IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE

Present :

THE HON'BLE JUSTICE SOUMEN SEN

C.O. No.4601 of 2015

SRI UMAPADA JATI & ORS.
VS.
SRI MANAS JATI & ORS.

For the Petitioners : Mr. Sudip Ghosh,
Mr. A. Dutta.

For the Opposite Parties : Mr. Nilanjan Bhattacharya,
Mr. Arpan Guha.

Heard on : 15.02.2016

Judgment on : 15th March, 2016.

Soumen Sen, J.:- This revisional application is directed against an order dated 13th August, 2015 passed in connection with the petition under Section 151 of the Code of Civil Procedure filed by the defendants praying for direction upon the plaintiff to pay ad valorem court fees on the basis of the value mentioned in the deed dated 14th August, 2012.

The said petition filed by the defendants was allowed.

The plaintiffs have challenged this order in this revisional application.

The plaintiff filed a suit against the defendants praying, inter alia, for the following reliefs:-

A) *A decree for declaration that the Regd. Deed of sale dated 14/8/2012 executed by def No. 1 to 6 in collusion with def No.7 in favour of defendants No.8 to 15 including Bakula Jati (now dead) is a fraudulent deed collusive in character and in complete breach of trust on the strength of the Power of Attorney dt 13/8/2012 on the footing that the terms embodied in the Regd Power of Attorney dt. 13/8/2012 has not been complied with and as such the said deed dt 14/8/2012 is a sham transaction & not acted upon and/or inoperative and also not binding upon the plaintiffs.*

A decree for further declaration that the defendants no. 8 to 15 including Bakula Jati (now dead) have not acquired any right, title & interest over the 'C' schedule property except "D" Schedule property on the strength of the alleged fraudulent deed dated 14/8/2012 executed by defs. No. 1 to 6 in collusion with def No.7.

B) *A decree for permanent injunction restraining the defendants No.8 to 15 including Bakula Jati (now dead) including their men & agent from creating any obstruction and disturbances in the matter of peaceful possession and enjoyment of the plaintiffs and from taking forcible possession & form making any construction in any manner over the property described in schedule "C" herein below except a portion of the "C" schedule which is described in Schedule "D" herein below and also for a decree of permanent injunction restraining the def No.16 including his men and agents from creating any objection and disturbances in the matter of peaceful possession and enjoyment of the plaintiffs and form taking forcible possession*

& form changing the nature & character & also from making any construction over the "C" schedule property herein below except "D" Schedule property.

C) *A decree for permanent injunction restraining the defendant No.16 not to alienate and/or transfer the "E" Schedule property to any outsider on the strength of the Regd. Deed of Sale dated 20/3/2013.*

The plaintiff at Paragraph 18 of the Plaint stated that for the purpose of court fees and jurisdiction, the suit is valued at Rs.125/- out of which Rs.100/- for declaration and for Rs.25/- for injunction and the ad valorem court fees are paid accordingly.

In the plaint, it is alleged that the defendant Nos. 1 to 6 in collusion and conspiracy with the defendant No.7 and without the knowledge of the plaintiffs executed a registered deed of sale on 14th August, 2012 which was subsequently registered on 16th August, 2012 in respect of entire "C" schedule property in favour of the defendant Nos.8 to 15. The said deed was executed in abuse of the power vested with the defendant Nos.1 to 6 including the defendant No.7 and is a sham transaction. The defendant Nos.8 to 15 including Bakula Jati since deceased did not acquire any right, title and interest over the "C" schedule property on the strength of such fraudulent deed. On the contrary, the plaintiffs have been in possession over the "C" schedule property excepting a portion thereof which is described in schedule "D" as the plaintiffs settled the property in the defendant No.1. The

defendant Nos.8 to 15 including Bakula Jati since deceased thereafter sold about 7 decimal of land described as 'E' schedule property in 1 (one) Dag being old Dag No.1023 Hal Dag No.1089 in favour of defendant No.16 which was subsequently registered on 23rd March, 2013. The said deed is illegal, void as the earlier deed executed in favour of the defendant Nos.8 to 16 is fraudulent and void. It is alleged that the defendant No.15 who is a subsequent transferee in respect of "E" schedule property did not get any physical possession over and in respect of "E" schedule property. The defendant Nos.1 to 6, 8 to 15 including Bakula Jati since deceased and defendant No.16 by reason of execution of fraudulent documents are trying to create a cloud upon the right, title and interest of the plaintiffs over the suit property and to remove such cloud, a decree for declaration as well as a decree for permanent injunction is necessary as the defendant Nos.8 to 15 are trying to create obstruction and disturbance to the peaceful possession and enjoyment of the plaintiffs over and in respect of the "C" schedule property.

