

# VALUATION & COURT-FEES

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**1. Acts, Rules & other Laws concerning valuation & court-fees :** There are following Acts, Rules & other Laws concerning the valuation of subject-matters and court-fees payable on documents of different natures and in different proceedings in the courts in U.P. :

- (i) Suits Valuation Act, 1887
- (ii) Uttar Pradesh Suits Valuation Rules, 1942
- (iii) Court-fees Act, 1870
- (iv) Uttar Pradesh Court Fees (Payment in Cash) Act, 1975
- (v) Uttar Pradesh Court Fees (Remission) Act, 1950

(vi) Judicial Pronouncements (Rulings).

**2(A). Amendments in U.P. in the Court-fees Act, 1870** : Different amendments (24) in the Court-fees Act, 1870, have been made in the State of U.P. in the following years : 1875, 1889, 1891, 1922, 1923, 1936, 1937, 1938, 1941, 1950, 1952, 1956, 1957, 1958, 1959, 1961, 1963, 1970, 1975, 1979, 1980, 1988, 1989, 2003.

**2(B). Classification of Court-fees (Rule 381, G.R. Civil)** : The Court- Fees payable by means of stamps into Civil Courts may be classified under the following heads:-

(1) Ad-valorem fees (Schedule I of Act VII of 1870 as amended in Uttar Pradesh)-

- (a) On plaints, memoranda of appeals and applications for review of judgment;
- (b) On copies and translations;
- (c) On certificates, probates and letters of administration.

(2) Fixed fees (Schedule II of Act VII of 1870 as amended in Uttar Pradesh)-

- (a) On plaints and memoranda of appeal;
- (b) On other documents.

<sup>Ω</sup>Substituted by notification no. 337/X-b-88 Allahabad Dated: 26.7.1996 published in U.P. Gazette on 28.9.1996

- (3) (a) Fees payable for searches and for the inspection of records books, and registers;
- (b) Process fee.

**2(C). Classification of Court-fees (Rule 382, G.R. Civil)** : (1) Of the three heads described in the preceding rule heads (1) and (2) alone are provided for by the Court-fees Act; and are paid by means of Court-fee stamps, impressed or adhesive,

(2) Heads (3) (a) and (3) (b) are payable under these Rules.

(3) A search and inspection fee is paid by a Court-fee adhesive label of 6 paise and 25 paise, respectively vide item No. 31 to Appendix C. III of the U.P. Stamp Manual, 1945.

(4) Copying fees, which are not to be confused with Court-fees payable on copies under Articles 6 to 9 of the First Schedule to the Court-fees Act, 1870, are payable by means of impressed copy stamps, known as 'copy folios' and Court fee labels overprinted with the words 'FOR COPIES ONLY' in the manner prescribed in rule 39 of the U.P. Stamp Rules, 1942.

**NOTE-***For rules as to search and copying fees see Chapters IX and X of these rules. The succeeding rules relate only to the Court-fees leviable under the Court-fees Act 1870.*

**3(A). Certain important sections of the Suits Valuation Act, 1887** : Following are the important sections of the Suits Valuation Act, 1887 :

**Sec. 4 : Valuation of relief in certain suits relating to land** : Suits mentioned in paragraphs IV (a), IV-A, IV-B, V-A, V-B, VI, VIA, VIII and X(d) of Section 7 and Articles 17, 18 and 19 of Schedule II of the Court Fees Act, 1870, as in force for the time being in the Uttar Pradesh, shall be valued for the purposes of jurisdiction at the market value of the property involved in or affected by, or the title to which is affected by the relief sought, or of the amount involved in or affected by, or the title to which is affected by the relief sought and such value shall in the case of land be deemed to be the value as determinable in accordance with the rules framed u/s. 3.

**Sec. 8 : Court fee value and jurisdictional value to be the same in certain suits** : Where in suits other than those referred to in Section 4, court-fees are payable ad valorem under the Court-Fees Act, 1870, as in force for the time being in the Uttar Pradesh, the value as determinable for the computation of Court-fees and value for purposes of jurisdiction shall be the same.

**Sec. 11 : Procedure where objection is taken on appeal or revision that a suit or appeal was not properly valued for jurisdictional purposes** : (1) Notwithstanding anything in Section 578 of the Code of Civil Procedure, an objection that by reason of the over-valuation or under-valuation of a suit or appeal a court of first instance or lower appellate court which had no jurisdiction with respect to the suit or appeal, exercised jurisdiction with respect thereto shall not be entertained by an appellate court unless :

- (a) the objection was taken in the court of first instance at or before the hearing at which issues were first framed and recorded or in the lower appellate court in the memorandum or appeal to that court, or
  - (b) the appellate court is satisfied, for reasons to be recorded by it in writing that the suit or appeal was over-valued or under-valued and that the over-valuation or under-valuation thereof has prejudicially affected the disposal of the suit or appeal on its merit.
- (2) If the objection was taken in the manner mentioned in clause (a) of sub-section (1) but the appellate court is not satisfied as to both the matters mentioned in clause (b) of that sub-

section and has before it the materials necessary for the determination of the other grounds of the appeal to itself, it shall dispose of the appeal as if there had been no defect of jurisdiction in the court of first instance or lower appellate court.

