindu Succession Act, 1956, Smt. Ginda Kunwar became full owner of this property. Smt. Veena Bahl, plaintiff No. 1 died on 22.10.1986 during the pendency of the present suit leaving behind her husband and two sons as her legal heirs and they were impleaded as plaintiff Nos. 1/1, 1/2 and 1/3. Smt. Ginda Kunwar executed a registered Will of property specified in Schedule B in favour of her grand-daughter Smt. Rajeshwari Devi on 23.12.1967. Smt. Ginda Kunwar died on 15.4.1974 and then Smt. Rajeshwari Devi became owner of this property by virtue of above Will. Smt. Rajeshwari Devi also died on 17.12.1980 and then her daughter Smt. Veena Bahl (plaintiff No. 1) became sole owner of the aforesaid property. Smt. Surendra Bala was not in possession of the property specified in Schedule "B" in 1956 when the Hindu Succession Act was enforced and she had no right to execute any Will of the above property on 23.12.1963. Smt. Rajeshwari Devi never entered into any agreement with Sri Vishnu Kumar (defendant No. 1) on 25.5.1968 or on any other date. No such agreement was signed by her and the agreement relied upon by defendant No. 1. Shri Vishnu Kumar is a void document. The Will relied upon by defendant No. 1 is invalid on this ground also that it has been made by Surendra Bala in favour of persons who are not member of her family. The plaintiff No. 1 after the death of her mother has become sole owner in possession of the disputed property but defendant No. 1 was threatening to realize rent from tenants in the property and during the pendency of the suit defendant No. 1 transferred some of the properties to defendants No. 3 to 8 relying upon the aforesaid forged Will in favour of himself and defendants No. 9 to 13. Plaintiff No. 2 died during the pendency of the suit on 17.9.2003 leaving plaintiffs No. 2/1 to 2/5 as her legal heir. Plaintiff No. 3 also died on 11.4.1997, leaving plaintiff No. 3/1 to 3/7 as her heirs. Defendant No. 2 also died leaving behind three legal heirs who were already impleaded as defendants No. 9, 10 and 11. Defendant No. 3 also died leaving defendants No. 3/1 to 3/4 as per heirs. Defendant No. 10 also died leaving behind defendants No. 10/1 to 10/4 as legal heirs. Pt. Shyma Lal

Chaubey (defendant No. 2) as Manager was permitted by the plaintiffs and their predecessors to reside in house No. 2 of the schedule "A" property and encouraged by him his sons and other persons named as legatees in the alleged Will dated 23.12.1963 were interfering with the plaintiffs' right over the property. Plaintiff No. 1 executed a sale deed in favour of plaintiffs No. 2 and 3 on 7.7.1983 in respect of the property specified in Schedule "B" of the plaint. These plaintiffs No. 2 and 3 Smt. Ramwati Devi and Smt. Rajeshwari Devi executed two Wills in favour of plaintiff No. 2/2 on 27.1.2003 and 29.2.1996 respectively and as such plaintiff No. 2/2 became sole owner of the property specified in schedule "B" of the plaint. The plaintiffs would suffer irreparable loss and injury if any of the properties specified in Schedule "A" and "B" are illegally transferred by the defendants. They, therefore, filed the suit for declaration that plaintiffs No. 1/2 and 1/3 are owner of the property specified in Schedule "A" of the plaint and that plaintiff No. 2/2 is owner of the property specified in Schedule "B" of the plaint and for permanent injunction restraining the defendants from alienating these properties. The plaintiffs valued the suit for relief "A" and "B" on the market value of property No. 1 and 2 specified in Schedule "A" of the plaint which was Rs. 26,98,530 and Rs. 43,11,195 respectively and on value of property No. 3 of Schedule "A" calculated at thirty times of the amount of annual land revenue of Rs. 12.95 paise, i.e., Rs. 388.50 paise plus Rs. 21,000 being the price of 21 trees standing thereon ; total Rs. 70,31,113.50 paise. The properties specified in schedule "B" were valued at Rs. 1,00,000 in respect of reliefs "C" and "D". The plaintiffs paid court fees of Rs. 200 each for declaratory reliefs "A" and "C" and Rs. 500 each for the reliefs of injunction "B" and "D".