It is alleged that the said defendant Nos.8 to 15 on the strength of such void documents are seeking to forcibly enter the suit property in order to take possession of the "C" schedule property. The plaintiffs have also claimed a decree for permanent injunction restraining the defendant No.16 including his men and agents from creating any obstruction to the peaceful possession and enjoyment of the plaintiffs and from taking

forcible possession and from changing the nature and character and from making any construction over the "E" schedule property.

The defendants filed an application under Section 151 of the Code of Civil Procedure contending that the suit has been deliberately undervalued. The defendants contended that it would appear from the prayers of the plaint that the plaintiffs prayed for substantive relief to the effect that the deed dated 14th August, 2012 is void, inoperative, illegal and thereby is liable to be delivered up and cancelled. The value of the property would appear from the registered deed of sale dated 14th August, 2012. The plaintiffs, in view of the reliefs claimed, would be required to put the valuation of the suit according to the market value and/or deed value as mentioned in the deed of sale dated 14th August, 2012 towards the substantive relief and/or main relief. The plaintiffs are liable to pay the ad valorem court fees over the said sum. The suit shall not be governed under Section 7(iv)(c) of the West Bengal Court Fees Act, 1870 and instead the plaintiffs would be directed to pay ad valorem court fees on the value indicated in the deed of sale dated 14th August, 2012.

The trial court on consideration of the decision of the Hon'ble Supreme Court in ***Suhrid Singh @ Sardool Singh Vs. Randhi Singh & Ors.*** reported at ***2010 (2) CHN 156 (SC)*** and this Court in ***Sova Rani Dutta Vs. Ashis Kumar Dutta*** reported at ***2014 (1) CHN 45 (CAL)*** held that the plaintiff being a non-executant of the deed of sale dated 14th August, 2012 in respect whereof he has prayed for a declaration that the

said deed is void along with consequential relief is bound to pay court fees in respect of the consideration mentioned in the deed.

In **Suhrid Singh @ *Sardool Singh*** (supra) the appellant filed a suit praying, inter alia, for the following reliefs:-

(i) *for a declaration that two houses and certain agricultural lands purchased by his father S. Rajinder Singh were co-parcenary properties as they were purchased from the sale proceeds of ancestral properties, and that he was entitled to joint possession thereof;*

(ii) *for a declaration that the Will dated 14.7.1985 with the codicil dated 17.8.1988 made in favour of the third defendant, and gift deed dated 10.9.2003 made in favour of fourth defendant were void and non-est "qua the co-parcenary";*

(iii) *for a declaration that the sale deeds dated 20.4.2001, 24.4.2001 and 6.7.2001 executed by his father S. Rajinder Singh in favour of the first defendant and sale deed dated 27.9.2003 executed by the alleged power-of-attorney holder of S. Rajender Singh in favour of second defendant, in regard to certain agricultural lands (described in the prayer), are null and void qua the rights of the "co-parcenary", as they were not for legal necessity or for benefit of the family; and*

(iv) *for consequential injunctions restraining defendant Nos.1 to 4 from alienating the suit properties.*

The appellant claims to have paid a Court fee of Rs.19.50 for the relief of declaration, Rs.117/- for the relief of joint possession, and Rs.42/- for the relief of permanent injunction, in all Rs.179/-. The learned Civil Judge on the question of court-fees held that the prayers

relating to the sale deeds amounted to seeking cancellation of the sale deeds and therefore ad valorem Court-fee was payable on the sale consideration in respect of the sale deeds. The appellant being aggrieved filed a revision contending that he had paid the Court-fee under Section 7(iv)(c) of the Court-Fees Act, 1870 and that the suit was not for cancellation of any sale deed and, therefore, the Court fee paid by him was adequate and proper. The High Court by the impugned order dated 19.3.2007 dismissed the revision petition holding that if a decree is granted as sought by the plaintiff, it would amount to cancellation of the sale deeds and, therefore, the order of the Trial Court did not call for interference.

