

THE HON'BLE SRI JUSTICE M.S. RAMACHANDRA

RAO

CRP.No.4485 of 2012

% 27-10-2015

Between:

#Nade Ali Mirza, S/o.Late Haider Ali Mirza,
And others

...Revision Petitioners

And

\$Mrs.Khalida Mohammed Salim Dawawala,
W/o.Mohd. Saleem Dawawala, and others.

...Respondents

< **GIST:**

> **HEAD NOTE:**

! Counsel for the petitioners : Sri Sri P.Venugopala Rao

^ Counsel for respondent Nos.1 to 7 : Sri Rakesh Sanghi
Counsel for respondent No.30 : Sri Asadullah Sharif

? Cases referred

1. ILR 34 Cal. 329 (P.C.)
2. AIR 1940 Mad. 113
3. 2007 (5) ALD 863
4. AIR 1976 AP 199
5. 1989 (3) ALT 629
6. 2005 (6) ALD 132
7. 1972 (2) APLJ 100
8. 2009 (1) ALT 219
9. 2000 (5) ALD 102
10. 2003 (4) ALD 345
11. 2007 (4) ALD 458
12. AIR 1939 Madras 462
13. AIR 2010 AP 178
14. AIR 2010 SC 2777
15. AIR 2014 SC 1286
16. AIR 2002 SC 233

17. AIR 1973 SC 2384
18. AIR 2010 SC 2807
19. (1980) 4 SCC 354
20. (1993) 2 ALT 48 (FB)
21. 35 Indian Appeals 98
22. 1956 An.W.R. 1033
23. 1948 (I) M.L.J. 270
24. AIR 1966 SC 216
25. (1891) 14 Mad 26
26. (2004) 13 SCC 480

IN THE HIGH COURT OF JUDICATURE AT
HYDERABAD

FOR THE STATE OF TELENGANA AND THE STATE OF ANDHARA
PRADESH

CRP.No.4485 of 2012

Between:

Nade Ali Mirza, S/o.Late Haider Ali Mirza,
And others.

...Revision Petitioners

And

Mrs.Khalida Mohammed Salim Dawawala,
W/o.Mohd. Saleem Dawawala, and others.

...Respondents

Date of Judgment pronounced on : 27.10.2015

HONOURABLE SRI JUSTICE M.S.RAMACHANDRA
RAO

1. Whether Reporters of Local newspapers

: -

May be allowed to see the judgments?

2. Whether the copies of judgment may be marked : Yes

to Law Reporters/Journals:

3. Whether The Lordship wishes to see the fair copy : -
Of the Judgment?

**THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA
RAO**

C.R.P.No.4485 of 2012

ORDER:

-

This Revision Petition is filed under Article 227 of the Constitution of India challenging the order dt.31-07-2012 in O.S.No.324 of 2011 of the Principal District Judge, R.R. District at L.B. Nagar, Hyderabad.

THE SUIT

2. The petitioners herein are plaintiffs in the above suit. They filed the said suit against respondent Nos.1 to 143 for the following reliefs:

(a) for a perpetual injunction restraining them from interfering with the alleged peaceful possession and enjoyment of the petitioners over the plaint schedule property and also not to alienate the same to any third party; and

(b) to declare 107 registered sale deeds and agreements

of sale –cum-GPAs mentioned therein which were registered in the office of the Sub Registrar, Rajendranagar, Ranga Reddy District as null and void.

3. The subject matter of the suit is an extent of Ac.39.11 gts. in Sy. Nos.310, 311 and 312 of Budwel village, Rajendranagar Mandal, Ranga Reddy District.

4. The petitioners valued the relief of perpetual injunction notionally at Rs.18.00 lakhs and the relief of declaration to declare the above documents as null and void also at Rs.18.00 lakhs and paid court fee thereon.

THE APPLICATION UNDER SEC.11(2) OF RESPONDENT NOS 1-7

5. Respondent Nos.1 to 7 herein who are defendant Nos.99, 100, 109 to 113 filed I.A.No.3373 of 2011 under Section 11 (2) of the AP Court Fee and Suit Valuations Act, 1956 (for short ‘the Act’) praying the Court below to decide the correctness of the valuation and Court Fee paid by the petitioners insofar as the relief of declaration that the 107 documents (mentioned in the plaint) are null and void is concerned.