3. The defendants contested the suit. They took a plea that the plaintiffs had sought the relief of declaration with the consequential relief of injunction in the relief clause of the plaint and so the plaintiffs should have paid ad valorem court fees on the entire valuation of the suit u/s 7(iv)(a) of the Court Fees Act (the Act) and the court fees of Rs. 200 and Rs. 500 paid separately for the reliefs of declaration and injunction was insufficient.

4. The following preliminary issues were framed :

1 (a) Whether the suit was undervalued?

1(b) Whether the court fees paid was insufficient?

5. The learned Additional District Judge after hearing both the parties on the above preliminary issues held on issue No. 1(b) that the court fee paid by the plaintiffs was not sufficient and the plaintiffs should pay ad valorem court fee on the entire valuation of the property in accordance with Section 7(iv)(a) of the Court Fees Act. Aggrieved with that order the plaintiffs filed this appeal.

6. We have heard the learned Counsel for both the parties and have perused the record.

7. The learned Counsel for both the parties referred to the seven Judges Full

Bench Ruling of this Court in the ease of Chief Inspector of Stamps, U.P., Allahabad Vs. Mahanth Laxmi Narain and Others, The learned Counsel for both the parties have relied upon different paragraphs of this ruling in support of their rival contentions. The learned Counsel for the plaintiff appellants contended that the relief of Injunction sought by the plaintiffs is not a consequential relief and so Section 7(iv)(a) of the Act is not applicable to the present case. On the other hand the learned Counsel for the defendants contended that relief of injunction sought by the plaintiffs is a consequential relief.

8. Let us consider the rival contentions of both the parties. However, before going through the above ruling it will be useful to reproduce the reliefs sought by the plaintiffs in the present suit which are as follows :

(a) A decree of declaration in favour of plaintiffs Nos. 1/2 and 1/3 against the defendants be passed declaring them to be owner of the properties mentioned in Schedule "A" of the plaint, be passed with a declaration that the plaintiff No. 1 is owner of properties No. 2, 3. 4 and part of the property No. 1 which is exclusive of the property and does not contain the property given in Schedule "B", the defendants be restrained from alienating the same in any way and if the plaintiff No. 1 is not held entitled to be in possession of the said properties then the possession be also delivered to plaintiff No. 1 over the same.

(b) That decree of prohibitory Injunction be passed in favour of plaintiff Nos. 1/2 and 1/3 against the defendants restraining them from alienating the properties mentioned in Schedule "A" of the plaint in any way with a declaration that the plaintiffs No. 2 and 3 are owners in possession of the property mentioned in Schedule "B", the defendants be restrained from interfering in the possession of plaintiffs No. 2 and 3 over the same and in the alternative if defendant No. 2 and 3 be not found in possession of the property in the Schedule "B", possession actual over the property in occupation of the defendants or any of them and construction over the portion in occupation of the tenants be delivered to the plaintiffs No. 2 and 3.

(c) That a decree of declaration in favour of plaintiff No. 2/2 be passed, against the defendants, declaring him to be the owner of properties mentioned in Schedule "B" of the plaint.

(d) That a decree of prohibitory injunction be passed in favour of plaintiff No. 2/2 restraining the defendants from alienating the property mentioned in Schedule "B" of the plaint in any way.

9. In the case of Mahant Laxmi Narain (supra) the orders of the lower courts in two suits were considered. One of those suits was Suit No. 83 of 1953. This suit was filed by Sri N.A. Guzdar and 16 other Parsis against Sri S. T. Shapoorji and 24 other Parsis on the allegation that "The Baram Jashane Roze Bahram Mandali" of Allahabad was a socio-religious association of the Parsis, that it had constructed a hall known as Bazam Gandhi Hall, that a meeting was convened on February 14, 1952, for winding up the Mandali and for transferring the hall and

that the meeting and the resolutions passed thereat were illegal and non-binding . The relief prayed for were :

(1) That it may be declared that the entire proceedings of meeting of 14.2.1952, including the resolutions passed thereat are illegal, ultra vires and null and void as regards the Mandali which is neither bound by them nor can be wound up for any reasons whatsoever.