The question that had fallen for consideration before the Hon'ble Supreme Court was what would be the Court-fee payable in regard to the prayer for a declaration that the sale deeds were void and not 'binding on the co-parcenary', and for the consequential relief of joint possession and injunction.

This question was answered in Paragraph 5, 6 and 7 of the said report which reads:-

> *"5. Court fee in the State of Punjab is governed by the Court Fees Act, 1870 as amended in Punjab (`Act' for short). Section 6 requires that no document of the kind specified as chargeable in the First and Second Schedules to the Act shall be filed in any court, unless the fee indicated therein is paid. Entry 17(iii) of Second Schedule requires payment of a court fee of Rs.19/50 on plaints in suits to obtain a declaratory decree where no consequential relief is*

prayed for. But where the suit is for a declaration and consequential relief of possession and injunction, court fee thereon is governed by section 7(iv)(c) of the Act which provides :

> *"7. Computation of fees payable in certain suits : The amount of fee payable under this Act in the suits next hereinafter mentioned shall be computed as follows :*
>
> *(iv) in suits - x x x x*
>
> *(c) for a declaratory decree and consequential relief.- to obtain a declaratory decree or order, where consequential relief is prayed, x x x x x according to the amount at which the relief sought is valued in the plaint or memorandum of appeal.*
>
> *In all such suits the plaintiff shall state the amount at which he values the relief sought:*
>
> *Provided that minimum court-fee in each shall be thirteen rupees.*
>
> *Provided further that in suits coming under sub-clause (c), in cases where the relief sought is with reference to any property such valuation shall not be less than the value of the property calculated in the manner provided for by clause (v) of this section." (emphasis added)*

The second proviso to section 7(iv) of the Act will apply in this case and the valuation shall not be less than the value of the property calculated in the manner provided for by clause (v) of the said section. Clause (v) provides that where the relief is in regard to agricultural lands, court fee should be reckoned with reference to the revenue payable under clauses (a) to (d) thereof; and where the relief is in regard to the houses, court fee shall be on the market value of the houses, under clause (e) thereof. (emphasis added)

6. Where the executant of a deed wants it to be annulled, he has to seek cancellation of the deed. But if a non-executant seeks annulment of a deed, he has to seek a declaration that the deed is

invalid, or non-est, or illegal or that it is not binding on him. The difference between a prayer for cancellation and declaration in regard to a deed of transfer/conveyance, can be brought out by the following illustration relating to `A' and `B' -- two brothers. `A' executes a sale deed in favour of `C'. Subsequently `A' wants to avoid the sale. `A' has to sue for cancellation of the deed. On the other hand, if `B', who is not the executant of the deed, wants to avoid it, he has to sue for a declaration that the deed executed by `A' is invalid/void and non-est/ illegal and he is not bound by it. In essence both may be suing to have the deed set aside or declared as non-binding. But the form is different and court fee is also different. If `A', the executant of the deed, seeks cancellation of the deed, he has to pay ad-valorem court fee on the consideration stated in the sale deed. If `B', who is a non-executant, is in possession and sues for a declaration that the deed is null or void and does not bind him or his share, he has to merely pay a fixed court fee of Rs. 19.50 under Article 17(iii) of Second Schedule of the Act. But if `B', a non-executant, is not in possession, and he seeks not only a declaration that the sale deed is invalid, but also the consequential relief of possession, he has to pay an ad-valorem court fee as provided under Section 7(iv)(c) of the Act. Section 7(iv)(c) provides that in suits for a declaratory decree with consequential relief, the court fee shall be computed according to the amount at which the relief sought is valued in the plaint. The proviso thereto makes it clear that where the suit for declaratory decree with consequential relief is with reference to any property, such valuation shall not be less than the value of the property calculated in the manner provided for by clause (v) of Section 7.

