

\* HIGH COURT OF DELHI : NEW DELHI

+ CS (OS) No. 2011/2006

Mrs. Sujata Sharma

...Plaintiff

Through : Ms. Mala Goel, Adv.

Versus

Shri Manu Gupta & Ors.

...Defendants

Through : Mr. D.K. Agarwal, Sr. Adv.  
with Mr. Aslam Ahmed and  
Mr. Babit Singh Jamwal,  
Advs. for D-1 & D-2  
Mr. Brajesh K. Srivastava with  
Mr. D.P. Sharma, Advs. for  
D-10 & D-11.

Decided on: February 08, 2010

Coram:

**HON'BLE MR. JUSTICE MANMOHAN SINGH**

- |                                                                              |     |
|------------------------------------------------------------------------------|-----|
| 1. Whether the Reporters of local papers may be allowed to see the judgment? | No  |
| 2. To be referred to Reporter or not?                                        | Yes |
| 3. Whether the judgment should be reported in the Digest?                    | Yes |

**MANMOHAN SINGH, J.**

1. Issues in this matter were framed on 15<sup>th</sup> September, 2008.

Issue No.1 i.e. "Whether the suit has been valued properly and proper court fee has been paid thereon" is to be treated as a preliminary issue.

2. The brief facts of the case as per plaint are that the plaintiff and defendant nos. 1 to 4, 6, 7, 9-11,12A, 14, and 16 are descendants of late Shri D.R. Gupta, who had constituted a Joint Hindu Family HUF known as D.R. Gupta and Sons, HUF. The said HUF has been in

existence since 5<sup>th</sup> January, 1963 as stated in late Shri D.R. Gupta's affidavit of the same date wherein he has stated that all his immovable and moveable properties will belong to the HUF. The said Shri D.R. Gupta expired on 1<sup>st</sup> October, 1971. Naturally, the eldest living coparcener took over as Karta of the HUF. Thereafter, after the death of each subsequent son of Late Shri D.R. Gupta, of which there were five, the present situation arose after the death of the fifth son of late Shri D.R. Gupta and the then Karta of the HUF in 2006.

3. The plaintiff being born in 1946 and being the daughter of the eldest son of late Shri D.R. Gupta, discussed with other members of the family as to who ought to be the next Karta of the HUF. It was enquired of the plaintiff whether she being the oldest coparcener of the HUF would now be its Karta. Out of all the defendants, only defendant nos. 1 to 5, 10 and 11 have opposed the idea of the plaintiff being Karta. Defendant nos. 6 to 9, 12, 12A, 14, 15, 16 and 17 have given 'No Objection' certificates regarding the same. For her part, the plaintiff has stated that taking stock of the 2005 amendments in the Hindu Succession Act, 1955 due to which now daughters also have a coparcenary right in a Joint Hindu Family HUF by virtue of their birth, the plaintiff being the eldest coparcener alive ought to simply be declared the Karta thereof.

4. As per plaintiff, she came to be aware of the fact that defendant no. 1, who is ten years younger than the plaintiff, sent a letter to the Defence Estate Officer projecting himself as the Karta of the D.R. Gupta & Sons HUF. The legal character of the plaintiff as the oldest

coparcener and possible Karta was clouded and the plaintiff thus filed the present suit for declaration that she is the Karta of the HUF.

5. The plaintiff's suit has been opposed on various legal issues of interpretation as well as of tradition. However, in their written statement defendant nos. 1 and 2 have raised the preliminary objection that this court has no jurisdiction to try the present suit as valuation of the suit for the purpose of jurisdiction has to be the same as valuation of the suit for the purpose of court fee.

6. In order to decide the preliminary issue No.1, it is necessary to consider paragraph 42 and the prayer clause of the plaint which read as under:

“42. The suit is valued for purposes for jurisdiction for relief of declaration at over Rupees one crore and the court fee payable on relief of declaration being fixed at Rs.20/-, the court fee of Rs.20/- has been paid.