(2) That the defendants be restrained from interfering with or obstructing in any manner whatsoever the plaintiffs in the use and enjoyment of the "Bazam Gandhi Hall" property belonging to the Mandali, as members thereof.

The first relief of declaration was valued at Rs. 5,000 and the fixed court-fee of Rs. 18/12 was paid thereon. The relief of injunction was valued at Rs. 200 and a court-fee of Rs. 50 was paid thereon. The defendants raised an objection that the suit was one for a declaration of this consequential relief of injunction and court-fee was payable ad valorem on the value of the immovable property under Sub-section (iv)(a). The Civil Judge held that the suit was for a declaration with a consequential relief of injunction, that the consequential relief was in respect of Immovable property, that the relief was incapable of valuation and, therefore, the court-fee was payable on the market value of the immovable property which was Rs. 12,000. He accordingly directed the plaintiffs to make good the deficiency which amounted to Rs. 986/2. Against this order, the plaintiffs filed F.A.F.O. No. 299 of 1959. J. D. Sharma, J., who heard the appeal, affirmed the decision of the Civil Judge that the suit was for a declaration with a consequential relief but he was of the view that the relief claimed was not in respect of immovable property, and therefore court-fee was payable on the amount at which the two reliefs were valued in the plaint, i.e., Rs. 5200. Against his judgment, three special appeals were filed, No. 27 of 1961 by the plaintiffs, No. 33 of 1961 by the defendants and No. 34 of 1961 by the Chief Inspector of Stamps. These appeals came up for hearing before a Bench which referred them to a Full Bench.

10. Another suit considered in the above ruling was No. 12 of 1960, which was filed by Mahant Laxmi Narain and two others, for the following reliefs :

1. That it be declared that plaintiff No. 1 was the mahant of math Khedra and sarbarakar of Shiv Ji and of properties of the math ; and

2. That an injunction be issued restraining the defendants from interfering with the possession of plaintiff No. 1 as the mahant and sarbarakar over the properties, plots, crops and well in suit.

The properties in suit were valued at Rs. 7,343/11 and the plaintiffs paid court fee of Rs. 100 on the first relief and a court fee of Rs. 237/8 on the second relief, treating the reliefs as two distinct and independent reliefs. The suit was dismissed by the Civil Judge and an appeal was filed by the plaintiffs. At that stage, the Inspector of Stamps, reported that the court-fee paid by the plaintiffs

was insufficient as the suit was governed by Sub-section (iv)(a) and court-fee was liable to be paid on the full value of the property and not on one-fifth of its value. The District Judge rejected the report holding that the second relief was not a consequential relief and the court-fee paid separately on the two reliefs was sufficient. Against his order, the Chief Inspector of Stamps filed Civil Revision No. 526 of 1963. A learned Single Judge, before whom the revision came up for hearing, referred it to a larger Bench. The Division Bench before which it then came up, referred it to a Full Bench.

11. Their Lordships of the Full Bench while interpreting the words "consequential relief observed in paragraph 18 of the judgment as follows :

18 . The words consequential relief have not been defined in the Court-Fees Act. The meaning, which should be given to a word or expression not defined in an enactment, should be its ordinary dictionary meaning or a meaning which is necessarily implied by the context in which it is used or by the object of the provisions or by the scheme of the enactment. The ordinary dictionary meaning of the word "consequential" is "following as a result or inference". This meaning justified the first test laid down in *Kalu Ram Vs. Babu Lal and Others*, The judgment in that case does not disclose or indicate the basis for the second, third and fourth tests. There is nothing in the language of Section 7 or in the context in which the word "consequential" has been used to support these tests. The objects of the Court-Fees Act are to collect revenue and to prevent frivolous suits being filed. Neither from these objects nor from the scheme of the Act can these three tests be necessarily implied.