6. They alleged that the petitioners had grossly under valued the suit schedule property showing that its entire value as only Rs.20.00 lakhs; that although this Court had issued instructions on the administrative side to subordinate District Courts to ensure that parties filed

market value certificate issued by the concerned Sub Registrar/Registrar, to ensure that correct payment of Court Fee is made by a litigant, and to prevent under valuing of suit claims, the petitioners did not enclose the market value certificate of the concerned Sub Registrar along with the plaint; in fact as per a market value certificate obtained by the respondent Nos.1 to 7, the market value of the suit schedule property is Rs.47,52,27,500/-, but the petitioners have not paid court fee on this basis; and since the suit claim is under valued, it amounts to playing fraud on the Court and the plaint should be thrown out. They contended that although an objection as to valuation of the reliefs was initially raised by the Court below, subsequently the said objection was heard by the Court below and not pressed by it, but later at the instance of the respondent Nos.1 to 7 who objected to the valuation, the Court permitted the suit to be registered "subject to objection". They contended that even as per the averments in the plaint, the petitioners did not prove the paramount title and ownership of late Haider Ali Mirza as regards the suit schedule property even though the petitioners are claiming through him, that they also did not produce any document in support of their above plea and so the petitioners are bound to seek relief of declaration of their title to the plaint schedule property under clauses (a) or (b) of Section 24 of the Act. They contended that the relief of declaration that the documents

in favor of defendant Nos.9 to 144 are illegal, null and void virtually amounts to seeking cancellation of the said documents and the petitioners ought to have valued it under Section 37 of the Act. It is further contended that by trick of pleading, the petitioners had grossly under valued the suit and misled the Court below to grant relief of declaration of title without valuing it under Section 24 (a) and / or (b) of the Act and they cannot rely on Section 24 (d) of the Act. They therefore contended that the market value of the property covered by each of the 107 documents questioned by the petitioners should be taken into account for the purpose of calculation of Court Fee and that since the said valuation is Rs.47,52,27,500/-, the petitioners should be directed to pay Court Fee on the said valuation under Section 24 (d) of the Act.

THE COUNTER AFFIDAVIT OF PETITIONERS

7. Counter affidavit was filed by the petitioners disputing the above contentions and asserting that the suit has been valued correctly and Court Fee was also correctly paid. The petitioners denied that they played any fraud and contended that the respondent Nos.1 to 7 had no *locus standi* to dispute the same. The petitioners insisted that the valuation of the declaratory relief sought in the plaint under Section 24 (d) of the Act is correct and valid. They contended that they are successors to Haider Ali Mirza and are absolute owners of the plaint schedule

property and entitled to question the validity of 107 documents executed among the defendants and to have them declared as null and void. They contended that they are not parties to those 107 documents which they seek to be declared as null and void, that they are not binding upon them, and that they need not show separate value of each document since they have pleaded that the documents are false and bogus. They contended that without filing Written Statement, it is not open to the respondent Nos.1 to 7 to file this application. They claim that defendant Nos.1 to 4 and 8 in their Written Statement had admitted that the original pattedar is the father of the petitioners and so the paramount title was admitted to be with the petitioners. They contended that Section 24 (a) or (b) of the Act are not attracted and that only Section 24 (d) is attracted. They alleged that there is no need for the petitioners to seek cancellation of the 107 documents or value them under Section 37 of the Act. They contended that the respondent Nos.1 to 7 cannot contend that valuation of the suit should be determined on the basis of consideration mentioned in the sale deeds and the said I.A. be dismissed.

THE ORDER OF THE TRIAL COURT

8. By order dt.31-07-2012, the Court below allowed the said I.A. and directed the petitioners to value the suit insofar as the relief of “declaration declaring the

107 sale deeds as null and void and not binding on the plaintiffs” as per the valuation certificate Ex.A-1 dt.27-07-2011 issued by the Sub Registrar, Rajendranagar, Ranga Reddy District filed by the respondent Nos.1 to 7 valuing the suit schedule property at Rs.47,52,27,500/-, and pay the Court Fee thereon before 14-08-2012 failing which it directed that the plaint would be rejected.

9. After referring to the case laws cited by both sides, the Court observed that there is no prayer for declaration of title sought by the petitioners in the plaint and they had sought only injunction simplicitor; that without seeking relief for declaration that the petitioners are absolute owners and possessors of the suit schedule property, the petitioners want to declare all the 107 documents executed by some of the defendants as null and void and not binding on them; the relief of injunction simplicitor, which is shown as the main relief in the plaint, cannot be treated as a main relief when the relief of declaration *of whatever nature* is added to it, and at best it can be treated as a consequential/ancillary relief. It held that whenever a declaration is sought for, it is incumbent on the part of the petitioners to value the suit as per Section 24 (d) of the Act and for that purpose, they should take the total value of the suit property into consideration. It held that the petitioners had filed Form No.8 showing market value of the land as only Rs.20.00 lakhs and paid Court Fee thereon while Ex.A-1 market value certificate

issued by the Sub Registrar on 27-07-2011 shows that the market value is more than Rs.47.52 crores, and since the petitioners are seeking a declaration in respect of that land and also seeking the documents to be declared as null and void, they should value the suit as per the said market value and cannot notionally fix the market value at Rs.18.00 lakhs and pay Court Fee as they did.

