

Court No. - 8

Case :- WRIT - C No. - 1002212 of 2012

Petitioner :- Ali Hasan

Respondent :- Additional District Judge Court No. 1 Barabank And Others

Counsel for Petitioner :- Adnan Ahmad, Adnan Ahmad

Counsel for Respondent :- Manish Kumar

Hon'ble Pankaj Bhatia, J.

C.M.Applications No.59578 of 2017; 59579 of 2017 and 59580 of 2027.

1. The application has been filed on account of the death of the sole petitioner along with the delay condonation application as well as the abatement recall application.
2. Cause shown is sufficient. The delay in filing the application is condoned.
3. The substitution application is allowed. The abatement is recalled.
4. Let the necessary incorporation be carried out during the course of the day.

Order on main petition.

5. Heard the counsel for the petitioner.
6. The present petition has been filed by the petitioner challenging the order dated 29.08.2011 whereby the issue with regard to court fees was decided against the plaintiffs as well as the appellate order dated 03.03.2012 whereby the appeal preferred against the said issue was dismissed.
7. The courts below were of the view that in view of the relief claimed in the plaint for declaration of a sale deed as sham and void and information to the Sub-Registrar, it was essentially a relief for quashing of the sale deed on which the court fees was payable on market value in terms of the provisions of Section 7(iv-A) of the Courts Fees Act as applicable in the State of U.P..
8. No error can be seen from the two orders passed, as such, no interference is called for.

9. The counsel for the petitioner places reliance on the judgment in the case of ***Shefali Roy vs. Hero Jaswant Dass and others; (1992) ALJ 728*** and emphasis on para 22 which is as under :

*"22. The payment of Court-fee depends upon the averments of the plaint and the relief claimed and not on the averments of the written statement. A suit for mere declaration that the plaintiff is owner of the property in suit as claimed by the plaintiff in the instant case and incidentally claiming a declaration that the alleged sale deed be declared null and void, does not fall within the ambit of Section 7(iv-A) (State of U.P. Amendment). [See State of U.P. v. Ramkrishan Burman](#), AIR 1971 SC 87; (1971 All LJ 1), wherein considering this State of U.P. Amendment their Lordships of the Apex Court ruled that in a suit for mere declaration that the plaintiff is owner of certain properties, this U.P. Amendment is not attracted for the purposes of payment of Court-fee. According to their Lordships this U.P. Amendment relates to a decree for recovery of money or other property. It however, does not include a decree concerning title to money or other property, and, hence where mere declaration is involved, the payment of Court-fee is governed under [Art. 17](#), Schedule II of the Court-fees Act. In view of the decision in *Ramkrishan Burman's case* (supra), we are of the opinion that the plaintiff has paid proper Court-fee."*

10. In the present case, the said judgment will have no effect in view of the relief claimed in the plaint, which not only claims the declaration of the deed to be void but also seeks consequential action of information to the Sub-Registrar, as such, the said judgment will have no avail to the petitioner.

11. No interference is called for. The writ petition is ***dismissed***.

12. In case the Suit is still pending, the same shall be decided expeditiously.

Order Date :- 14.12.2023
VNP/-