12. It may be mentioned that in the earlier Full Bench ruling of this Court in the case of *Kalu Ram Vs. Babu Lal and Others*, , it was laid down that the relief must satisfy the following four conditions or tests to make it a "consequential relief within the meaning of Section 7(iv)(c) :

1. The relief follows directly from the declaration given.
2. The Valuation of the relief is not capable of being definitely ascertained.
3. The relief is not specifically provided for anywhere in the Act.
4. The relief is one which cannot be claimed independently of the declaration as a substantive relief.

13. In the case of *Mahant Laxmi Narain (supra)* the Full Bench of seven Hon"ble Judges considered the aforesaid Full Bench ruling in the case of *Kalu Ram (supra)* and held that the second, third and fourth tests laid down in *Kalu Ram's* case are not justified and they unnecessarily narrow down the meaning of the words consequential relief. Their Lordships concluded the correct legal position in this regard in the following paragraphs :

22. It thus appears that the second, third and fourth tests laid down in *Kalu Ram Vs. Babu Lal and Others*, are not justified and unnecessarily narrow down the

meaning of the words "consequential relief". Section 7(iv)(c) applies to a suit to obtain a declaratory decree or order in which a consequential relief is prayed. The suit must principally be for a declaration and in that suit some other relief should also be claimed. The two reliefs may be asked for either as one composite relief or as two distinct reliefs. The words "consequential relief" imply that the other relief should be one which flows directly from the declaration which the plaintiff desires to be made. This means that the plaintiff should be entitled to the other relief only as a necessary consequence or result of the granting of the declaratory relief. The other relief must be so dependent on the declaratory relief that it cannot be allowed if the principal relief is refused. In Suit No. 83 of 1953, two reliefs were prayed for which, in substance, were for a declaration that the proceedings of a meeting held on 14.2.1952 and the resolutions passed at it were illegal and not binding on the Mandali and for an injunction restraining the defendants from obstructing the plaintiffs from using the hall belonging to the Mandali. Here the relief of injunction flowed from the relief of declaration and if the suit for declaration were dismissed, it could not be decreed for the injunction. The relief of injunction is therefore, a consequential relief and the suit is covered by subsection (iv)(a). In Suit No. 12 of 1960, the reliefs prayed for were a declaration that the first plaintiff was the mahant of the math and the sarbarakar of the deity and of the properties of the math and an injunction restraining the defendants from interfering with the possession of the first plaintiff over the properties as mahant and sarbarakar. The relief of injunction flowed directly from the right which the plaintiff desired to be declared and is a consequential relief. This suit is also, therefore, covered by Sub-section (iv)(a).

23. The next question, which arises for consideration, is as to the manner in which the reliefs are to be valued under Sub-section (iv)(a). Sub-section (iv)(a) treats a suit for a declaratory decree or order, in which a consequential relief is prayed, as one for a single relief. It provides that the court-fee payable in such suits shall be according to the amount at which the relief sought is valued in the plaint or memorandum of appeal. This gives the plaintiff a right to put any valuation, which he considers proper, on the combined declaratory and consequential reliefs. This right of the plaintiff is subject to two restrictions imposed by the first and the second provisos. The second proviso makes it incumbent on the plaintiff to value the relief at an amount not less than Rs. 300. The first proviso has already been set out earlier. It is applicable only to suits falling under Sub-section (iv)(a) in which the relief sought is with reference to immovable property. It provides for the following three things :

(i) That the plaintiff shall value the relief according to the value of the consequential relief. This means that the declaratory relief and the consequential relief have to be treated as one relief and the value of such relief has to be the value of the consequential relief :

(ii) That, if the consequential relief is capable of valuation, then the plaintiff shall value the relief at an amount according to this valuation ; and

(iii) That, if the consequential relief is incapable of valuation, then the plaintiff shall value the relief at an amount which is the value of the immovable property computed in accordance with Sub-section (v), (v-A) or (v-B) as the case may be. Upto this stage there is no dispute. The controversy is over the meaning of the words "relief is incapable of valuation". On the one hand, it is said that these words mean that the relief should be incapable of valuation under any provision of the Act, on the other hand, it is asserted that these words mean that the relief should be incapable of market or economic valuation.

