

Court No. 6
(265719)

25.08.2025
(AD 1)
(S. Banerjee)

CO 3051 of 2025

Shashi Kant Tapuriah
Vs.
Rajesh Kumar Tapuriah & Ors.

Mr. Supratick Syamal
...for the petitioner
Mr. Probal Kumar Mukherjee, Sr. Advocate
Mr. Saket Chaudhary
...for the opposite party no. 1

This application under Article 227 of the Constitution of India is at the instance of the 7th defendant and is directed against order no. 149 dated June 24, 2025 passed by the learned Civil Judge (Jr. Division) 2nd Court at Alipore in Title Suit No. 96 of 2012. By the order impugned, the application filed by the 7th defendant praying for adjudication of the valuation of the reliefs claimed in the plaint, stood rejected.

Mr. Syamal, learned advocate appearing for the petitioner submits that the learned trial judge while rejecting the application placed reliance upon the decision of the Hon'ble Supreme Court in the case of *Suhrid Singh @ Sardool Singh –Vs.- Randhir Singh & Ors.*, reported in AIR 2010 SC 2807 without appreciating that the said decision cannot be applied

to the facts of the case on hand as in the instant suit the plaintiff/opposite party herein has prayed for cancellation of the lease deed. He, therefore, submits that the opposite party should be directed to value the suit according to the relief claimed in the plaint for cancellation of the lease deed.

When this matter was taken up on August 21, 2025, Mr. Mukherjee, learned Senior Advocate appearing for the opposite party no. 1, prayed for an accommodation to take instruction as to whether the plaintiff shall pursue the claim with regard to the reliefs claimed under prayer (f) of the plaint. Today when this matter is taken up for hearing, Mr. Mukherjee, learned Senior Advocate, on instruction, submits that the petitioner through electronic mail addressed to the learned advocate-on-record of the opposite party stated that the opposite party shall delete the prayer '(f)' of the plaint. Such submission of Mr. Mukherjee is placed on record.

The opposite party herein filed a suit for declaration that the opposite party is the co-owner in the suit premises and, therefore, is entitled to possession and enjoyment of the same and for further declaration that the purported lease deed executed and registered by the original defendant no. 1 in favour of the original defendant no. 2, is a voidable

document and not binding on the plaintiff and other coparceners and for other reliefs.

It is not in dispute that the plaintiff/opposite party no. 1 is not an executant to the deed which is the subject-matter of challenge in the suit.

The Hon'ble Supreme Court in the case of *Suhrid Singh (supra)* has 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 circumstances in which the prayer for cancellation and the declaration in regard to a deed of transfer has to be made was elaborately stated by way of illustration in the said decision.

In the said reported decision there was no prayer for cancellation of the sale deeds.

The learned trial judge rejected the application filed by the petitioner herein praying for adjudication of the valuation of the reliefs claimed in the plaint by relying upon the decision in the case of *Suhrid Singh (supra)*. It appears from the plaint that the opposite party herein prayed for cancellation of the deed in

question as would be evident from paragraph (f) of the plaint which reads thus:

“(f) Declaration and/or mandatory injunction calling upon the original Defendant No. 1 And the Defendant No. 2 to jointly and/or severally return and cancel the lease deed dated 3rd February 2012 so much so that the deed be thus delivered up and cancelled;”

However, since the petitioner has now chosen to give up the prayer in paragraph ‘(f)’ of the plaint, this court finds that the suit as framed after deletion of the prayer (f), would be a suit for declaration that the lease deed executed and registered by the original defendant no. 1 in favour of the defendant no. 2, is a voidable document and not binding on the plaintiff and other coparcenaries. Thus, the decision in the case of *Suhrid Singh (supra)* shall squarely apply to the case on hand after deletion of prayer (f) from the plaint.

Section 7(iv)(b) states that in suits for declaratory decree and consequential relief to obtain a declaratory decree or order where consequential relief is prayed, in all such suits the plaintiff shall state the amount on which he values the relief sought.

As observed hereinbefore, the suit after deletion of prayer (f) is a simplicitor suit for declaration of title

declaration that the lease deed is void, non est etc. and for consequential relief, the plaintiff was thus entitled to value the reliefs sought for.

In view of the aforesaid, this court finds that the learned trial judge was right in holding that the court fees is not required to be paid as per the market value as the plaintiff has put his own value on the relief claimed which is permissible under Section 7(iv)(b) of the West Bengal Court Fees Act, 1970.

In the light of the submissions advanced by the learned senior advocate for the petitioner, the opposite party is directed to file an appropriate application before the learned trial judge within a fortnight from date for deletion of prayer (f) from the plaint and upon filing of such application, the learned trial judge shall pass orders accordingly. If such an application is not filed within the time limit as aforesaid, this order shall stand automatically recalled and the application filed by the petitioner which is annexed at page 62 of the civil revision application, shall automatically stand revived and the learned trial judge shall decide the same afresh after giving an opportunity of hearing to the respective parties and by passing a reasoned order.

At this stage Mr. Mukherjee, learned Senior Advocate, appearing for the opposite party no. 1

submits that since the suit is pending from the year 2012, a direction for expeditious hearing of the suit may be passed.

It has been jointly submitted by the learned advocates for the respective parties that the suit is at the stage of cross-examination of the first witness of the plaintiff which is fixed on September 10, 2025, the learned trial judge is requested to make an endeavour to dispose of Title Suit No. 96 of 2012 as expeditiously as possible without granting any unnecessary adjournment to either of the parties.

With the above observations, CO 3051 of 2025 stands disposed of.

(Hiranmay Bhattacharyya, J.)