THE REVISION BY PETITIONERS

10. Challenging the same, this Revision Petition is filed.

11. Heard Sri P.Venugopala Rao, learned counsel for the petitioners, Sri Rakesh Sanghi, learned counsel for respondent Nos.1 to 7 and Sri Asadullah Sharif, learned counsel for respondent No.30. The respondents 8-143 have been shown as not necessary parties to the Revision.

THE CONTENTIONS OF COUNSEL FOR PETITIONERS

12. The learned counsel for the respective parties reiterated the stand taken by them in the Court below. In addition, the counsel for the petitioners contended that since the petitioners are not *eo nomine* parties to the 107 documents in respect of which declaratory relief was sought by them in the plaint, they

are not bound to sue for a declaration or for cancellation of each of them and such a prayer even if it is there, needs to be ignored and Court Fee need not be paid thereon. He relied upon **Bijoy Gopala Mukerji Vs. Krishna Mahishi Debi**^[1], **Ramaswami Ayyangar Vs. Rangachariar**^[2] and **Mohd. Ikramuddin Vs. Sangram Bosle and others**^[3]. He further contended that the view taken by the Court below that the petitioners should pay Court Fee on the basis of market value of the suit schedule property in respect of the relief of declaration sought by the petitioners, is contrary to law, and that the Court below is not correct in concluding that the petitioners are in fact seeking a declaration in respect of the suit schedule land. He also disputed the finding of the Court below that the relief of injunction sought for by the petitioners, in the facts and circumstances of the case, is not a main relief but only a consequential/ancillary relief.

CONTENTIONS OF COUNSEL FOR RESPONDENTS

13. The learned counsel for the respondent Nos.1 to 7 contended that the reasoning of the Court below is correct and that there is no substance in the contentions raised by the counsel for the petitioners.

According to him, the purpose of payment of Court Fee is for the benefit of the State and the petitioners cannot be allowed to under value the suit by a trick of pleading and get away with it. He contended that the petitioners are bound to seek declaration of their title to the plaint schedule property and since they have not chosen to do so, the plaint is liable to be rejected. He contended that the petitioners ought to have valued the suit under Section 24 (a) and (b) of the Act and not under Section 24 (d) of the Act and they should have paid Court Fee on the market value of the property on the date of filing of the suit. He contended that the relief of declaration claimed by the petitioners in effect amounts to seeking relief of cancellation of the documents/sale deeds and under Section 37 of the Act they should pay Court Fee on the market value of the property comprised in the sale deeds. He also contended that the Revision itself is not maintainable. He relied upon **Mohd. Shahbuddin and another Vs. Ahmed Saifulah Hussain and others**^[4], **Satyanarayana Vs. Om Prakash and others**^[5], **D.D.Nirmal Kumar and others Vs. G.Sundera Shekhar and others**^[6], **N. Kuru Murthy v.**

M. Narasaiah^[7], **Koganti Sujani Vs. Vissamsetti Sankar Babu and others**^[8], **V.Rajeshwar Rao Vs. N.Yadagiri and others**^[9], **State of AP and others Vs.**

Narender Reddy and others^[10], Chirala Rate Payers and Civic Amenities Association Chirala, Prakasam District Vs. Chirala Municipality^[11], Kolachala Kutumba Shastri Vs. Lakharaji Bala Tripura Sundaramma and others^[12], M/s.Lakshminagar Housing Welfare Association, Hyderabad Vs. Syed Sami and others^[13], Satheedevi Vs. Prasanna and others^[14] and Polamrasetti Manikyam and another Vs. Teegala Venkat Ramayya and others^[15].

14. I have noted the submissions of both sides.

POINT FOR CONSIDERATION

15. Therefore, the point for consideration is “*whether the Court below was correct in holding that for the relief prayed by the petitioners seeking declaration that 107 documents executed among the defendants are null and void and not binding on them, the valuation of the suit and the payment of Court Fee thereon by them is not correct and that the petitioners are bound to pay court fee on the market value of the plaint schedule property ?*”

THE CONSIDERATION BY THE COURT

16. From the plaint copy filed by petitioners, it is

clear that the petitioners contend that the plaint schedule property belongs to their late father Hyder Ali Mirza, that they have inherited it from him, and that they are in possession and enjoyment thereof. They alleged that that the respondents have no right, title or interest therein and the respondents have executed 107 registered sale deeds and agreement of sale – cum – GPAs nominally and collusively even though they have no valid title to the plaint schedule property. They have sought in the plaint two reliefs : (a) for perpetual injunction restraining the respondents nos.1 to 143 from interfering with the peaceful possession and enjoyment of the petitioners over the plaint schedule property and (b) to declare 107 registered sale deeds and agreement of sale – cum - General Power of Attorneys executed amongst the defendants/respondents as null and void and not binding on them.