Their Lordships after discussing rival contentions on the point concluded the legal position as under:

It must be kept in mind that the declaratory relief and the consequential relief falling u/s 7(iv)(a) in respect of Immovable property have to be valued as one relief and that relief is the consequential relief. What has then to be seen is whether the relief, which has been prayed as a consequential relief is capable of valuation or not. When the Act itself provides the manner or method of valuation of a particular relief, how can it be said that that relief is incapable of valuation? If the relief, which is prayed for as a consequential relief is specifically provided for in the Act, then it is capable of valuation and must be valued according to the provision made in respect of it; but if the relief is one which is not specifically provided for in the Act, then it is not capable of valuation under the Act and must be valued according to the value of the immovable property in respect of which it has been prayed. Simply because an injunction is sought in conjunction with a declaratory relief, thereby becoming a consequential relief, it does not cease to be a relief of injunction. The value of the suit is the value of the consequential relief that is to say the value of the relief of injunction. The method for valuation of a relief of injunction is specifically provided in Sub-section (iv-B). Where the relief, which is prayed for as a consequential relief is the relief of injunction, it is capable of valuation under Sub-section (iv-B) and must be valued according to the provisions of this subsection.

14. After making these observations their Lordships held that in O.S. No. 83 of 1953 the suit was for a declaratory decree with a consequential relief of injunction and so it was governed by Section 7(iv)(a) of the Court Fees Act and so the court fee was to be paid in this case in accordance with the above section.

15. In Suit No. 12 of 1960, it was held that this case was also governed by Section 7(iv)(a) of the Act but since excess court fee had already been paid, there was no question of recovery of any more court fees.

16. It is to be seen that in the present case also the plaintiffs have sought for a declaratory decree in respect of the properties specified in Schedule "A" and "B" of the plaint along with consequential relief of injunction and in view of the law laid down in the above Full Bench ruling in the case of Mahant Laxmi Narain (supra) the provisions of Section 7(iv)(a) of the Court Fees Act are applicable to the present case, and the plaintiffs have to pay court fee in accordance with this

section.

17. The above ruling in the case of Mahant Laxmi Narain (supra) was followed by a Division Bench of this Court in the case of Chief Inspector of Stamps, U.P. v. Bhagwati Prasad and Ors. 1985 ALJ 219. In this case also a declaratory relief was sought for in respect of certain property along with relief of injunction and so it was held to be a case of consequential relief covered by Section 7(iv)(a) of the Court Fees Act.

18. The learned Counsel for the defendants also cited before us another Division Bench ruling of this Court in the case of Kailash Chand Vs. Vth A.C.J., Meerut and others, . In this case a suit was filed challenging a Will as null and void and the suit was filed after death of the testator. It was held that after death of the testator, the Will shall become operative, and therefore it is an instrument or document securing the property having money value, and therefore the court fee would be payable u/s 7(iv)(a) of the Court Fees Act and Article 17 of Schedule II of the Court Fees Act shall not be applicable.

19. It was submitted by the learned Counsel for the defendants that in the present case the plaintiffs have challenged the Will allegedly executed by Smt. Surendra Bala in favour of Pt. Shyam Lal Chaubey on 23.12.1963 as well as the agreement executed by Smt. Surendra Bala in favour of defendant No. 1 on 25.5.1968. So it is not mere a suit for declaration under Article 17 of Schedule II of the Act. He also cited before us the ruling of this Court in the case of Smt. Bina Rani v. Fakir Chand and Ors.. 1986 ALJ 86, in which it has been held that the Will is an instrument and it secures property in favour of the beneficiaries concerned and so Section 7(iv)(a) is attracted for payment of court-fees.