(3) If the objection was taken in the manner and the appellate court is satisfied as to both those matters and has not those materials before it, it shall proceed to deal with the appeal under the rules applicable to the court with respect to the hearing of appeals, but if it remands the suit or appeal, or frames and refers issues, for trial; or requires additional evidence to be taken, it shall direct its order to a court competent to entertain the suit or appeal.

(4) The provisions of this section with respect to an appellate court shall, so far as they can be made applicable, apply to a court exercising revisional jurisdiction u/s. 622 of the Code of Civil Procedure or other enactment for the time being in force.

(5) This section extends to the whole of India, and shall come into force on the first day of July, 1887.

**3(B). Section 3 of the Suits Valuation Act, 1887 not ultra vires :** Clause (e) of Rule 3 of the U.P. Suits Valuation Rule, 1942 is not ultra vires. Section 3 of the Suits Valuation Act, 1887 authorises the State Government to make rules among other things for determining the value of land for purposes of jurisdiction in suits mentioned in para (v) of section 7 of the Court-fees Act. Para (v) of covers suits for possession of land as well as buildings and gardens. The State Government could therefore frame rules as to how the value of land in a suit for possession of land was to be determined for purposes of jurisdiction. There appears to be nothing which could debar the State Government from providing that if buildings or gardens stand upon the land over which possession is sought, their value should be included while determining the value of the land itself. That the valuation of the land for purposes of jurisdiction will be different from the valuation of the land for purposes of court-fee will not invalidate the rule. The proviso to section 3 clearly contemplates that the value of land for the purpose of jurisdiction may be different from the value of the land for the purpose of court-fees. The only limitation which is laid down is that the value for the purpose of jurisdiction should not be less than the value for the purpose of court-fee. For purposes of court- fee it may not be necessary to include the value of building or garden standing on the land in cases where possession over land is claimed without the building or garden. But it appears to have been open to the State Government while framing rules in exercise of the powers conferred by section 3 to provide that while determining the value of land for the purpose of jurisdiction in a

suit for possession of land the value of the buildings or gardens standing upon it should be taken into account even though possession is not being claimed over the buildings or gardens along with the land. See : **Shanti Prasad vs. Mahabir Singh, AIR 1957 All 402 (F.B.)**

**3(C). Uttar Pradesh Suits Valuation Rules, 1942 [Rules made by the U.P. Government u/s. 3, Suits Valuation Act, 1887] :** The entire text of the Uttar Pradesh Suits Valuation Rules, 1942 reads as under : -

“In exercise of the powers conferred by sub-section (1) of Section 3 of the Suits Valuation Act, 1887 (VII of 1887), as amended in its application to the Uttar Pradesh Suits Valuation (Amendment) Act, 1939 (VII of 1939), the Governor of the Uttar Pradesh in supersession of Government Notification No. 1874/VII-447, dated the 27<sup>th</sup> November, 1929, hereby makes the following rules for determining the value of land for purposes of jurisdiction in the suits, mentioned in Paragraphs V, V-A and V-B of Section 7 of the Court Fees Act, 1870 (VII of 1870), as amended in its application to the Uttar Pradesh by the Uttar Pradesh Court Fees (Amendment) Act, 1938 (XIX of 1938), and the Court Fees (Uttar Pradesh Amendment) Act, 1941 (IX of 1941).

- 1. Short title, extent and commencement :** (a) These rules may be called the Uttar Pradesh Suits Valuation Rules, 1942.
  - (b) They shall apply to the whole of the Uttar Pradesh.
  - (c) They shall come into force from the date of their notification in the official Gazette.
- 2. Definitions :** In these rules there is anything repugnant to the subject or context,--
  - (a) “Government” means the Government of Uttar Pradesh.
  - (b) “estate” means any land subject to the payment of revenue for which the proprietor or farmer or raiyat shall have executed separate engagement with the Government or which in the absence of such engagement, shall have been separately assessed with revenue;
  - (c) “rent-free grant” or “land at a favourable rate of rent” have the meanings assigned to them by Section 188 and Section 189 respectively of the Uttar Pradesh Tenancy Act, 1939 (XVII of 1939).
- 3. Suits for possession of land, buildings and gardens :** In suits for the possession of land, the value of the land for purposes of jurisdiction shall be determined as follows:

- (a) where the land forms an entire estate or a definite share of an estate paying annual revenue to Government or forms part of such estate and such revenue, and such revenue, is permanently settled—Fifty five times the annual revenue so payable;
- (b) where the land forms an entire estate or a definite share of an estate paying annual revenue to Government or forms part of such estate and such part is recorded in the Collector's register as separately assessed with such revenue, and such revenue is not permanently settled—thirty times the annual revenue so payable;
- (c) where the land pays no annual revenue has been partially exempted from such payment, or is charged with a fixed payment in lieu of such revenue, and net profits have arisen from the land during the three years immediately preceding the date of presenting the plaint—
  - (i) fifty-five or thirty times the nominal annual revenue when such revenue has been assessed according as the land is in a permanently or temporarily settled area; or
  - (ii) where no such nominal revenue has been assessed, twenty times the annual average of such net profits;
    - but where no such profits have arisen from the lands, twenty times the annual average net profits of similar land for the three years immediately preceding the date of presenting the plaint;
- (d) where the land forms part of an estate paying annual revenue to Government, but is not a definite share of such estate and does not come under the clause (a), (b) or (c) of this rule—fifty-five or thirty times the annual revenue payable in respect of such a land according as the land is in a permanently or temporarily settled area;
- (e) where there are also buildings or gardens on the land the aggregate of the value of the land as determined in accordance with these rules plus the market value of such buildings or gardens situated thereon.

**4. Suits for possession of superior proprietary, under-proprietary and sub-proprietary rights in land** : The value of the suits for the purposes of jurisdiction in suits for possession—

- (a) of superior proprietary rights where under-proprietary or sub-proprietary rights exist in the land shall be twenty times the annual net profits of the superior proprietor;

- (b) of under-proprietary land as such shall be twenty times the annual under-proprietary or sub-proprietary rent, as the case may be, recorded in the Collector's register as payable for the land for the year next before the presentation of the plaint.

If no such rent is recorded in the Collector's register, the value shall be determined by multiplying by twenty such rents for similar land for the year next before the presentation of the plaint.

**5. Suits between rival tenants and by tenants against trespasser :** The value of suits for purposes of jurisdiction in suits for possession of land between rival tenants and by tenants against trespasser shall—

- (a) where the land is the land of a permanent tenure-holder or a fixed rate tenant, be thirty times the annual rent recorded in the Collector's register as payable for the land for the year next before the presentation of the plaint;
- (b) where the land is the land of an ex-proprietary or occupancy tenant or to a tenant holding on special terms in Oudh, be twelve times such rent;
- (c) where the land is the land of a hereditary tenant, be six times such rent.

If no such rent is recorded in the Collector's register, the value shall be determined by multiplying the annual average rent of similar land for three years next before the presentation of the plaint, by thirty, twelve, eight and six accordingly as the class of tenancy affected is governed by clause (a), (b), (c) or (d) of this rule.

**6. Suits for possession of rent free grants :** (1) The value of suits for the purposes of jurisdiction in suits for possession of a rent-free grant or a grant of land held at favourable rate of rent shall be thirty times, the annual average rent payable by occupancy tenants for similar land for the three years next before the presentation of the plaint.

(2) Notwithstanding anything contained in the foregoing rules, the value of land for purposes of jurisdiction shall in no case be less than the value as determined for computation of Court fees.

**5. Certain important sections of the Court-fees Act, 1870 [as amended in U.P.] :** Following are certain sections of the Court-fees Act, 1870, as amended in the State of U.P. :

**Sec. 7 : Computation of fees payable in certain suits for money :** The amount of fee payable under this Act in the suit next hereinafter mentioned shall be computed as follows:-

*For money* – (i) In suits for money (including suits for damages or compensation, or arrears of maintenance of annuities, or of other sums payable periodically)—according to the amount claimed;

*For maintenance and annuities* – (ii-a) In suits for maintenance and annuities or other sums payable periodically )—according to the value of the subject-matter of the suit, and such value shall be deemed to be ten times the amount claimed to be payable for one year:

Provided that in suits for personal maintenance by females and minors, such value shall be deemed to be the amount claimed to be payable for one year;

For reduction or enhancement of maintenance and annuities—(ii-b) In suits for reduction or enhancement of maintenance and annuities or other sums payable periodically according to the value of the subject-matter of the suit and such value shall be deemed to be ten times the amount sought to be reduced or enhanced for one year;

*For other movable property having a market value*—(iii) In suits for moveable property other than money, where the subject- matter has a market value—according to such value at the date of presenting the plaint;

For declaratory decree with consequential relief : (iv) In suits : -(a) to obtain a declaratory decree or order, where consequential relief other than reliefs specified in sub-section (iv-A) is prayed; and

For accounts : (b) For accounts according to the amount at which the relief sought is valued in the plaint or memorandum of appeal :

Provided that in suits falling under clause (a), where the relief sought is with reference to any immovable property, such amount shall be value of the consequential relief and if such relief is incapable of valuation, then the value of the immovable property computed in accordance with sub-section (iv), (v-A) or (v-B) of this section as the case may be:

Provided further than in all suits falling under clause (a), such amount shall in no case be less than Rs. 300.