Prayer:

It is prayed that a decree for declaration be passed in favour of the Plaintiff against the Defendants No.1, 2, 3, 4, 5, 10 and 11 (i.e. Shri Manu Gupta, Mrs. Aditi Desai, Shri Vasu Gupta, Mrs. Gita Lal, Mrs. Lalita Gupta, Mrs. Meera Sawhney and Mrs. Gargi Gupta declaring the Plaintiff as the 'Karta' of the 'D.R. Gupta & Sons (HUF)', 4, University Road, Delhi-110007.”

7. The plaintiff has argued that the present suit is merely a suit for declaration and court fees is fixed at Rs.20/- in accordance with Article 17 Clause (iii) contained in Schedule II of the Court Fee Act, 1870. Since as per the referred provision the fee is fixed, therefore, the requisite court fee has been paid. It is also argued that as per prayer clause of the plaintiff, no further relief is sought therefore the provision

of Section 7(iv) clause (c) of the Court Fee Act, 1870 has no application in the present case and the plaintiff need not pay ad-valorem court fee.

8. In this regard, counsel for the plaintiff has referred to ***Union of India Vs. R.P. Dhir & Ors., ILR (1970) Delhi 433*** wherein while discussing Section 42 of the Specific Relief Act, 1877 which corresponds to Section 34 of the Specific Relief Act, 1963 it was held as under :

“(9) Before, however, a suit for bare declaration can be held to be not maintainable because of the proviso, it has to be shown that the plaintiff was able to seek a further relief than a mere declaration of title and he omitted to do so. The words "further relief" do not mean every kind of relief that may be prayed for; what they contemplate is, a relief arising from the cause of action on which the plaintiff's suit is based. The further relief, referred to in the section, is such without which the declaration claimed would be ineffective, infructuous and unworkable.”

9. Learned counsel for the plaintiff has also referred the case of ***Nemi Chand and Anr. Vs. The Edward Mills Co. Ltd. and Anr., AIR 1953 SC 28*** in which it was held as under :

“It was said that the words that respondent No. 2 "had no right to act as chairman and managing director" amounted to a claim for consequential relief. We are unable to agree. The claim contained in the first relief of the plaint is to the effect that it be declared that defendant No. 2 has no right to act as chairman and managing director because of his appointment being illegal, invalid, and ultra vires. The declaration claimed is in negative form that defendant No. 2 has no right to act as chairman and managing director. No claim for a consequential relief can be read within this prayer. .... This contention of Mr. Setalvad, therefore, cannot be sustained.”

10. In support of her submission another decision has been referred being ***Hans Raj Kalra Vs. Kishan Lal Kalra and Ors., ILR***

*1976 Delhi 745* as regards the issue of court fee payable on mere declaration and/or consequential relief. The court held as follows :

(20) It is fairly well settled that it is not the form of the plaint or the manner in which the relief is worded in it, but the substance of it, which is determinative of its real nature and character and in determining whether a suit is a suit for a mere declaration or for a declaration with consequential relief Court must not be carried away by the form of the plaint but must look to the substance of it (1). It is equally well settled that the question whether the suit would be governed by Section 7(iv)(c) or Article 17 of Schedule II of the Court Fees Act must be determined not on what relief the plaintiff should ask to be able to succeed but according to the relief actually claimed in the plaint (2). It is equally well settled that the question whether a suit comes within the terms of Section 34 of the Specific Relief Act or not will have no impact on the question of valuation of the suit for the purpose of court fees but must be determined on the basis of what the plaintiff actually seeks and not on the basis of what he may be entitled to sue for (3). In case the suit is for a declaration implicate it would be necessary for the Court to consider whether a consequential relief is implicit in the declaration. If it is, the provisions of Section 7(iv)(c) of the Court Fees Act would be attracted (4). If on the whole and in substance a suit appears to ask for some relief other than or in addition to a mere declaration the suit must be held not to be one for a bare declaration even though the plaint may be cast in a declaratory form (5). It is, however, open to the Court, in considering the question, to take into account the maintainability or otherwise of a suit for a bare declaration (6). The consequential relief must be such that it will constitute further relief within the meaning of Section 34 of the Specific Relief Act (7). It must be a relief to which the plaintiff would not be entitled unless a certain title was established and unless the plaintiff would necessarily be entitled to such relief on such title being established (8). A relief is consequential to a declaration if it follows on such declaration and depends on it (9). What ensues or follows must have a necessary connection with the cause. Cause and consequence are co-relative terms, one implying the other. What the courts must, therefore, see is whether the relief, other than the declaratory decree, follows as a natural consequence from the declaration or

in other words flows from it (10). But the mere fact that a certain relief flows from the right declared will not by its own force make it consequential relief unless it is asked for as incidental to the declaration.”