20. On the other hand the learned Counsel for the plaintiff appellants submitted in support of his contention that the suit is for mere declaration without any consequential relief, cited before us the ruling of Calcutta High Court in Siba Rani Devi and Others Vs. Ramendra Nath Mukherjee and Others, . In this case the suit involved the construction of some document in which a stranger was interested and it did not involve cancellation or setting aside of any document, so the suit was held to be within the purview of Article 17 of Schedule II of the Court Fees Act. The facts of this ruling are quite different from those of the present case and so it does not apply to the present case.

21. Learned counsel for the plaintiff appellants next referred to the case of Ram Krishna Barman v. Mohan Lal Sahgal and Ors. 1964 ALJ 498. We have carefully gone through this ruling. In this case the facts were that O.S. No. 14 of 1950 was filed by one Radhey Lal for relief of declaration in respect of certain property and court fee was paid for that relief under Article 17(iii) of Schedule II of Court Fees Act. The suit was decreed ex parte. Subsequently R. K. Barman, the plaintiff appellant, who was a defendant in the above suit, filed O.S. No. 14 of 1956 challenging the above decree passed in O.S. No. 4 of 1950 alleging that the decree was obtained by committing fraud upon him and sought declaration to

this effect. The plaintiff of this suit also paid the amount of court fees in accordance with Article 17(iii) of the Court Fees Act. The Stamp Inspector submitted a report that the case was covered u/s 7(iv)(a) of the Court Fees Act. It was held by this Court that when the court fee was payable in respect of the relief sought in Suit No. 4 of 1950 under Article 17 (iii) of the Act, then the same court-fee was payable in the subsequent Suit No. 14 of 1956 praying for cancellation of the decree passed in that suit. The facts of this case, as narrated above, are quite different from those of the instant case and thus the ruling of this case also does not render any help to the plaintiff appellants in the present case.

22. The learned Counsel for the plaintiff appellants also cited before us another Division Bench ruling of this Court in the case of Sahu Madan Mohan Vs. Tejram George Coronation Hindu School Association and Others, In this case the plaintiff had sought two reliefs ; one for declaration that the plaintiff was the President of the School and second for declaration that certain resolutions passed by the defendants were void and ultra vires. Injunction was also sought to prevent the defendants from acting upon the said resolutions passed by them and to prevent the defendant No. 2 from acting as the President, and also to prevent them from interfering with his (plaintiffs) working. It was laid down by the Division Bench that the first relief relates to declaration of the plaintiff as President of the School and it had no concern with the immovable property and so it was the pure relief of declaration and Section 7(iv)(a) of the Court Fees Act was not applicable in respect of the first relief, but this section was applicable in respect of second relief of declaration for declaring certain resolutions to be void and ultra vires, and the relief of injunction to prevent the defendants from acting upon those resolutions was by way of consequential relief and so Section 7(iv)(a) of the Act was applicable in respect of these reliefs. This ruling does not render any help to the plaintiffs in the present case because in the instant case, there is no dispute regarding any post like the Principal involving pure and simple declaration only, but the dispute is in respect of certain immovable property, and declaratory reliefs have been sought in the suit in respect of those properties with a consequential relief of injunction. In such a case Section 7(iv)(a) of the Act is applicable as laid down in this ruling.

23. The learned Counsel for the plaintiff appellants also cited before us the Full Bench ruling of this Court in the case of Smt. Bibbi and Another Vs. Shugan Chand and Others, . In this case it was held that the sale deed is a document securing property and so the suit for declaring the sale deed to be unauthorised, void, illegal and ineffective as against the plaintiff, was within the ambit of Section 7(iv)(a) of the Court-Fees Act and Article 17(iii) of Schedule II is not applicable and the contrary view taken in Chief Inspector of Stamps Vs. Jash Pal Singh and Others, was overruled. This ruling also does not render any help to the plaintiff appellants.