Provided also, that in suits falling under clause (b), such amount shall be the approximate sum due to the plaintiff and the said sum shall form the basis for calculating (or determining) the valuation of an appeal from a preliminary decree passed in the suit.

For cancellation or adjudging void instruments and decrees : (iv-A) In suit for or involving cancellation of or adjudging void or voidable a decree for money or other property having a market value, or an instrument securing money or other property having such value:

(1) where the plaintiff or his predecessor-in-title was a party to the decree or the instrument, according to the value of the subject-matter, and

(2) where he or his predecessor-in-title was not a party to the decree or instrument, according to one-fifth of the value of the subject-matter, and such value shall be deemed to be—

If the whole decree or instrument is involved in the suit, the amount for which or value of the property in respect of which the decree was passed or the instrument executed, and if only a part of the decree or instrument is involved in the suit, the amount or value of the property to which such part relates.

Explanation : ‘The value of the property’ for the purposes of this sub-section, shall be the market-value, which in the case of immovable property shall be deemed to be the value as computed in accordance with sub-section (v), (v-A) or (v-B), as the case may be.

For easement—(iv-B) In suits : (a) for a right to some benefit (not herein otherwise provided for) to arise out of land,

For an injunction—(b) to obtain an injunction;

To establish an adoption : (c) to establish an adoption or to obtain a declaration that an alleged adoption is valid;

To set aside an adoption : (d) to set aside an adoption or to obtain a declaration that an alleged adoption is invalid or never, in fact, took place;

To set aside an award other than awards mentioned in Section 8—(e) to set aside an award not being an award mentioned in Section 8;

according to the amount at which the relief sought is valued in the plaint;

Provided that such amount shall not be less than half of the market value of the property involved in or affected by the relief sought or Rs. 1,000 whichever is greater:

Provided further than in the case of suits falling under clauses (a) and (b), the amount of Court fee payable shall in no case exceed Rs. 5,000.

**Explanation 1.** : When the relief sought is with reference to any immovable property the market-value of such property shall be deemed to be the value computed in accordance with sub-section (v), (v-A) or (v-B) of this section, as the case may be.

**Explanation 2.** : In the case of suits :

- (i) falling under clauses (a) and (b), the property which is affected by the relief sought, and where properties of both the plaintiff and defendant are affected, the property of the plaintiff so affected;
- (ii) falling under clauses © and (d), the property to which title by succession or otherwise may be diverted or affected by the alleged adoption; and
- (iii) falling under clause (e), the property which forms the subject-matter of the award;

shall be deemed to be the property involved in or affected by the relief sought within the meaning of the proviso to this sub-section.

For restitution of conjugal rights. : (iv-C) In suits : (a) for the restitution of conjugal rights;

For marital rights. : (b) for establishing or annulling or dissolving a marriage;

For guardianship. : (c) for establishing a right to the custody or guardianship of any person such as a minor, including guardianship for the purpose of marriage.

according to the amount at which the relief sought is valued in the plaint, but in no case shall such amount be less than Rs. 200.

*For possession of lands, buildings or gardens – (v)* In suits for the possession of land, buildings or gardens :

according to the value of the subject matter; and such value shall be deemed to be :

- (I) Where the subject-matter is land, and :
  - (a) where the land forms an entire estate or a definite share of an estate, paying annual revenue to Government, or forms part of such an estate and is recorded in the collector's register as separately assessed with such revenue and such revenue is permanently settled –  
thirty times the revenue so payable:
  - (b) where the land forms an entire estate, or a definite share of an estate, paying annual revenue to Government , or forms part of such estate and is recorded as aforesaid and such revenue is settled, but not permanently  
ten times the revenue so payable:

- (c) where the land pays no such revenue, or has been partially exempted from such payment, or is charged with any fixed payment in lieu of such revenue, and net profits have arisen from the land during the year next before the date of presenting the plaint : twenty times the annual average of such net profits; but when no such net profits have arisen there from the market value which shall be determined by multiplying by twenty the annual average net profits of similar land for the three years immediately preceding the date of presenting the plaint;
- (d) where the land forms part of an estate paying revenue to Government, but is not a definite share of such estate and does not come under clause (a), (b) or (c) above : the market value of the land which shall be determined by multiplying by fifteen the rental value of the land, including assumed rent on proprietary cultivation, if any;
- (II) where the subject-matter is a building or garden :

**Explanation . :** The word “ estate” as used in this sub-section, means any land subject to the payment of revenue, for which the proprietor or farmer or raiyat shall have executed a separate engagement to Government or which, in the absence of such engagement, shall have been separately assessed with revenue.