11. Learned counsel for the defendants has not disputed the provisions of law as well as the decisions referred by the plaintiff. His main contention is that the present case does not seek a mere declaration but a declaration with a consequential relief which is implicit in the averments made in the plaint itself. It is argued that in the present case, consequential relief would flow *ipso facto* from the declaration sought by the plaintiff, which is evident merely by reading the statement made in paragraphs 28, 35 to 40 of the plaint. Therefore, he submits that the plaintiff has not valued the suit for the purpose of court fee properly and no court fee on the correct value has been paid as the subject matter of the properties of the HUF is worth several crores.

12. Thus, it is contended that in view thereof, the actual relief sought by the plaintiff includes consequential relief in addition to declaratory relief and therefore, the plaintiff ought to have paid ad valorem court fee in consonance with Section 7 (iv) (c) of the Court Fees Act, 1870. Further, it is argued that by virtue of Section 7 (iv) (c) of the Court Fees Act read with Section 8 of the Suits Valuation Act, the value for purposes of jurisdiction ought to be the same as the value for purposes of court fee. In support of his contentions, counsel for the defendants has referred to ***Sathappa Chettiar v. Ramanathan Chettiar***, 1958 SCR 1024, the relevant portion of which is reproduced hereinbelow :

“15. What would be the value for the purpose of jurisdiction in such suits is another question which often arises for decision. This question has to be decided by reading Section 7(iv) of the Act along with Section 8 of the Suits Valuation Act. This latter section provides that, where in any suits other than those referred to in Court Fees Act Section 7, paras 5, 6 and 9 and para 10 clause (d), court fees are payable ad valorem under the Act, the value determinable for the computation of court fees and the value for the purposes of jurisdiction shall be the same. In other words, so far as suits falling under Section 7, sub-section (iv) of the Act are concerned, Section 8 of the Suits Valuation Act provides that the value as determinable for the computation of court fees and the value for the purposes of jurisdiction shall be the same. There can be little doubt that the effect of the provisions of Section 8 is to make the value for the purpose of jurisdiction dependent upon the value as determinable for computation of court fees and that is natural enough. The computation of court fees in suits falling under Section 7(iv) of the Act depends upon the valuation that the plaintiff makes in respect of his claim. Once the plaintiff exercises his option and values his claim for the purpose of court fees, that determines the value for jurisdiction. The value for court fees and the value for jurisdiction must no doubt be the same in such cases; but it is the value for court fees stated by the plaintiff that is of primary importance. It is from this value that the value for jurisdiction must be determined. The result is that it is the amount at which the plaintiff has valued the relief sought for the purposes of court fees that determines the value for jurisdiction in the suit and not vice versa.”

13.           Emphasizing that the plaintiff has, by way of this suit, sought to not only take the reins of the HUF as its Karta but also to restrain defendant no. 1 from acting as the Karta thereof, counsel for defendant no. 1 has referred to the various instances in the plaint for instance paragraphs 28 and 31, 35-37 and 41 wherein letters of the defendant no. 1 have been mentioned where he has referred to himself as the Karta of the HUF.

14. It is also argued that since part of the cause of action arose due to the act of defendant no. 1 declaring himself to be the Karta of D.R. Gupta & Sons HUF, therefore, the present suit filed on this cause of action although ostensibly is only asking for declaratory relief, in actuality the plaintiff is seeking consequential relief as she wants to injunct/restrain defendant no. 1 from being/projecting himself as the Karta. In this regard, counsel for the defendants has emphasized the settled law that in deciding the question of court fees, the Court should look into the allegations contained in the plaint to determine what is the substantive relief asked for. Mere astuteness in drafting the plaint should not stand in the court's way in looking into the substance of the relief asked for.