7. In this case, there is no prayer for cancellation of the sale deeds. The prayer is for a declaration that the deeds do not bind the "co-parcenery" and for joint possession. The plaintiff in the suit was

not the executant of the sale deeds. Therefore, the court fee was computable under section 7(iv)(c) of the Act. The trial court and the High Court were therefore not justified in holding that the effect of the prayer was to seek cancellation of the sale deeds or that therefore court fee had to be paid on the sale consideration mentioned in the sale deeds."

In **Sova Rani Dutta** (supra) the plaintiff instituted a suit for a decree of declaration that the alleged gift deed is not acted upon and binding upon the plaintiff, a decree of declaration that the alleged deed of gift is prepared fraudulently and by practising fraud upon the plaintiff, a decree of permanent injunction restraining the defendant No.1 not to enter into the suit property and/or physical possession and not to disturb the plaintiff in the suit property and/or not to cause wastage or damage of the suit property and/or not to change the nature and character of the suit property and other consequential reliefs.

The defendants filed an application under Section 151 of the Code of Civil Procedure containing, inter alia, that the suit has not been properly valued at the time of institution and as such the plaintiff should be directed to pay the ad valorem court-fees on the valuation as made in the deed of gift. This application was allowed by the impugned order.

The learned single Judge on consideration of the materials-on-record held that in the present suit, the plaintiff has virtually prayed for a relief for cancellation of the deed of gift and in view thereof the plaintiff

would be required to pay ad valorem court-fees on the valuation indicated in the deed of gift in question.

The learned Counsel for the petitioner has relied upon a Single Bench judgment of our Court in ***Ajit Kumar Shil Vs. Subrata Narayan Chowdhury & Ors.*** reported at ***2011 (1) CHN 653 (Cal)*** and argued that in a similar situation it was held that the plaintiff is not liable to pay ad valorem Court-fees on the valuation of the impugned deeds.

The germane issue is as to whether the valuation of the relief as claimed was justified and the trial court acted with material irregularity in not accepting the valuation put by the plaintiff.

In other words, whether the valuation made by the plaintiff in the suit, is acceptable or not. When a suit is filed, seeking a declaratory decree and also a consequential relief, the plaintiff has the freedom to state the amount he values the relief sought for by him.

A suit for a declaration and consequential relief falls under Section 7(iv)(c) and Court-fees must be paid on the valuation put by the plaintiff. Where the plaintiff is not entitled to a relief of injunction unless the relief of declaration is granted to him and once the relief of declaration is granted the other relief would necessarily follow without further proof, the suit is for a declaration and consequential relief. Section 7(iv)(c) permitting the plaintiff to attach his own valuation to the relief claimed by him and the Courts have no power to revise the plaintiff's valuation unless it appears to be manifestly arbitrary. In construing the plaint, the

Court must take it as it is, not as it may think it ought to have been and a relief not asked for cannot be imported so as to charge Court-fee thereon. It is, however, the plaintiff's own business, if he chooses to take the risk of the suit failing for want of a prayer for consequential relief and the Court cannot call upon him to pay Court-fee on a consequential relief which he should have claimed. The principle of assessment of Court-fee is that where a plaintiff asked for a declaration with a consequential relief, he is bound to pay ad valorem fee proportional to the loss from which he seeks to be relieved. The principle to be followed is to ascertain the substance of the relief claimed and not the form of the language of the plaint. A suit for cancellation of a deed is not one for declaration. In order to avoid payment of ad valorem court-fee, the relief of cancellation is often couched in the form of a declaration that the deed is void or is not binding on the plaintiff or that the deed does not affect the plaintiff's interest. In such cases, if cancellation of or avoiding the effect of the deed is implicit in the declaration sought for Section 7(iv)(c) would apply. However, there will be situations where the plaintiff may not be required to ask for cancellation of the documents. No such relief can be implied if the plaintiff is not required to have the deed cancelled or set aside or to avoid the effect of the deed. A third party need not sue for cancellation. Even where the plaintiff being a party to the deed alleges that it was not executed by him but it is a forged one, he need not seek consequential relief of cancellation.