For possession of superior proprietary and under-proprietary land, : (v-A) In suits for possession :

(1) of superior proprietary rights where under-proprietary or sub-proprietary rights exist in the land :

according to the market-value of the subject-matter, and such value shall be determined by multiplying by fifteen the annual net profits of the superior proprietor;

(2) of under-proprietary or sub-proprietary land as such : according to the value of the subject-matter, and such value shall be determined by multiplying by ten the annual under-proprietary or sub-proprietary rent, as the case may be, recorded in the Collector’s register as payable for the land for the year next before the presentation of the plaint.

If no such rent is recorded in the Collector’s register the value shall be determined in the manner laid down in clause (c) of sub-section (v) of this section save that the multiple will be ten.

**Explanation**—Land held by any permanent lessees shall be treated for the purposes of this sub-section, as under-proprietary or sub-proprietary land,

Possessory suits between tenants : (v-B) In suits for possession of land between rival tenants and by tenants against trespasser according to the value of the subject-matter and such value shall be determined if such land is the land of—

(a) a permanent tenure-holder or a fixed rate tenant—by multiplying by twenty the annual rent recorded in the Collector's register as payable for the land for the year next before the presentation of the plaint;

(b) an ex-proprietary or occupancy tenant—by multiplying by two such rent in case of suits for possession of land between rival tenants, and by annual rent in suits by tenants against trespassers;

(c) any other tenant—by annual rent.

If no such rent is recorded in the Collector's register, the value shall be determined in the manner laid down in clause (c) of sub-section (v) of this section save that the multiple shall be that entered in clauses (a), (b) and (c) of this sub-section according as the class of tenancy affected is governed by clause (a), (b) or (c) of this sub-section.

To enforce a right of pre-emption – (vi) In suits to enforce a right of pre-emption-- according to the value (computed in accordance with paragraph v of this section) of the land, house or garden in respect of which the right is claimed.

For partition : (vi-A) In suits for partition :  
according to one quarter of the value of the plaintiff's share of the property;

And according to the full value of such share if on the date of presenting the plaint the plaintiff is out of possession of the property of which he claims to be a co-parcener or co-owner, and his claim to be a co-parcener or co-owner on such date is denied.

Explanation—The value of the property for the purposes of this sub-section shall be the market-value which in the case of immovable property shall be deemed to be the value as computed in accordance with

For interest of assignee of land revenue – (vii) In suits for the interest of an assignee of land revenue : fifteen times his net profits as such for the year next before the date of presenting the plaint.

To set aside or to restore an attachment – (viii) In suits to set aside or to restore an attachment including suits to set aside an order passed under Order XXI, Rule 60, 61 or 62 of the Code of Civil Procedure-- according to half of the value of the property or interest attached, whichever is less.

Explanation : The value of the property or interest for the purposes of this sub-section shall be the market-value which in the case of immovable property or interest in such property shall be deemed to be the value as computed in accordance with sub-section (v), (v-A) or (v-B), as the case may be.

To redeem : (ix) In suit against a mortgagee, for the recovery of the property mortgaged : according to the principal money expressed to be secured by the instrument of mortgage.

To foreclose : (ix-A) In suits by mortgagee to foreclose the mortgage, or where the mortgage is made by conditional sale, to have the sale declared absolute :

- (a) of a contract of sale : - according to the amount of the consideration;
- (b) of a contract of mortgage : according to the amount agreed to be secured;
- (c) of a contract of lease : according to the aggregate amount of the fine or premium (if any) and of the rent agreed to be paid during the first year of the term;
- (d) of an award : according to the amount or value of the property dispute, and such value shall be the market-value as computed in accordance with sub-section (v), (v-A) or (v-B), as the case may be.

*Between landlord and tenant*—(xi) In the following suits between landlord and tenant :

- (a) for the delivery by a tenant of the counterpart of a lease,
- (b) to enhance the rent of a tenant having right of occupancy,
- (c) for the delivery by a landlord of a lease,
- (cc) for the recovery of immovable property from a tenant including a tenant holding over after the determination of a tenancy,
- (d) to contest a notice of ejectment,
- (e) to recover the occupancy of immovable property from which a tenant has been illegally ejected by the landlord,
- (f) for abatement of rent
- (g) for determination of rent, and
- (h) for determination of rent : according to the amount of the rent of immovable property to which the suit refers, payable for the year next before the date of presenting the plaint, except in the case of suits falling under clause (h) in which, according to twice the amount claimed by the plaintiffs to be the annual rent.