24. The learned Counsel for the plaintiff appellants also cited before us the ruling

of Hon''ble Apex Court in the case of State of Uttar Pradesh Vs. Ramkrishan Burman (Dead) by L. Rs. and Others, . This appeal was filed before Hon''ble Supreme Court by the State of U.P. against the judgment of this Court in the case of R. K. Barman (supra). The Hon''ble Apex Court dismissed the appeal filed by the State confirming the judgment given by this Court. The facts of the above case being different from the facts of the instant case, as already discussed above, this ruling does not render any help to the present plaintiff appellants.

25. The learned Counsel for the plaintiff appellants also cited before us a ruling of the M. P. High Court in the case of Smt. Sabina alias Farida Vs. Mohd. Abdul Wasit, In this case relying upon the ruling of the Hon''ble Apex Court in the case of Shamsheer Singh Vs. Rajinder Prashad and Others, the Court observed as follows :

3A. Section 7(iv)(a) refers to a prayer for a declaratory decree and consequential relief. Where the plaintiff wants to claim an injunction which is a consequence of declaration or where without declaration of right or status the Injunction cannot be granted, Section 7(iv)(a) would apply with full force. Section 7(iv)(d) relates to the relief of the injunction. Article 17 of Schedule II of Court-Fees Act refers to certain suits wherein the fixed court-fee is to be paid. It relates to such reliefs where the plaintiff seeks to obtain declaratory decree where no consequential relief is prayed. Section 7(iv)(c) and Article 17 of Schedule II read together lead to only irresistible conclusions that if no consequential relief is prayed for Section 7(iv)(c) would not be applicable and plaintiff is not liable to pay the court-fees on the market value of the property as a simple declaration would be sufficient. The Supreme Court in the matter of Shamsheer Singh Vs. Rajinder Prashad and Others, has observed as under :

The expression "consequential relief means some relief, which would follow directly from the declaration given, the valuation of which is not capable of being definitely ascertained and which is not specifically provided for anywhere in the Act and cannot be claimed independently of the declaration as a "substantial relief". In the matter of Purshottam Dass and Others Vs. Har Narain and Another, the High Court following the observations of the Supreme Court further held that where the Court held that the plaintiffs could not claim the relief of injunction without praying for declaration as prayed for, it must be held that the relief of declaration and injunction prayed for is a claim to obtain declaratory relief where consequential relief is prayed for.

4. The true test for ascertaining whether the consequential relief in fact flows from the declaratory relief is as to whether the said consequential relief can be claimed independently of the declaration as a substantial relief or not. Every injunction in a suit for declaration would not follow from the declaration. In a case where plaintiff is in possession of the property in his own rights, comes before the Court and seeks declaration that the property belongs to him and the other party cannot interfere with his possession then it cannot be said that plaintiff is required to pay the ad valorem court-fees because the relief of

injunction is a consequential relief. As observed above the relief of injunction if can independently be claimed then in every case it would not be a consequential relief. It is settled law that if a person is in settled possession he cannot be evicted except in accordance with law. Such a person if claims a declaration of his title and injunction that the defendants be restrained from interfering with his possession then the relief of injunction is not a consequence of the declaration because even if the Court is of the opinion that the declaration cannot be made in favour of the plaintiff then too the Court will grant an injunction in favour of the person who is in settled possession. Such a person would be called upon to value both the reliefs separately and each of the reliefs would be Independent of the other. In a suit of this nature the plaintiff is not seeking the relief of Injunction as consequential relief but is entitled to claim the same because of his settled possession. In such a case Section 7(iv)(d) of the Court-Fees Act would be applicable for valuing the relief of Injunction and Article 17 of Schedule II of the Act would provide the court-fees for the said declaration.

It is to be seen that in this case the plaintiff had sought the relief of declaration of title to the disputed house on the basis of her settled possession and had also sought Injunction to restrain defendants from Interfering with her possession. It was held that the relief of Injunction was not consequential to the relief of declaration and so Section 7(iv)(a) of the Act was not applicable.

