

30.06.2025
Item No.397

Court No.29
Sg/SM

C.O. 3780 of 2024
Sri Indranath Saha
Vs.
Smt. Minati Saha

Mr. Goutam Misra,
Mr. Vaskar Pal

....for the petitioner.

Ms. Debapriya Mitra,
Ms. Madhumita Sil

....for the opposite party.

The order dated 13th February, 2024 passed by learned Civil Judge (Junior Division), Additional Court at Serampore passed in Title Suit No.373 of 2023 is under challenge, whereby the plaintiff is directed to put proper valuation of the suit on the basis of the value of subject matter, i.e. the property involved in the deed of gift.

Petitioner/plaintiff submits that he filed a suit for declaration and permanent injunction against the opposite party/defendant. The opposite party/defendant entered appearance and filed her written statement and contesting the suit.

The incident which led the plaintiff to file the present suit is that the petitioner/plaintiff who is a senior citizen executed a deed of gift with terms and conditions in favour of the opposite party/defendant herein, who is his daughter-in-

law vide deed of gift dated 11th November, 2009. Since the opposite party/defendant failed to abide by the terms and conditions of the said deed of gift, the plaintiff/petitioner revoked the said deed of gift by executing another registered deed of revocation dated 1st December, 2020. Now on and from 1st April, 2020, the opposite party/defendant is continuously threatening the plaintiff/petitioner not to allow him to cultivate the said property.

By the impugned order dated 13th February, 2024, learned court below was pleased to direct the plaintiff to put proper valuation of the suit on the basis of the value of the subject matter, i.e., the property involved in the deed of gift and to pay the ad-valorem Court fees thereon, in default the Court expressed his desire to invoke the provision under Order 7 Rule 11(b) for rejection of plaint.

Being aggrieved by the said order, leaned counsel appearing on behalf of the petitioner submits that the court below failed to consider that the deed of gift had already been revoked by the deed of revocation, and in view of execution of such deed of revocation the earlier deed of gift has already been treated as null and void. The petitioner/plaintiff has filed the present suit simpliciter for declaration under Section 34 of the Specific Relief Act and for which he has valued the

suit according to his own valuation and accordingly paid the court fee. The question of payment of ad valorem court fee does not arise.

Learned counsel appearing on behalf of the opposite party submits that in order to avoid the payment of the ad valorem court fee, the plaintiff has tactfully framed the suit as if it is a suit for declaration though his ultimate relief is for cancellation of the deed of gift executed in favour of the defendant/opposite party. Accordingly, learned court below was justified in asking the plaintiff/petitioner to file ad valorem court fee in accordance with law. In such view of the matter, the order impugned does not call for interference invoking this court's jurisdiction under Article 227 of the Constitution of India.

Learned court below, by the order impugned referring Section 31 of the Specific Relief Act rejected the contention of the petitioner/plaintiff and came to a finding that for seeking the relief of cancellation of deed of gift, the plaintiff is required to put ad valorem court fees in this suit which the plaintiff has not paid as yet. Accordingly, he directed the plaintiff/petitioner to file the ad valorem court fee in terms of the valuation of the subject matter of the property involved in the deed of gift.

It is further submitted that the review application was also filed before the court below which was also turned down by the court below by an order dated 26th July, 2024.

Having heard leaned counsel appearing on behalf of the parties, it appears that the plaint as it has been framed appears to be that for a declaration that after revocation, the deed of gift being no.2839 of 2009 dated 11th November, 2009 shall be treated as void and illegal since he had already executed the deed of revocation and the other declaration he has sought for is after revocation of earlier deed of gift, the defendant lost her legal right regarding ownership of the suit schedule property.

However, the court below observed that the proper remedy left for the plaintiff is to seek relief of cancellation of the deed of gift and not a mere declaration to that effect that the deed of gift is not enforceable in law and vague and improper and inoperative and, therefore, plaintiff being a party to the deed of gift his only remedy is to pray for cancellation of the deed of gift and for which he is required to pay the ad valorem court fee. A Division Bench of the Nagpur High Court in an old case in Ratan Singh Vs. Raghunaj Singh, AIR 1946, Nag 30 laid down :

- i. “that the Court fees Act is a fiscal enactment and has therefore to be construed strictly and any ambiguity or doubt arising out of it’s interpretation has to be resolved in favour of the subject.**
- ii. that the question of Court fee is payable on the claim as framed in the plaint and not on the claim as it ought to be framed.**
- iii. that the question Court fee is distinct and separate from the question of the maintainability of the suit as framed.”**

However it is well settled rule that while anything not contained in the plaint cannot be imparted, yet the real substance of the plaint and not it’s ostensible form must be looked into.

(Samsheer Singh Vs. Rajinder Prashad, AIR 1973 SC 2384)

Coming back to the instant case, it appears that the Court below tried to demonstrate the issue on the basis of the claim as it ought to be

framed. He nowhere observed that camouflaging real relief under verbiage, plaintiff has framed his claim in declaratory form.

Since there is contradiction about the framing of the suit and the finding of the court below without proper explanation, I find that the order impugned suffers from impropriety and the issue is required to be adjudicated afresh by the court below by framing two issues as preliminary issue.

- i) Is the suit maintainable in its present form and prayer;
- ii) Whether the court fee paid by the plaintiff is sufficient;

In such view of the matter, the order impugned dated 13th February, 2024 passed in Title Suit No.373 of 2023 along with the order dated 26th July, 2024 stands quashed. CO 3780 of 2024, thus, disposed of accordingly.

Learned trial court will make every endeavour to frame the said issue and to dispose of the same at the earliest since the petitioner/plaintiff is a senior citizen and stated to be aged about 90 years.

(Dr. Ajoy Kumar Mukherjee, J.)