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17.12.2025
Ct. No. 446
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In the High Court at Calcutta
Civil Revisional Jurisdiction
Appellate Side

C.O. 510 of 2025

Ananda Kumar Singh
Vs.
Shri Prakash Banerjee & Ors.

Mr. Sounak Bhattacharya,
Mr. Sounak Mondal,
Mr. Abhirup Halder,
Mr. Anirban Saha Roy

...for the petitioner.

Mr. Suprovat Bhattacharyya,
Mr. Arindam Paul,
Ms. Subhasri Chatterjee,
Mr. Subhadeep Maitra

...for the opposite parties.

1. Determination of court fees, particularly in suits seeking cancellation of or adjudging a deed relating to an immovable property as void or voidable, whether the deed is one of sale, gift or otherwise, often creates a conundrum. A similar maze has arisen in the present revisional application, which has been filed questioning the legality and propriety of the order dated 27.09.2024 passed by the Civil Judge (Junior Division), 1st Court, Alipore, South 24 Parganas, on a petition filed by defendant no. 2/petitioner under Section 11 of the West Bengal Court-fees Act in connection with Title Suit No. 671 of 2023.
2. By the said order, the learned Court rejected the petitioner's contention that the suit had been under-

valued and insufficiently stamped, and accordingly dismissed the petition.

3. Before delving into the nuanced labyrinth of the controversy involved in this application, it would be apt to advert to the essential facts leading to its presentation, which are as follows:
 - a) The plaintiffs/opposite parties instituted a suit seeking a decree of declaration that the deed of gift bearing No. 160505949 dated 31.08.2016 and the deed of sale vide. no. 160502446 dated 30.11.2022, both registered in the office of the ADSR, Alipore, is null and void. They have further prayed for a decree of mandatory injunction restraining the defendants, their men and agents from alienating the property or creating any third-party interest in the suit property in any manner whatsoever.
4. The specific case sought to be made out by the plaintiffs is that the suit property belonged to one Smt. Ila Banerjee, since deceased, who was the mother of the plaintiffs and defendant no. 1. Smt. Banerjee had acquired ownership of the suit property by way of purchase under two registered deeds of sale dated 07.11.1985 and 07.10.1986, respectively, and her name was duly mutated in respect of the said property in the assessment records of the Kolkata Municipal Corporation.
5. Smt. Banerjee was survived by the plaintiffs and defendant no. 1, while her husband Ram Kamal Banerjee had predeceased her. Plaintiff nos. 2 and 3 are

stated to be physically and mentally disabled. The case of the plaintiffs is that Ram Kamal Banerjee, out of his self-acquired funds, had purchased three properties, namely the suit property and two residential houses, one at Purulia and the other at Kolkata, and had transferred all three properties in the name of Smt. Banerjee. It is further asserted that Smt. Banerjee also had substantial deposits in SBI and UBI and earned considerable income from nearly 100 bighas of agricultural land.

6. After the demise of Ram Kamal Banerjee, the defendant no. 1 would occasionally take Smt. Banerjee to his quarters at Purulia and, on various pretexts, obtained her signatures on different documents. In 2020, when Smt. Banerjee intended to distribute her properties among her legal heirs, she was informed by defendant no. 1 that she had already transferred the suit property in his favour in 2016 by executing a deed of gift.
7. Smt. Banerjee, by her complaint dated 13.06.2020, brought these facts to the notice of the Superintendent of Police, Purulia. Thereafter, by another complaint dated 22.07.2020, she informed the Officer-in-Charge of Purulia Town Police Station about the incident. She also lodged a complaint with Bansdroni Police Station, which resulted in Bansdroni P.S. Case No. 130 dated 04.08.2021 under Sections 120B/467/468/471/420/406 of the IPC against defendant no. 1. In addition, Smt. Banerjee initiated a proceeding under the relevant provisions of the Maintenance and

Welfare of Parents and Senior Citizens Act, 2007 before the Sub-Divisional Officer, Purulia.