15. As to what constitutes 'consequential relief', counsel for the defendants has referred to the observation in *Mt. Zeb-ul-Nissa Vs. Din Mohammad*, AIR 1941 Lahore 7 (FB) (6) which was also upheld by the Supreme Court in *Shamsher Singh Vs. Rajinder Prasad and Ors.*, AIR 1973 SC 2384 (7). The said observation states as follows :

“The expression ‘consequential relief’ in Article 7 (iv) (c) 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’.”

16. ‘Further relief’ as mentioned in Section 34 of the Specific Relief Act, 1963 must arise from the cause of action on which the declaratory suit is based. However, the operation of Section 7 (iv) (c) of

the Court Fees Act, 1870 is limited to cases where a consequential relief is claimed in addition to a declaratory relief. The section does not apply to all cases falling within the ambit of Section 34 of the Specific Relief Act as though every 'consequential relief' would be 'further relief', there would be 'further relief' which would not constitute 'consequential relief'. No relief is consequential unless it cannot be granted without a declaration.

17. It is settled law that a declaration with consequential relief falls within the meaning of Section 7 (iv) (c) of the Court Fee Act, 1870 and the plaintiff in such a case is required to value the suit for the purposes of court fee which is payable ad-valorem according to the value of the relief sought.

18. In the present case, the plaintiff has valued the relief of declaration for the purposes of jurisdiction at over Rs.1 crore. However, the fixed court fee of Rs.20/- has been paid on the relief of declaration. It is not in dispute that in order to avoid a suit for declaration which falls within the ambit of Section 7 of the Court Fee Act, the plaintiff cannot claim the actual relief in a mere declaration form if the substance of the suit reveals that the plaintiff seeks certain reliefs which are other than mere declaration.

19. In the present case, after going through the paragraphs 28 and 35 to 40, *prima facie* it appears that the plaintiff has sought the control of the HUF in question and has also sought to restrain defendant No.1 from acting as Karta and the plaintiff is also trying to do her duty as Karta of

the said HUF. Otherwise, the mere relief of declaration sought by the plaintiff would be fruitless if granted. There is an object behind the declaration sought by the plaintiff in the prayer. In other words, indirectly by way of the declaration sought, the plaintiff is seeking to obtain an injunction against the defendant No.1.

20. The decisions referred by the plaintiff have no bearing in the facts and circumstances of the present case as the consequential relief in those cases, if the declaration was allowed, were not founded upon same cause of action as the declaration. Therefore, the Court has to see as to whether a declaration of suit is merely a declaration or a declaration with consequential relief. The contents of the plaint are very much necessary to be looked into in order to suggest as to whether the relief sought by the plaintiff ultimately gives benefit to the plaintiff for further reliefs or not.

21. Another aspect of the matter is that Section 8 of the Suit Valuation Act, 1887 provides that except for suits falling under Section 7 paragraphs V, VI, IX and paragraph X (d) of the Court Fees Act, 1870, the value determinable for Court Fees and Jurisdiction shall be the same. Thus, the valuation put by a plaintiff for the purposes of court fees will be deemed as the value for jurisdiction also.

22. For the aforesaid reasons, I am of the considered view that the present case does fall under Section 7 (iv)(c) of the Court Fees Act by a reading of the plaint and it does not fall within the ambit of Article 17(iii) of Schedule II thereof. I am of the opinion that the relief sought

by the plaintiff is not merely a declaration and in view of the relief claimed, the plaintiff in fact has sought implicit consequential relief in the matter.

23. Thus, it is held that the suit has not been properly valued for the purposes of court fee and jurisdiction.

24. The plaintiff under these circumstances, is granted four weeks time to deposit the deficient ad-valorem court fee. Issue No.1 is accordingly decided.

25. List the matter before the Court on 12<sup>th</sup> March, 2010 for further direction.

**MANMOHAN SINGH, J.**

**FEBRUARY 08, 2010**  
**jk**