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2.1 By way of Sale Deed dated 24.06.2021 for a total sale consideration of Rs.2,70,00,000/-, the petitioner/plaintiff purchased from the present respondents no.1 & 2 (*defendants no.1 & 2 in the suit*) portion C of premises bearing no. 144 E/1, Kilokari, Hari Nagar Ashram, near Jagan Nath Market, New Delhi (*hereinafter referred to as "the suit property"*) ad-measuring 350 sq. yards on stilt floor comprising temporarily covered portion, as depicted blue and yellow in the site plan annexed with the plaint. Earlier during the period from 2017 to 2019, the respondents/defendants no.1 & 2 had sold other flats at Tower-A in the said premises to respondents/defendants no.3-6 by way of their individual Sale Deeds. The respondents/defendants no.1-6 even subsequent to purchase of the subject property by the petitioner/plaintiff continued to use a portion thereof (*shaded yellow in the site plan*) to access their respective flats. Further in the month of August 2023, the respondents/defendants no. 1-6 attempted to trespass into portion of the subject property by placing certain articles and they threatened that petitioner/plaintiff would not be allowed to carry out any construction in the suit property. Subsequently, the petitioner/plaintiff came to know that respondent/defendant no.6, conspiring with the respondents/defendants no.1 & 2 fraudulently inserted certain clauses in their Sale Deed dated 11.10.2021, whereby the respondent/defendant no.6 was authorised to use the subject property for ingress and egress by vehicular access and they also executed a Rectification Deed dated 11.10.2021 to insert a similar clause in Sale Deed dated 28.02.2019 which was registered on 01.03.2019.



2.2 According to the petitioner/plaintiff, upon execution of Sale Deed dated 24.06.2021 in her favour, respondent/defendant no.1 was left with no right, title and interest to permit the remaining defendants use of the subject property for ingress and egress, therefore, the said Sale Deed and the Rectification Deed are liable to be declared null and void. Therefore, petitioner/plaintiff filed the subject suit with following reliefs:

“a. Pass a Decree of declaration, declaring Clause 22 along with the portion shown in yellow in the site plan of the Sale Deed dated 11.10.2021 executed by the Defendant No. 1 in favour of the Defendant No. 6 which was registered on 12.10.2021 in the office of Sub-Registrar, New Delhi, as Document No. 5035, in Book No. 1, Volume No. 1738, on pages 186 to 200 as null and void ab initio;

b. Pass a Decree of declaration, declaring the entire Rectification Deed dated 11.10.2021 executed by the Defendant No. 1 in favour of the Defendant No. 6 which was registered on 12.10.2021 in the office of Sub-Registrar, New Delhi, as Document No. 5021, in Book No. 1, Volume No. 1738, on pages 48 to 52 as null and void ab initio;

c. Pass a decree for Perpetual Injunction restraining the Defendants their family members, agents, nominees, assignees, relatives, associates and servants etc. from using or entering or trespassing into the suit property or obstructing with any construction activities of the Plaintiff in the suit property;

d. Pass a decree for Mandatory Injunction directing the Defendants their agents, nominees assignees, relatives, associates and servants etc. not to use or enter or trespass into the suit property or obstructing with any construction activities of the Plaintiff in the suit property;

e. Award the cost of the suit in favour of the Plaintiff and against the Defendants.

f. Any other or further relief (s) which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case may also be awarded in favour of the Plaintiff and against the Defendants."

2.3 The petitioner/plaintiff, placing reliance on provision under Section 7(iv)(c) of the Court Fees Act valued the relief of declaration at Rs.200/- each and paid Court Fees of Rs.20/- each, claiming that the relief of



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injunction sought vide prayer clauses (c) and (d) are not consequential reliefs.

2.4 Placing reliance on the judgment of the Hon'ble Supreme Court in the case titled ***Suhrid Singh @ Sardool Singh vs Randhir Singh & Ors.***, Civil Appeal No.2811-2813 of 2010, the learned trial court took a view that the reliefs of injunction in the present case not being in consequence of the reliefs of the declaration, the suit *qua* the reliefs of the declaration would not fall within the ambit of Section 7(iv)(c) of the Court Fees Act, so the Court Fees shall be computed in accordance with Article 17(iii) of Schedule II to the Court Fees Act; and for the purposes of valuation, in view of Rule 7 of Chapter III, Part C, Volume I, Delhi High Court Rules, valuation of the suit shall be at the market value of the subject property as on the date of institution of the suit.

2.5 Hence, the present petition.

3. During arguments, learned counsel for petitioner contended that the impugned order is not sustainable in the eyes of law. It was argued that in view of nature of reliefs sought, petitioner is liable to pay only fixed Court Fees on each of the reliefs sought and the same having been done, plaint is not liable to be rejected. On the other hand, learned counsel for respondents supported the impugned order and contended that the petition is devoid of merit.

4. In the case of ***Suhrid Singh*** (supra), while dealing with the Court

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Fees Act, as amended in Punjab, the Hon'ble Supreme Court laid down the distinction between the relief of cancellation of a Deed and relief of declaration when the Deed is void. Where the executant of a Deed wants to get it annulled, he has to seek cancellation of the Deed. But if a non executant wants annulment of a Deed, he has to seek a declaration that the Deed is void or not binding on him. It is not just the form of suit, even the Court Fees in the two cases is different. Where the executant seeks cancellation of the Deed, he has to pay *ad valorem* Court Fees. But where the non executant seeks declaration that the Deed is void or not binding on him, he has to pay fixed Court Fees under Article 17(iii) of Second Schedule to the Court Fees Act in case non executant is in possession of the subject property; however, where the non executant seeking declaration of nullity of the Deed is not in possession of the subject property and he seeks not just a declaration of nullity of the Deed but also the consequential relief of possession, then he has to pay *ad valorem* Court Fees as provided under Section 7(iv)(c) of the Court Fees Act.

5. In the present case, going by the rival pleadings, it cannot be denied that the petitioner/plaintiff is not in possession of the portion of the subject property shaded yellow in the site plan, which portion is being used by the respondents/defendants for ingress and egress to their respective flats. As reflected from the site plan and photographs of the subject property, the portion shaded yellow in the site plan, which portion is used by the respondents/defendants for ingress and egress is separated from the remaining portion of the subject property (*shaded blue in the site plan*) by a wall and both portions have separate gates. The reliefs of injunction sought

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in the suit do not automatically flow out of the relief of declaration *qua* nullity of the Rectification Deed and the subject clause of the Sale Deed under challenge. Without obtaining declaration as sought, the petitioner/plaintiff cannot seek injunction to restrain the respondents/defendants from using the subject property for ingress and egress.

6. I am in agreement with the learned trial court that in the present case the Court Fees shall be computed in terms with Article 17(iii) of Second Schedule to the Court Fees Act and for valuation of the suit, Rule 7, Part C, Chapter III, Volume I of the Delhi High Court Rules would operate and the suit shall be valued at market value of the subject property as on the date of institution of the suit. As further rightly observed by the learned trial court, there is no distinction between the relief *qua* declaration of a particular clause of the Deed and *qua* the entire instrument, because the declaration of nullity of clause 22 of the Sale Deed, if allowed would certainly have a bearing on the entire Sale Deed with consequent effect on the subject property.

7. In view of above discussion, I find no infirmity in the impugned order, so the same is upheld and the present petition is dismissed.

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(JUDGE)

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