Re: Section 11(1) (a) :

17. Clause (a) of Sub-section (1) of Section 11 of the Act mandates a Court before which a plaint is presented, to register it as a suit only after deciding, on the allegations contained in the plaint and the materials furnished by the plaintiff, the proper court fee payable thereon. Clause (b) of sub-section (1) of Section 11 thereof makes the decision of the Court under Clause (a) regarding the proper fee payable subject to review, from

time to time, as occasion requires.

18. In **Kamaleshwar Kishore Singh v. Paras Nath Singh and others** ^[16], the Supreme Court held that, the decision on court fee can normally only be based on the plaint as framed and not on the plaint as it ought to have been framed, that, in certain circumstances the Court can however come to the conclusion that the drafting of the plaint was such that the plaintiff is attempting to evade payment of correct court fee or that there is a provision of law requiring the plaintiff to value the suit and pay the court fee in a manner other than the one adopted by the plaintiff. It held that a court is enjoined to begin with an assumption, for the purpose of determining the court fees payable on the plaint, that the averments made therein by the plaintiff are correct and that this did not preclude the court from interfering if there is an arbitrary valuation of the suit property having no basis at all for such valuation and made so as to evade payment of court fee, or given for the purpose of conferring jurisdiction on some court which it did not have, or depriving the court of jurisdiction which it would otherwise have. It is the substance of the relief sought for and not the form which will be determinative of the valuation and payment of court fee. The defence taken in the written statement may not be relevant for the purpose of deciding the payment of court fee by the plaintiff. If the plaintiff is

ultimately found to have omitted to seek an essential relief which he ought to have prayed for, and without which the relief sought for in the plaint as framed and filed cannot be allowed to him, the plaintiff shall have to suffer the dismissal of the suit.

19. In view of this settled principle of law, the court has to proceed on the basis of the averments in the plaint. At this point of time, when even a written statement is not filed by respondents 1-7, it is not possible to say that by a trick of pleading the petitioners are evading payment of court fee. So the contention of the respondents that the petitioners should have also sought for declaration of title specifically in the plaint and valued the same on the basis of the market value of the property comprised in the 107 documents sought to be declared as null and void, cannot be accepted because whether such a relief also ought to have been prayed for by the petitioners, without which the reliefs sought in the plaint by them as framed cannot be granted, is a matter to be decided after trial and after arguments are heard in the suit after the suit is registered.

Re: Sec.11(2) and Sec. 11 (3)

20. Sub-section (2) of Section 11 gives an option to any defendant to plead that the subject matter of the suit has not been properly valued or that the fee paid is not sufficient. It enjoins that all questions arising on such pleas shall be heard and decided before the hearing

of the suit as contemplated by Order 18 C.P.C. It directs that if the Court decided that the subject matter of the suit is not properly valued or that the fee paid is not sufficient, the court shall fix a date before which the subject matter of the suit shall be valued in accordance with the court's decision and the deficit fee shall be paid. It however directs that if within the time allowed, the subject matter of the suit is not valued in accordance with the court's decision or if the deficit fee is not paid, the plaint shall be rejected and the court shall pass such order as it deems just regarding costs of the suit. This decision of the trial court on the aspect of court fee can also be gone into by the Court of Appeal either *suo moto* or on the application of any party. [Section 11 (3) of the Act]

21. Sub-section (2) of Section 11 is the provision relied on by the respondent nos.1 to 7 in I.A.No.3373 of 2011 seeking a decision of the court below on the correctness of the valuation of the suit and the court fee paid by the petitioners on the relief of “declaration that the 107 sale deeds/agreements of sale – cum - GPAs are null and void and not binding” on the petitioners.

22. This provision was interpreted by a Division Bench of this Court in **Satyanarayana** (5 supra). The Bench held that the words in Section 11 (2) of the Act “*shall be heard and decided before the hearing of the suit*” are only directory and not mandatory. The Bench held

that the purpose for which the provision is made is only to see that proper court fee is collected from the plaintiff by the court and the defendant is only given a right to point out regarding the deficiency of the court fee paid and that should be limited and should not be extended to enable him to protract the trial of the suit. It further held that the defendant is not aggrieved by any such decision and merely because he is given a right to contest the valuation, he cannot be permitted to use the same as a weapon to protract the litigation. It held that only in cases where the question of payment of court fee affects the very pecuniary jurisdiction, it is necessary for the court to investigate and examine and then decide it as a preliminary issue, if it is satisfied that the jurisdictional question is involved and that in such cases only, the defendant can move the higher courts on the ground that the dispute regarding court fee is not tried as a preliminary issue. In other disputes relating to payment of court fee, it should be left to the discretion of the court to try the same as a preliminary issue or try jointly along with other issues. The Bench also considered the view in **Mohd. Shahbuddin and another** (4 supra) and overruled the same. Therefore, the counsel for respondent nos.1 to 7 is not entitled to place any reliance on the decision in **Mohd. Shahbuddin and another** (4 supra).