26. It was contended by the learned Counsel for the plaintiff appellants that in the present case also the plaintiffs are seeking declaration of title in exercise of their own rights to the disputed property and the relief of injunction was not a consequential relief and so Section 7(iv)(a) was not applicable. We do not find any force in the above contention. It is to be seen that in the present case the plaintiffs have challenged the Will allegedly executed by Smt. Surendra Bala in favour of Pt. Shyam Lal Chaubey, defendant No. 2. They have also challenged the agreement dated 25.5.1968 allegedly executed by Smt. Rajeshwari Devi in favour of Vishnu Kumar defendant No. 1. They have also challenged the transfer deeds of the disputed property executed by defendant No. 1 in favour of defendant Nos. 3 to 8. Their claim rests upon validity of the Will dated 18.5.1964 in favour of Rajeshwari Devi and upon adjudication of the Will in favour of defendant No. 2 as null and void. The transfer deeds of the properties in favour of defendant Nos. 3 to 8 will also have to be declared void before grant of the declaration in the plaintiffs' favour, and the relief of Injunction cannot be granted before grant of declaration of title in favour of the plaintiffs. As such, in the present case, the relief of Injunction is a consequential relief and so the above ruling in case of Smt. Sabina alias Farida (*supra*) does not render any help to the present plaintiff appellants.

27. The learned Counsel for the plaintiff appellants also cited before us the ruling of this Court in the case of Smt. Bina Rani v. Fakir Chand and Ors. 1986 ALJ 86. In this case the plaintiff had sought declaration of title in her favour on the basis of a Will and in that suit the Will relied upon by the defendant was also

challenged though no specific relief was sought in respect of the latter Will. It was held that the relief could be granted only after holding the Will in favour of the defendant to be void and so Section 7(iv)(a) of the Act was held applicable to that case. In this way, this ruling does not render any help to the plaintiff appellants in the present case.

28. The learned Counsel for the plaintiff appellants also cited before us a Division Bench ruling of this Court in the case of Kailash Chand Vs. Vth A.C.J., Meerut and others, This ruling was also cited by the learned Counsel for the respondents and has been discussed in para 18 of the judgment. It does not render any help to the plaintiff appellants.

29. The learned Counsel for the. appellants also cited before us another Division Bench ruling in the case of Smt. Shefali Roy Vs. Hero Jaswant Dass and others, . In this case the plaintiff had sought the relief of declaration that he was owner of the disputed property and the sale deed relied upon by the defendant was null and void. It was held in this ruling that the court fee was payable under Article 17 of Schedule II of the Court Fees Act and Section 7(iv)(a) of the Act was not applicable. This view of the Division Bench was, however, not followed in the subsequent Division Bench ruling in the case of Kailash Chand (supra) and their Lordships relying upon Full-Bench decision in the case of Smt. Bibbi and Another Vs. Shugan Chand and Others, (discussed above in para 26) held that a suit involving cancellation or adjudication as void or voidable of such a document is covered u/s 7(iv)(a) of the Act and Article 17(iii) of Schedule II of the Court Fees Act is not applicable. In this view of the matter, the ruling in Shejalt Roy's case (supra) cannot be relied upon.

30. The legal position that emerges out of the discussion, attempted above, is that Section 7(iv)(a) of the Court Fees Act is applicable in the present case and so the learned Civil Judge committed no illegality by holding that the court fee of Rs. 200 paid by the plaintiffs separately for the relief of declaration under Article 17(iii) of the Court Fees Act as well as of Rs. 500 for the relief of injunction was insufficient and court fee should have been paid on the relief of declaration as well on the consequential relief of injunction on the entire valuation of suit property in accordance, with Section 7(iv)(a) of the Act. The order passed by the court below does not suffer from any illegality and it deserves to be upheld. The appeal, in this way, has no force and is liable to be dismissed.

31. The appeal is dismissed with costs. The order dated 23.4.2005, passed by the Additional District Judge is confirmed.