8. Subsequently, defendant no. 1 executed a development agreement with defendant no. 2, authorising him to develop the suit property. Subsequently, that development agreement was revoked and by a registered deed of sale dated 30.11.2022, the suit property was transferred in favour of the defendant no. 2.
9. Smt. Banerjee thereafter filed a writ petition, being WPA 11722 of 2020, which was disposed of on 05.08.2021. Although the writ petition was decided in her favour, she passed away before she could derive any benefit from the order. Faced with this situation, the plaintiffs were compelled to institute the present suit.
10. Upon receiving summons in the suit, defendant no. 1 filed an application under Section 11 of the West Bengal Court Fees Act, 1870 (for short, the 1870 Act), contending, inter alia, that the plaintiffs had valued the suit at only Rs. 200, although the plaint contained two specific prayers, namely, a declaration that the gift deed dated 30th August 2016 and the sale deed dated 30th November 2022 are null and void, and a decree of mandatory injunction.
11. It was the specific case of the defendant no. 1 the suit is one for declaration with injunction as a consequential relief and accordingly, the plaintiffs ought to have valued the suit as per market value of the property and pay ad-valorem Court fees as stipulated in the Schedule

-I of the 1870 Act. However, the plaintiffs did not file any written objection in respect of that petition.

12. A perusal of the order dated 27.09.2024, which rejected the petition of the defendant no. 2 under Section 11 of the 1870 Act, reveals that the learned Court below refused to accept the contention of the defendant no. 2 with following observation and order:

“The plaint of the plaintiff features several ground for the non-effectiveness of the said deed of gift. It is stated that the same is void as being vitiated by fraud, coercion etc. The plaintiff also narrates as chequered history of complaining against such mischievous act of the defendant no.1 to various authorities as well. Now to opine, this Court finds that the plaintiff though failed to pray any relief in respect to the declaration of title, but the same can be figured out from the plaint itself. The decree of void declaration can be prayed by a party/plaintiff if the documents gets vitiated by fraud, coercion etc. even though the plaintiff is a party to that particular deed. If the documents stand as void, it stands void ab initio. So, no question of avoiding of such deed arises. But in the case of cancellation, the documents stand valid at its first instance, wherein the plaintiff seeks to avoid the same because of certain reason of non-complying of any terms and condition of the said deed and/or whatsoever, as the case

pans out to be. The same is a matter of adjudication for trial.

With such observation, this Court finds that a prayer for decree of void declaration of the instant deed of gift is sufficient for the plaintiff to seek for the present cause as panned out through the featuring of the instant plaint. There seems no requirement at this stage at least as appears to this court for a prayer for cancellation of the said impugned deed of gift from the part of the plaintiff of this suit. Hence, there seems no further requirement for assessing ad valorem court fees on such prayer of void declaration as framed by the plaintiff.”

13. Mr. Sounak Bhattacharya, learned advocate appearing for the defendant no. 2/petitioner, contends that although the plaintiffs have sought a declaration that the deed of gift is void, the suit is virtually a suit for cancellation of the deed along with a consequential relief of injunction. Therefore, according to Mr. Bhattacharya, the plaintiffs are required to pay ad valorem court fees on the market value of the property. In support of such contention, he places strong reliance on the decision reported in *2014 (1) CHN (Cal) 45 (Sova Rani Dutta vs. Ashis Kumar Dutta & Ors.)*.
14. In rebuttal, Mr. Suprabhat Bhattacharya, learned advocate representing the plaintiffs/opposite parties, argues that the plaintiffs are not the executants of the deed and, therefore, they have rightly sought a

declaration that the deed is void since they are not required to pray for cancellation of the deed. He submits that for seeking such a declaration of voidness, the plaintiffs are entitled to pay ad valorem court fees on the basis of their own valuation. To fortify his submissions, he relies upon two decisions: one reported at *2006 (1) CHN (Cal) 526 (Paresh Chandra Nath vs. Naresh Chandra Nath & Ors.)* and another unreported judgment rendered in *C.O. No. 4601 of 2015 (Sri Umapada Jati & Ors. vs. Sri Manas Jati & Ors.)*.

15. It hardly needs reiteration that the valuation of a suit must be determined on the basis of the plaintiff's pleadings and the reliefs sought. In the present case, the plaintiffs have sought a declaration that the deed of gift is void. They have also prayed for a further declaration that the subsequent sale deed executed by the donee under that gift deed is void. In addition to these declarations, the plaintiffs have sought a decree of mandatory injunction.
16. The plaintiffs have valued the suit as per their own assessment and have paid ad-valorem court fees accordingly. Defendant No. 2, however, contends that the suit has been undervalued and that the court fees paid are insufficient. His argument is that although the plaintiffs have framed their prayer as one seeking a declaration that the gift deed is void, the substance of the relief is effectively a prayer for cancellation of the deed. Therefore, according to Defendant No. 2, the

plaintiffs were required to pay ad-valorem court fees on the market value of the property.