In ***Naba Kumar Das Vs. Damodar Das*** reported at ***1992 (II) CHN 482; 96 CWN 723*** the issue arose whether in a suit for declaration that the deed of gift is null and void, the suit is to be valued according to the valuation given in the plaint or plaintiff would be required to pay ad valorem court-fees on the value of the property covered by the deed. The plaintiff-petitioners instituted the suit against the defendant-opposite party for a declaration that the Deed of Gift in question executed by the father of the plaintiffs, the defendant no.2, in favour of the defendant no.1 is a nullity and void and is liable to be cancelled and for injunction alleging that the defendant no.1 obtained the said Deed by exercising undue influence on the defendant no.2. The suit was valued at Rs.51/- for injunction under s. 7(iv)(b) of the Court-fees Act. The defendant opposite party no.1 raised a preliminary objection regarding the valuation of the suit. The learned Judge by the impugned order directed the plaintiffs to pay requisite Court fees on Rs.47,000/- which was said to be the value of the property covered by the Deed, as in the opinion of the Court, the plaintiff really wanted to set aside the Deed of Gift under the garb of a declaration. The revisional application was moved against the said order contending that the suit was for a declaration with a consequential relief and the suit was correctly valued under s.7(iv)(b) of the Court-fees Act.

The plaintiffs have essentially prayed for declaration as a principal relief that the alleged Deed of Gift is null and void being fraudulent,

really speaking the prayer for setting aside the said deed was made as a consequential prayer as also the prayer for permanent injunction.

On such consideration it was held that the said suit cannot be termed to be a suit really speaking for setting aside the disputed Deed of Gift, in other words, the said prayer cannot be termed to be a principal prayer made in the suit.

The plaintiffs not being parties to the disputed Deed of Gift, the question of setting aside of the said Deed did not arise at all and simply the suit for declaration that the disputed deed was a nullity or void and not binding upon the plaintiffs without any consequential relief could have been brought by the plaintiffs ignoring the deed altogether and even if the prayer for setting aside the deed was made in the suit, that was merely prayed for a consequential relief.

The leaned single Judge followed an earlier Division Bench judgment in ***Sm. Ranjani Bala Rakshit v. Biswanath Rakshit*** reported at ***AIR 1981 Cal 189*** **Paragraph 7** of the said judgment which reads:-

> *"7. In the Bench decision of this Hon'ble Court in the case of* ***Sm. Ranjani Bala Rakshit v. Biswanath Rakshit (AIR 1981 Calcutta 189)*** *which arose out of a suit for partition upon a declaration that a document purported to be executed by the plaintiff in favour of defendants 3, 4 and 5 dated 29th July, 1955 was fraudulent, collusive and void and not binding on the plaintiff, it was held by Anil Kumar Sen and B.C. Chakrabarti, JJ. in paragraph 18 at page 192 of the said decision as follows:-*

"In the instant case, we have found that the plaint assertion plainly is that she was given to understand that a power of Attorney was being done and she lent her signature on such representation. Therefore, in law, there was no valid execution, the mind of the applicant not having accompanied her signature. Such a case, if proved, would render the deed void. In this case the mis-representation is both as regards the contents as well as to the character of the document, and as such the transaction is wholly void. In such a suit, it is not necessary to seek a relief of setting aside the document and no consequential relief is implicit in the relief asked for."

If suit was for seeking declaratory decree with consequential relief it would fall under Section 7(iv)(c) consequential relief means some relief which would follow directly from the declaration given. Where it is quite independent of the declaratory relief and, thus, can be either granted or refused apart from the relief of declaration, it is not a consequential relief. However, consequential relief would be further raised within the meaning of proviso to Section 34 of the Specific Relief Act. But there may be other kinds of relief which can be regarded as further reliefs but they are not consequential. Whether the plaintiff must ask for a consequential relief in a suit for declaration depends upon the circumstances of each case. It is plain that there may be cases in which a declaration may be sufficient for his protection in such an event the plaintiff cannot be compelled to seek a consequential relief.