23. In the present case, the plaint was

presented in the District Court at Ranga Reddy, the Court which has unlimited pecuniary jurisdiction. So it cannot be said that to approach a court with lesser pecuniary jurisdiction, the plaint was undervalued.

REVISION FILED BY PETITIONERS MAINTAINABLE

24. The Division Bench in **Satyanarayana** (5 supra) followed the decision of Supreme Court in **Shamsher Singh v. Rajendra Prasad**^[17] in holding that no Revision would lie against the decision on the question of adequacy of court fee at the instance of a defendant. Similar view has been taken in **N. Kurumurthy** (7 supra) and **Koganti Sujani** (8 supra).

25. The counsel for respondents nos.1 to 7 sought to rely on the judgment in **Satyanarayana** (5 supra), **N. Kurumurthy** (7 supra) and **Koganti Sujani** (8 supra) to contend that the petitioners cannot file a Revision challenging the order of the court below passed in exercise of its power under Section 11 (2). This contention is not tenable for the reason that the petitioners are not defendants in the suit and they are plaintiffs and the impugned order affects their rights to prosecute the suit. Therefore, in my considered opinion, the petitioners are entitled to question the same under Article 227 of the Constitution of India.

IS A PLAINTIFF, WHO IS NOT PARTY TO A SALE DEED/CONVEYANCE/DEED AND WHO SEEKS TO QUESTION IT,

BOUND TO SEEK CANCELLATION OF IT ?

-

26. This issue was considered in **Suhrid Singh v. Randhir Singh**^[18] while considering the provisions of the Court Fee Act (7 of 1870). The Supreme Court held that 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 Court explained the difference between a prayer for cancellation and declaration in regard to a deed of transfer/conveyance by giving an illustration. In the said illustration if A and B are two brothers and A executes a sale deed in favour of C and later wants to avoid it, he has to sue for cancellation of the deed. On the other hand, if B, who is not an 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. It observed that in essence both may be suing to have the deed set aside or declared as not binding, but the form is different and the court fee is also different.

27. Admittedly, in the present case, the petitioners are not parties to the 107 documents which they seek to be declared as null and void and not binding on them. Therefore, in view of the above decision, it

cannot be said that they are bound to seek relief of cancellation of the 107 documents and compute court fee on the market value of the land comprised therein.

28. It is not disputed by both parties that only if the petitioners were to seek relief of cancellation of the 107 documents mentioned in the plaint, Section 37 of the Act would get attracted.

29. The said Section 37 directs that in a suit for cancellation of a decree for money or other property having money value, or other document which purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest in money, moveable or immovable property, fee shall be computed on the value of the subject matter of the suit. It enjoins that such value shall be deemed to be, (a) if the whole decree or other document is sought to be cancelled, the amount or value of the property for which the decree was passed or other document was executed, and (b) if part of the decree or other document is sought to be cancelled, such part of the amount or of **the value of the property**. Sub-section (2) is not relevant for our purpose.

30. Though a Full Bench of this Court in **Lakshminagar Housing Welfare Association** (13 supra) took the view following the Full Bench decision of the Madras High Court in **Kolachala Kutumba Sastri** (12

supra) that the court fee should be computed, in a suit for cancellation of a deed of conveyance, on the market value of the property which is subject matter of the said deed, the said decision was over-ruled in **Polamarasetti Manikyam** (15 supra) by the Supreme Court. The Supreme Court followed its decision in **Sathee Devi** (14 supra) while interpreting Section 37 of the Act and held that the term “value of property” mentioned in the said provision does not mean “market value of the property” and that court fee has to be calculated on the sale consideration mentioned in the sale deed/conveyance.

31. However, as stated above, since the petitioners are not parties to the 107 documents which they seek to be declared as null and void and not binding on them, they are not bound to seek the relief of cancellation of these 107 documents and they are not bound to pay court fee as computed under Section 37 of the Act. Therefore, the above decisions cited by the counsel for respondent nos.1 to 7 cannot be applied to the present case.