**6. Nature of court-fee not 'tax' :** Fees taken in courts and its nature cannot be equated to taxes. See : **Govt. of Madras vs. Zenith Lamps, AIR 1973 SC 724 (Five-Judge Bench)**

7. **Object of levying court-fees** : The fees taken in Courts and the fees mentioned in Entry 66, List I are of the same kind. They may differ from each other only because they relate to different subject matters and the subject matter may dictate what kind of fees can be levied conveniently, but the overall limitation is that fees cannot be levied for the increase of general revenue. For instance, if a state were to double Court fees with the object of providing money for the road building or building schools, the enactment would be held to be void. In a case concerned with the administration of civil justice in a State, the fees must have relation to the administration of civil justice. While levying fees the appropriate legislature is competent to take into account all relevant factors, the value of the subject matter of the dispute, the various steps necessary in the prosecution of a suit or matter, the entire cost of the upkeep of Courts and offices administering civil justice, the vexatious nature of a certain type of litigation and other relevant matters. It is free to levy a small fee in some cases, a large fee in others, subject of course to the provisions of Article 14. But one thing the legislature is not competent to do, and that is to make litigants contribute to the increase of general public revenue. In other words, it cannot tax litigation, and make litigations pay, say for road building or education or other beneficial schemes that a state may have. There must be a broad correlationship with the fees collected and the cost of administration of civil justice. Whenever the State Legislature generally increases fees it must establish that it is necessary to increase Court fees in order to meet the cost of administration of civil justice. As soon as the broad correlationship between the cost of administration of civil justice and the levy of Court-fees cases, the imposition becomes a tax and beyond the competence of the State Legislature. See : **Govt. of Madras vs. Zenith Lamps, AIR 1973 SC 724 (Five-Judge Bench)**

8. **Relevant considerations for levying court-fees** : (A) The fees taken in Courts and the fees mentioned in Entry 66, List I are of the same kind. They may differ from each other only because they relate to different subject matters and the subject matter may dictate what kind of fees can be levied conveniently, but the overall limitation is that fees cannot be levied for the increase of general revenue. For instance if a state were to double Court fees with the object of providing money for the road building or building schools, the enactment would be held to be void. In a case concerned with the administration of civil justice in a state the fees must have relation to the administration of civil justice. While levying fees the appropriate legislature is competent to take into account all relevant factors, the value of the subject matter of the dispute, the various steps necessary in the prosecution of a suit or matter, the entire cost

of the upkeep of Courts and officers administering civil justice, the vexatious nature of a certain type of litigation and other relevant matters. It is free to levy a small fee in some cases, a large fee in others, subject of course to the provisions of Article 14. But one thing the legislature is not competent to do, and that is to make litigants contribute to the increase of general public revenue. In other words, it cannot tax litigation, and make litigations pay, say for road building or education or other beneficial schemes that a state may have. There must be a broad correlationship with the fees collected and the cost of administration of civil justice. Whenever the State Legislature generally increases fees it must establish that it is necessary to increase Court fees in order to meet the cost of administration of civil justice. As soon as the broad co-relationship between the cost of administration of civil justice and the levy of Court-fees cases, the imposition becomes a tax and beyond the competence of the State Legislature. See : **Govt. of Madras vs. Zenith Lamps, AIR 1973 SC 724 (Five-Judge Bench)**

**(B) Relevance of “property affected & relief claimed” in determination of valuation & court-fee** : Where the plaintiff had brought a suit in the Court of the Munsif whose pecuniary jurisdiction extended to Rs. 5000/- for possession of the land only mentioned in A schedule to the plaint and a house mentioned in B schedule, the valuation for purposes of jurisdiction put by the plaintiff was below Rs. 5000/-, the plaintiff had not included in the valuation the value of the buildings and a garden existing on the land as he did not claim any interest or relief in respect of them, the defendant contended that he had constructed the buildings and the garden at a cost of Rs.10,000 and their value should be included in the value for purposes of jurisdiction and if so valued the suit was beyond the pecuniary jurisdiction of the Munsif, the contention was accepted by the Munsif and the plaint was returned for presentation to the proper Court. Then it has been held that (i) though the plaintiff had not claimed any relief in respect of the buildings and the garden if the suit of the plaintiff succeeds and he is found entitled to the relief he has claimed the defendants must either remove the buildings and do away with the garden in question or leave them as they are to be taken by the plaintiff along with the land. In the circumstances the buildings and garden must be held to be affected by the relief sought within the meaning of the term as used in section 4 of the Suits Valuation Act, 1887. (ii) Even if the suit, so far as it was a suit for possession over the land mentioned in list ‘A’ be deemed to be a suit for possession of land alone without involving or affecting the buildings or the garden standing upon it, in view of clause (e) of Rule 3 of the U.P. Suits Valuation Rules, 1942 the market value of the buildings and the garden standing on the land