(Umarannessa Bibi Vs. Jamirannessa Bibi reported at ***AIR 1923 Cal 362)***

In a suit covered under Section 7(iv) the plaintiff has the sole discretion to fix valuation and the Court cannot determine whether the valuation given by the plaintiff is fair and reasonable. Where a suit is governed by Section 7(iv)(c) is filed the plaintiff has the right to put his own valuation on the relief claimed and such valuation is to be accepted unless it is wholly arbitrary, unreasonable and without any rational basis, however, merely because relief is not valued at market value it does not become arbitrary or unreasonable and if plaintiff can support the valuation on any rational basis, the same has to be accepted. The plaintiff praying for relief under Section 7(iv)(c) may put his own valuation, but it is not binding on the Court and it may refuse to accept the figure if the plaintiffs' valuation is arbitrary or unreasonable, and it can exercise the powers under O.7 R. 11 of the Civil Procedure Code. ***(Sadarali Biswas & Anr. Vs. Wazed Ali Mondal & Ors.*** reported at ***2013 (1) ICC 787)***

There cannot be any doubt that for the purpose of jurisdiction the valuation would be the same as for the court-fees in view of Section 8 of the Suits Valuation Act. Though the plaintiff is entitled to put its own valuation for the reliefs claimed in a suit coming under Section 7(iv)(b), it cannot put any arbitrary valuation of his own and the valuation so put would be subject to revision by the court under Section 11 of the Court-

fees Act which provides that if the Court is of opinion that the subject matter of any suit has been wrongly valued it may revise the valuation and determine the correct valuation and may hold such enquiry as it may think necessary for such purpose. It is well-settled that the valuation is to be determined on the basis of the plaintiff's pleading and with reference to the relief claimed by the plaintiff. It is also established that if there is no objective standard of valuation of the relief, notwithstanding the power of the Court to revise the valuation, the Court will not do so for the simple reason that the Court would have no material before it from which it can adjudge the valuation as given by the plaintiff to be erroneous. How far the plaintiff's claim would succeed or the extent to which relief claimed would be admissible is not the criterion of valuation. If the value of the entire relief claimed in the plaint can be assessed and found out that would be the value of the relief irrespective of to what extent such relief would be admissible to the plaintiff on final adjudication. ***(M/s. Hind Wire Industries Ltd. Vs. Uttarpradesh State Electricity Board & Anr.*** reported at ***1977 (2) CLJ 258)***

The learned Counsel for the parties have also referred to a decision of the Punjab and Haryana High Court in Civil Revision No.5820 of 2008 ***(Ami Chand v. Raj Pal & Ors.*** reported at ***AIR 2011 Punjab and Haryana 109)*** and submits that in the said decision it was held that in a suit where the main relief claimed was of cancellation of sale deed, and the consequent relief of injunction was also sought, such suit would not

be covered under Section 7(iv)(c) and the same would be covered under Article I Schedule I of Act, under which ad valorem Court-fee would be required to be affixed as per consideration of the sale deed. The learned Counsel for the opposite party would argue that the substantive relief is the cancellation of the two deeds and mere cleaver drafting of the plaint would not be allowed to stand in the way of the Court looking into the substantive relief asked for.

It is submitted that the suit is virtually for all intents and purposes a suit for cancellation of the sale deed.

In ***Ajit Kumar Shil Vs. Subrata Narayan Chowdhury & Ors.*** reported at ***2011 (1) CHN 653 (Cal)*** the plaintiff filed a suit praying, inter alia, for the following reliefs:-

> *"(a) .....*
>
> *(b) For a declaration that the defendant Nos.1, 2,6 and 7 as well as 8 have no legal right interest or title in respect of the schedule property and the impugned forged deed being No.1-3109 dated 17.4.1961 as if executed by Amiruddin Halder who died on 17.08.1960 in favour of defendant No. 3 to 5's firm has no force or hold any legality over the suit land the said Deeds to be declared as void deed, and the subsequent deed as deed (a) being No.3800 dated 4.10.2001 in favour of defendant No.6 and 7; (b) the deed of gift dated 19.11.2001 in favour of defendant No.8's office being No.3383 made on the said forged deed being No.1-3109 are not binding upon the plaintiff's purchased property i.e. the suit property.*
>
> *(c) A decree for permanent injunction restraining the defendants and their men and agents from changing the nature and*

character of the suit property and from carrying any construction or boundary fence in any part of the schedule property until and unless the validity of the illegal forged deed is tried by the Court of Law."