IF A SALE DEED/CONVEYANCE/DEED IS NULL AND VOID, SPECIFIC PRAYER TO SET IT ASIDE IS UNNECESSARY

-

32. If a sale deed, according to the plaintiff is null and void, and *non-est* in the eye of law he need not seek to have it set aside. This principle was laid down in

Mahadeo Prasad Singh v. Ram Lochan^[19] by the Supreme Court. It held:

“32. Thus considered, the sale of the immovable property ordered by the Munsif in execution of the decree of the Court of Small Causes transferred to him, was wholly without jurisdiction and a nullity.

33. Once we come to the conclusion that the sale in question was totally null and void, the alternative contention of the appellants with regard to the suit being barred by Section 47 of the Code of Civil Procedure, does not survive.

34. This is not a case of an irregular or voidable sale which continues to subsist so long as it is not set aside, but of a sale which was entirely without jurisdiction. It was non est in the eye of law. Such a nullity does not from its very nature, need setting aside.” (emphasis supplied)

33. A Full bench of this Court in **Employees Association v. Sri Chennakesava Swami temple**^[20], reiterated the principle that if a sale is void, there is no necessity to seek cancellation of it, following **Mahadeo Prasad Singh (18 supra)**. In **Employees Association** (20 supra), a the suit was filed for setting aside a sale conducted pursuant to the sanction given by the Commissioner and the Government under Section 74 of the A.P. Charitable & Hindu Religious Institutions & Endowments Act, 1966 without challenging the said orders. The Bench held that not only was a civil suit maintainable to set aside the sale but it also held that the sale is void. It observed:

“ In support of the contention that the plaintiffs could

have even filed a simple suit for recovery of possession of the suit land without seeking cancellation of the sale deed which was null and void under Section 74 of the Act, the learned counsel for the plaintiffs-respondents have relied on the decision of the Privy Council in **T.P. Petherpermal Chetty v. R. Muniandi Servai and Ors.**^[21], , the relevant portion of which is as follows:

"As to the point raised on the Indian Limitation Act, 1877, their Lordships are of opinion that the conveyance of June 11, 1895, being an inoperative instrument, as, in effect, it has been found to be, does not bar the plaintiff's right to recover possession of his land, and that it is unnecessary for him to have it set aside as a preliminary to his obtaining the relief he claims."
(emphasis supplied)

38. In a matter arising under the Court Fees Act, 1870, a learned Judge of this Court held in **Srimathi Mokhamatla Kondamma and Anr. v. Srimathi Mokhamatla Venkatalakshmi Devi**^[22], that as in the case of a reversioner, it is open to the junior widow to ignore the adoption by a senior widow as a nullity and file a suit for possession after the death of the senior widow. A junior widow, the learned Judge observed, is entitled to ignore the adoption and file a suit for recovery of her half share against the senior widow. If the junior widow is not bound under substantive law to sue for a declaration that the adoption is invalid, in order to obtain the relief of partition and separate possession, it does not matter whether the alleged adopted son is impleaded or not as a party or that an unnecessary relief for declaration is sought for in the plaint. It is not necessary for the junior widow to seek relief either for setting aside the adoption in order to obtain the relief of partition and separate possession or for a declaration that the alleged adoption is not true and valid. In a matter arising under the Madras Court Fees Act, 1870, a Division Bench of the Madras High Court held in **Sahul Hamed Rowther v. K.C.P. Mohideen Pichai**^[23] that-

" Where a plaintiff alleged that a sale deed executed by him in favour of the defendant was

sham and nominal and prays for a declaration to that effect and an injunction restraining the defendant from interfering with the plaintiff's possession it is not necessary for the plaintiff to pray for cancellation of the deed."

From the above decisions it is clear that since the petitioners herein are contending that the impugned documents are null and void, they need even specifically seek a relief for their cancellation.

ON WHAT BASIS THE PETITIONERS SHOULD HAVE VALUED THE RELIEF OF DECLARATION THAT THE 107 DOCUMENTS ARE NULL AND VOID AND NOT BINDING ON THEM ?

34. In **Bijoy Gopala Mukerji** (1 supra), the Privy Council was of the view that the relief for declaring that a sale deed is null and void when prayed in a plaint by a party, who is not *eo nomine* a party to it, is in fact an unnecessary relief. In that case, a reversioner sued for a declaration that a lease granted by the widow of the last male owner was not binding on him and for khas possession. It was objected that the omission to plead setting aside of the lease by a suit instituted within the time limited by Article 91 of the Limitation Act, was fatal to the suit. The Privy Council held that an alienation by a Hindu widow though not absolutely void, is *prima facie* voidable at the election of the reversionary heir, who may affirm it, or treat it as a nullity, without the intervention of any court. It held that he shows his election to do the latter by commencing an action to recover possession of

the property and in such an event there is, in fact, nothing for the court either to decide or cancel as a condition precedent to the right of action of the reversionary heir. It held that though the appellants before it prayed in the plaint that a declaration that the lease was inoperative as against them be granted, as leading up to their prayer for delivery to them of khas possession, it was not necessary for them to do so. It observed that they might have merely claimed possession, leaving it to the defendants to plead and (if they could) prove the circumstances which they relied on for showing that the Ijara or any derivative dealing with the property were not in fact voidable, but were binding on the reversionary heirs. It observed :

“6.in such cases, even if the plaint contains a prayer for a declaration or cancellation, there is good reason for holding it to be one for a purely incidental but unnecessary relief.”