17. It is an undisputed fact that, in order to avoid payment of ad-valorem court fees, parties often frame the relief of cancellation in the guise of a declaration that a deed is void or not binding on the plaintiff. In such cases, the court is faced with the challenging task of determining whether the declaration sought is genuinely one of voidness or merely an attempt to evade the proper court fees. It is a well-established principle that the court must remain vigilant against any attempt to circumvent the payment of the requisite court fees and, in the exercise of its authority, may revise the valuation and direct the plaintiff to pay the appropriate ad-valorem court fees.
18. To resolve such issues, courts have consistently applied a straightforward test: whether the plaintiff was a party to the deed in question. Judicial decisions have repeatedly held that if the plaintiff is not an executant of the deed, he is not required to seek cancellation. In such cases, a declaration that the deed is void is sufficient, and a third party need not seek cancellation as a consequential relief. Conversely, if the plaintiff is a party to the deed, he must seek a decree of cancellation as a consequential relief. Further, while examining the need for consequential relief, the court must consider whether such a relief is essential for sustaining the suit in view of the proviso to Section 34 of the Specific Relief Act. In cases where a declaration may be sufficient,

plaintiff cannot be forced to seek a consequential relief. (See, the case of *Sri Umapad Jati (supra)*].

19. In the decision of *Smt. Ramjani Balal Rakshit vs. Biswanath Rakshit*, reported in *AIR 1981 Cal 189*, the Hon'ble Division Bench dealt with a partition suit where the plaintiff sought a declaration that a deed purportedly executed by her was fraudulent, alleging that she had been misled into signing the document under the impression that it was merely a power of attorney. The Court held that, if such allegations were proved, the deed would be treated as void, and no further relief for cancellation was necessary. Consequently, the plaintiff was not required to pay ad-valorem court fees based on the market value of the property.
20. Following such decision, in a decision, reported at 1992 (2) *CHN (Cal) 482*, (*Naba Kumar Das vs. Damodar Das*), it was held that as the plaintiffs were not parties to the disputed deed of gift, the question of setting aside of the said deed did not arise and even if such a prayer is made, the same was made for a consequential relief.
21. In a decision, reported at (2006) 1 *CHN 526* (*Paresh Chandra Nath vs. Naresh Chandra Nath & Ors.*), plaintiff, inter alia, prayed for a declaration that the deed of gift was fraudulent and for setting aside of the said deed and for further declaration that the defendant no. 1 had no saleable interest in the suit property and as such, the transfers made by him in favour of the defendant no. 2 to 8 were illegal and in addition thereto, the plaintiff prayed for a decree of perpetual injunction.

The plaintiff paid the court fees according to his own valuation. The Bench negated the contention of the defendant that the plaintiff was required to pay court fees as per market value since declaration that the deed was void was substantive relief and not the setting aside the deed.

22. In the decision, reported at *2011 (1) CHN 653 (Ajit Kumar Shil vs. Subrata Narayan Chowdhury & Ors.)*, the plaintiff prayed for a declaration that the deed of gift was void and a decree for permanent injunction. The Bench considering two decisions rendered by two Single Benches in case of *Kartick Mondal vs. Sri Biman Sen*, reported at *2008 (2) CLJ (Cal) 306*, *Naba Kumar Das (supra)* and a Division Bench's decision, reported at *AIR 1971 Cal 202*, held that plaintiff had correctly valued the suit as per Section 7(iv)(b) of the West Bengal Court Fees Act, 1870 and not under Section 7(v)(b) of the Act i.e. not as per market value. Considering all these decisions, in the decision of *Sri Umapada Jati (supra)* also, the same view has been reiterated by a Co-ordinate Bench of this Court.
23. Therefore, from the discussions set out in the preceding paragraphs, it transpires that even the Hon'ble Division Bench of this Court and, subsequently, on the basis of such decision of the Hon'ble Division Bench, several Co-ordinate Benches of this Court have consistently held that a decree of declaration that a deed of gift is void constitutes a substantive relief, particularly where the plaintiff is not a party to the deed or not the executant

thereof. In such circumstances, the plaintiff is not required to seek cancellation of the deed, and even if such prayer is made as a further or consequential relief, he is not required to pay ad valorem court fees on the market value of the suit property. Therefore, I am unable to accept the reasoning of the decision in *Sova Rani* (supra).

24. In view of this, the claim of the petitioner lacks merit and the same cannot be entertained. The order impugned in this revisional application is upheld.
25. Accordingly, the revisional application is, thus, dismissed. There shall be no order as to the costs.

(Partha Sarathi Chatterjee , J.)