The trial court on an objection raised by the defendants as to the valuation and payment of court-fees allowed the said objection held that the plaintiff would have to pay ad valorem court fees on the basis of the agreed amount of deeds under challenge. On consideration of the averments made in the plaint that the plaintiffs are not parties to the disputed deed of gift and having regard to the fact that the principal prayer was for declaration of title the suit is required to be valued under Section 7(iv)(b) and not under Section 7(v)(b). The observation of the learned single Judge in this regard can be found at Paragraph 10 of the said report which reads:-

*"**10**. In AIR 1971 Calcutta 202 a Division Bench of this Hon'ble Court held inter alia, that on plain allegation the plaintiff was in possession of the disputed property and the only thing she needed was declaration that impugned documents were null and void and of no effect, court fee need not be paid under Section 7(iv)(c) of the Court Fees Act. The same principle was followed in the case of Naba Kumar Das -Vs.- Damodar Das [1992 (II) CHN 482]. In that case this Hon'ble Court held that where the plaintiff petitioner instituted the suit against the defendant opposite party for a declaration that the deed of gift in question executed by the father of the plaintiff, the defendant no. 2, in favour of the defendant no. 1 is a nullity and void and is liable to be cancelled and for injunction, such issue*

cannot be termed to be a suit really speaking for setting aside the disputed deed of gift or in other words, the said prayer cannot be termed to be a principal prayer made in the suit. The plaintiffs not being parties to the disputed deed of gift, the question of setting aside the said deed did not arise at all and simply the suit for declaration that the disputed deed was a nullity or void and not binding upon the plaintiffs without any consequential relief could have been brought by the plaintiffs ignoring the deed altogether and even if the prayer for setting aside the deed was made in the suit, it was merely prayed for as a consequential relief and in such case the court assessed value under Section 4(iv)(b) of the Act has been correctly made. In the case of Sri Kartick Mondal & Ors. -Vs.- Sri Biman Sen & Ors. [2008(2) CLJ (Cal)] this Hon'ble Court also held the same view under the West Bengal Court Fees Act, 1970. It has been held therein that where the principal prayer is made for declaration of title and recovery of possession as consequential relief, the plaintiffs are required to value the entire suit as per provision contained in Section 7(iv)(b) of the Act of 1970 and not under Section 7(v)(b) of the said Act. Relying upon the above principles I hold that in the instant case the plaintiff is not liable to pay any ad valorem court fees on the valuation of impugned deeds as subsequently decided by the Learned Court below in his impugned order no. 29 dated 18.03.2008 to be read with order no. 39 dated 12.02.2009. I also hold that without setting aside the order no. 1 dated 25.01.2005 adjudging the court fees paid as sufficient he cannot reopen the issue on his own accord without framing any specific issue on the basis of pleadings of the parties already on record. These are the two infirmities for which in my opinion the impugned order is not sustainable in law. Both the points are thus decided. Accordingly both the impugned orders relating to payment of ad valorem court fees are hereby set aside."

In the instant case, the plaintiffs have asserted that the plaintiffs are in possession of the suit property. The plaintiffs have not claimed recovery of possession. The plaintiffs are not the executant of the said documents. The plaintiffs have clearly averred that the said documents were executed by some of the defendants fraudulently and by misrepresentation that the said defendants were authorized to execute such deed on behalf of the plaintiffs. The plaintiffs further averred that the defendants have fraudulently executed such document and the transactions are sham transactions. In my view, in such a situation the plaintiffs would not be required to pay ad valorem court-fees on the basis of the consideration amount mentioned in deeds under challenge. The decision of the Hon'ble Supreme Court in **Suhrid Singh @ Sardool Singh** (supra) is clearly distinguishable on facts. Under the West Bengal Court-fees Act, 1870 there is no proviso in Section 7(iv)(c) of the Court-fee similar to the proviso to Section 7(iv)(c) in the State of Punjab. The view taken by the lower Court would mean that the suit is liable to fail in absence of a prayer for cancellation of the impugned deeds and hence valuation is to be determined on the basis of the value mentioned in the deed of sale. This approach was incorrect. In the instant case, on the basis of the averments in the plaint, declaration can be granted without cancellation of the deeds.

Under such circumstances, the impugned order is set aside.

The revisional application is allowed.

However, there shall be no order as to costs.

Urgent xerox certified copy of this judgment, if applied for, be given to the parties on usual undertaking.

(Soumen Sen, J.)