35. The above decision was approved by the Supreme Court of India in **Radha Rani v. Hanuman Prasad**^[24]. The Supreme Court held:

“In this connection, it is necessary to consider whether the heirs of the widow were necessary parties to a suit against the alienee either for a declaration that the alienation is void beyond her lifetime or for possession of the alienated property. In the case of an alienation by a Hindu widow without legal necessity, the reversioners were not bound to institute a declaratory suit during the lifetime of the widow. They could wait until her death and then sue the alienee for possession of the alienated property treating the alienation as a nullity without the intervention of any court. See Bijoy Gopal Makherji v. Krishna Mahishi Debi. To such a suit by

the reversioners for possession of the property after the death of the widow, the heirs of the widow were not necessary parties. The reversioners could claim no relief against the heirs of the widow and could effectively obtain the relief claimed against the alienee in their absence. Instead of waiting until her death, the next reversioner as representing all the reversioners of the last full owner could institute a suit against the alienee for a declaration that the alienation was without legal necessity and was void beyond her lifetime.”

36. The decision in **Bijoy Gopala Mukerji** (1 supra), was followed by a Full Bench of the Madras High Court in **Ramaswami Ayyengar** (2 supra). In that case, a suit had been filed for partition of the estate of a joint Hindu family by the minor son of a Hindu father through his mother and next friend before the Sub-ordinate Judge of Kumbakonam. He contended that his father had engaged in reckless speculation in land, in trade, and in litigation dissipating the cash resources of the family and by selling and mortgaging family properties. He further alleged that the said transactions are not binding on the family, *but he did not seek any prayer for setting aside of the alienations of the family properties or for declarations that his father's other transactions are unenforceable against the estate.* The court below directed him to pay court fee by deeming him to be constructively a party to a mortgage and other transactions entered into by his father and directed him to pay court fee in accordance with the *ad valorem* scale specified in Article 1 of Schedule – I of the Court Fee Act, 1870. The Full Bench held that in

respect of transactions entered into by his father in respect of which the plaintiff is not bound under the substantive law by which he is governed to sue for a declaration or cancellation, no court fee is payable. It held :

“if a person not having authority to execute a deed, or having such authority under certain circumstances which did not exist, executes a deed, it is not necessary for persons who are not bound by it, to sue to set it aside, for it cannot be used against them and that they may treat it as non-existent and sue for their right as if it did not exist.”

It followed the decision in **Unni v. Kunchi Amma**^[25].

37. The Supreme Court approved the decision in **Ramaswami Ayyengar** (2 supra) in **Nagappan v. Ammasai**^[26].

38. The above decisions of the Privy Council in **Bijoy Gopala Mukerji** (2 supra) and **Ramaswami Ayyengar** (1 supra) were followed by a single Judge of this Court in **Mohd. Ikramuddin** (3 supra).

39. In **Mohd. Ikramuddin** (3 supra), the plaintiff had filed a suit for declaration of title and recovery of possession of plaint schedule properties. He also sought a declaration that a sale deed executed by 2nd defendant in favour of 1st defendant is null and void. Since it was a suit for declaration of title and recovery of possession, he paid court fee under Section 24 (d) of the Act.

40. The said provision states :

“24. Suits for declaration : --

... ..

(d) *In other cases, whether the subject-matter of the suit is capable of valuation or not, fee shall be computed on the amount at which the relief sought is valued in the plaint or at which such relief is valued by the Court whichever is higher.”*

41. The trial court took an objection about the payment of court fee and directed him to pay court fee under Section 37 of the Act since he is asking for declaration that a registered sale deed was null and void and not binding on him. This was questioned in Revision before this Court. *This Court held that since the plaintiff was not a party to the registered sale deed, he need not ask for cancellation of it and he is perfectly justified in asking for consequential relief of declaration that the sale deed is not binding on him.* It held that merely because, to be on the safe side, the plaintiff sought for the relief for declaration that the sale deed is null and void and paid the court fee under Section 24 (d) of the Act, it did not mean that the suit falls under Section 37 and not Section 24 (d). *It further held that such a prayer for declaration or cancellation could as well be ignored and court fee need not be paid thereon.* It held that according to the plaint, when the plaintiff is not a party to the sale deed, he need not ask for cancellation of the sale deed as the

cancellation implies that the person suing should be an actual or constructive party to a valid or operative document. It held that a third party like the plaintiff is not bound by a document of the description in question and is not obliged to sue for cancellation. It set aside the order of the court below directing the plaintiff to pay court fee under Section 37 of the Act but not under Section 24 (d) and held that since according to the plaintiff it is a sham transaction, he need not pray for its cancellation and even if such a prayer is made, he need not pay court fee.