was bound to be added to the value of the land in order to determine the value of the land itself. There appears to be nothing in clause (e) of Rule 3 to limit its application to suits where possession over the land is claimed along with the buildings or gardens standing upon it and to exclude from its application suits in which possession is claimed over land alone. The clause has been enacted to provide for the valuation of land and clearly lays down that in case buildings or garden stand on the land their value must be added to the value of the land determined according to the other clauses of the rule for the purpose of determining the value of the land itself. (iii) Consequently, while valuing his relief for possession over the land in list 'A' for purposes of jurisdiction the plaintiff should have added to the value of the land the market value of the buildings and garden that stood thereon. If the suit of the plaintiff had been properly valued, it would have fallen outside the pecuniary jurisdiction of the Munsif. The Munsif was, therefore, justified in ordering the plaint to be returned for presentation to proper court. See : **Shanti Prasad vs. Mahabir Singh, AIR 1957 All 402 (F.B.)**

**9. Reliefs prayed for in the plaint to be considered for court-fee** : For the purposes of court-fee, the court must look at the reliefs as prayed for in the plaint. In order to ascertain the real nature of the reliefs claimed, the substance of the plaint has to be considered. If a declaratory relief alone has been prayed for, the court cannot super add a consequential relief which it thinks the plaintiff ought to have prayed for than treat it as a consequential relief. See :

1. **Chief Inspector of Stamps, U.P., Allahabad vs. Mahanth Laxmi Narain, 1970 ALJ 119 (All—Seven-Judge Bench)**
2. **Smt. Shefali Roy vs. Hero Jaswant Dass, AIR 1992 All 254 (D.B.)**

**10. Court-fee to be decided on the basis of allegations in the plaint & not on the basis of plea in W.S. or by the final decision of suit** : It is settled law that the question of court fee must be considered in the light of the allegation made in the plaint and its decision cannot be influenced either by the pleas in the written statement or by the final decision of the suit on merits. All the material allegations contained in the plaint alone should be construed and taken as a whole. The court in deciding the question of court-fee should look into the allegations in the plaint to see what is the substantive relief that is asked for. Mere astuteness in drafting the plaint will not be allowed to stand in the way of the court looking at the substance of the relief asked for. See :

1. **Neelavathi vs. N. Natarajan, AIR 1980 SC 691 (Three-Judge Bench)**
2. **Shamsher Singh vs. Rajinder Prasad, AIR 1973 SC 2384**
3. **Chief Inspector of Stamps, U.P., Allahabad vs. Mahanth Laxmi Narain, 1970 ALJ 119 (All—Seven-Judge Bench)**
4. **Kishan Lal vs. A.S. Higher Secondary School, AIR 1963 All 330 (D.B.)**
5. **Smt. Shefali Roy vs. Hero Jaswant Dass, AIR 1992 All 254 (D.B.)**

11. **Assumption regarding correctness of averments in the plaint & court-fee** : It is well settled that the court-fee has to be paid on the plaint as framed and not on the plaint as it ought to have been framed unless by astuteness employed in drafting the plaint the plaintiff has attempted at evading payment of court fee or unless there be a provision of law requiring the plaintiff to value the suit and pay the court-fee in a manner other than the one adopted by the plaintiff. The court shall begin with an assumption for the purpose of determining the court-fee payable on plaint, that the averments made therein by the plaintiff are correct. Yet, an arbitrary valuation of the suit property having no basis at all for such valuation and made so as to evade payment of court-fees and fixed for the purpose of conferring jurisdiction on some court which it does not have, or depriving the court of jurisdiction which it would otherwise have, can also be interfered with by the court. It is the substance of the relief sought for and not the form which will be determinative of the valuation and payment of the court-fee. The defence taken in the written statement may not be relevant for the purpose of deciding the payment of court-fee by the plaintiff. If the plaintiff is ultimately found to have omitted to seek an essential relief which he ought to have prayed for, and without which the relief sought for in the plaint as framed and filed cannot be allowed to him, the plaintiff shall have to suffer the dismissal of the suit. See : **Kamaleshwar Kishore Singh vs. Paras Nath Singh, AIR 2002 SC 233**