42. In the present case also, the petitioners contend that the title to the plaint schedule property belongs to them and they are the heirs to their father late Hyder Ali Mirza and the respondents cannot deal with the plaint schedule properties without any right, title or interest therein. Since they are not parties to the 107 sale deeds/agreements of sale – cum – GPAs mentioned in the plaint, and they contend that they are sham, invalid, null and void and collusive documents and have sought a declaration that they are null and void and not binding on them, they not only need not seek relief that these documents be cancelled, but they are also not bound to pay any court fee on this relief of declaration in view of the decisions in **Bijoy Gopala Mukerji** (2 supra), **Radha Rani** (24 supra), **Ramaswami Ayyengar** (1 supra), **Nagappan** (26 supra) and **Mohd. Ikramuddin** (3 supra).

43. Therefore conclusion of the court below that the petitioners are bound to pay court fee for the said relief on the market value of the plaint schedule properties as indicated in Ex.A.1 market value certificate dt.27.07.2011, is unsustainable.

44. The court below also erred in observing that the relief of injunction simplicitor cannot be treated as main relief since the relief of declaration is also prayed for by the petitioners in the plaint. In the facts and circumstances of the present case, the relief of injunction sought by petitioners has to be held to be a main relief and cannot be said to be an ancillary relief.

45. A plaintiff in possession and claiming title can undoubtedly ask for relief of injunction as a primary relief and if he does not prove either his title or possession, he may be denied such relief, but that is a different matter.

46. The reliance on Section 24 by the court below in this regard also cannot be sustained since the provisions therein would be attracted only if the petitioners have sought a declaration of their title and sought relief of possession/injunction or if they sought for a declaration that documents *to which they are parties* are null and void or a declaration of any nature other than one sought for in the plaint. The said provision would have no application in a situation where the petitioners are not parties to the

documents which they wish to be declared as null and void and not binding on them.

47. The other decisions in **D.D. Nirmal Kumar** (6 supra), **V. Rajeswara Rao** (9 supra), **V.Narender Reddy** (10 supra), **Chirala Rate Payers and Civic Amenities Association** (11 supra), cited by counsel for respondents, have no application and turn on the peculiar facts of those cases.

48. For the above reasons, I am of the opinion that the impugned order cannot be sustained. It is accordingly set aside and the C.R.P. is allowed. No costs.

49. As a sequel, the miscellaneous petitions pending, if any, shall stands closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 27-10-2015

Kvr/Ndr/

LR copy to be marked : YES

B/o.

Kvr/ndr.

[\[1\]](#) ILR 34 Cal. 329 (P.C.)

[\[2\]](#) AIR 1940 Mad. 113

[\[3\]](#) 2007 (5) ALD 863

[\[4\]](#) AIR 1976 AP 199

[\[5\]](#) 1989 (3) ALT 629

[\[6\]](#) 2005 (6) ALD 132

[\[7\]](#) 1972 (2) APLJ 100

[\[8\]](#) 2009 (1) ALT 219

- [\[9\]](#) 2000 (5) ALD 102
- [\[10\]](#) 2003 (4) ALD 345
- [\[11\]](#) 2007 (4) ALD 458
- [\[12\]](#) AIR 1939 Madras 462
- [\[13\]](#) AIR 2010 AP 178
- [\[14\]](#) AIR 2010 SC 2777
- [\[15\]](#) AIR 2014 SC 1286
- [\[16\]](#) AIR 2002 SC 233
- [\[17\]](#) AIR 1973 SC 2384
- [\[18\]](#) AIR 2010 SC 2807
- [\[19\]](#) (1980) 4 SCC 354
- [\[20\]](#) (1993) 2 ALT 48 (FB)
- [\[21\]](#) 35 Indian Appeals 98
- [\[22\]](#) 1956 An.W.R. 1033
- [\[23\]](#) 1948 (I) M.L.J. 270
- [\[24\]](#) AIR 1966 SC 216
- [\[25\]](#) (1891) 14 Mad 26
- [\[26\]](#) (2004) 13 SCC 480