12(A). **“Market value” its meaning & relevant date for determination of the same** : Interpreting section 7 (v) and (vi) of the Court-fees Act, 1870, it has been held that Court-fee should be on the market value of property at the time of institution of the suit and not at the time of sale. The market value of the property in suit must be determined with reference to the provisions of the Court-fees Act alone. When the legislature provided in Sec. 7(vi) read with sub-s. (v) that the court-fees must be paid according to the market value of the building or land, it must be deemed to lay down that the value should be determined with reference to the point of time when the suit is instituted. The price paid or the variation in the value of the

property at a date earlier than the date when the suit is instituted should not be taken into account. It is only the presentation of the plaint to the proper Court that amounts to the institution of the suit and it is the date of the institution of suit which is material for the purposes of computing court-fee on the market value of property. See : **Mohd. Banu Begum vs. Sultani, AIR (36) 1949 All 107 (D.B.)**

**12(B). Circle rate cannot provide true market value of property** : Explaining Section 47-A of the Stamp Act, 1899, it has been held by the Allahabad High Court that circle rate by itself does not provide true market value of the property. It is only a guiding factor. Proceeding on assumption that the valuation of the property purchased through sale deed according to prevailing circle rate would be at par with market value is not proper. See : **Amit Kumar Tyagi Vs State of UP, AIR 2014 All 40.**

**13. Determination of market value through commission (Sec. 75 r/w. Order 26, Rule 9 CPC)** : (A) Court is empowered u/s. 75 r/w. Order 26, Rule 9 CPC to order a local investigation to be made through commission for ascertaining the market value of any property, or the amount of mesne profits or damages or annual net profits. According to Order 26, Rule 10 CPC the report submitted by the Commissioner to the Court shall be treated as evidence in the case and if the court thinks proper, the Commissioner may be examined with regard to the correctness of his report.

(B) **Court when to require evidence from parties regarding valuation of the property** : The plaintiff claimed permanent injunction, a prohibitory injunction, possession and demolition of the constructions already made by the defendants or which they might make during the pendency of the suit. The court below, should have found out by taking evidence of the parties what construction had already taken place before the filing of the suit and what constructions had been made by the contesting defendant after the filing of the suit and regarding which there was a prayer for demolition. After valuing these constructions etc., the court should then have proceeded with the decision of the question of jurisdiction and court-fees. See : **Chandrapati Tripathi vs. Suryamani, AIR 1975 All 430**

(C) **Points for commission to be defined by the court (Rule 68, G.R. Civil)** : According to Rule 68 of the General Rules (Civil), when issuing a commission for making a local inspection u/o. 26, rule 9 CPC, court shall define the points on which the commissioner has to report. No point which can conveniently and ought to be substantiated by the parties by evidence at the trial shall be referred to commissioner.

**14. Nature of suit & relief claimed to be the determinative test for court-fees :** (A) The court has to see what is the nature of the suit and of the reliefs claimed, having regard to the provisions of Sec. 7 of the Court-fees Act, 1870. If a substantive relief is claimed though clothed in the garb of a declaratory decree with a consequential relief, the Court is entitled to see what is the real nature of the relief and if satisfied that it is not a mere consequential relief but a substantive relief, it can demand the proper court-fee on that relief irrespective of the arbitrary valuation put by the plaintiff in the plaint on the ostensible consequential relief. See :

**Kalu Ram vs. Babu Lal, AIR 1932 All 485 (Five-Judge Bench)**

(B) **'Relief sought' & its meaning** : Explaining Sec. 7(iv) of the Court-fees Act, 1870, it has been held that "relief sought" means relief sought as a whole and not merely consequential relief. The words "relief sought" in Sec. 7 (iv) of the Court-fees Act, 1870 do not refer to the consequential relief merely, but they mean the relief sought as a whole, i.e., the declaratory decree or order with the consequential relief. See : **Sahu Madan Mohan vs. Tejram George Coronation Hindu School Association, AIR (36) 1949 All 207 (D.B.)**

(C) **'Consequential relief' & its meaning** : The words 'consequential relief' have not been defined in the Court-fees Act, 1870. The meaning which should be given to a word or expression not defined in an enactment, should be its ordinary dictionary meaning or a meaning which is necessarily implied by the context in which it is used or by the object of the provisions or by the scheme of the enactment. The ordinary dictionary meaning of the word 'consequential' is following as a result or inference. Interpreting the provisions of Sec. 7(iv) (a) and Sec. 7(iv) (c) of the Court-fees Act, 1870, a Seven-Judge Bench of the Allahabad High Court has held that relief of injunction flowing from relief of declaration is consequential relief and such a suit would be covered u/s. 7(iv) (a) of the Court-fees Act, 1870. Second, third and fourth tests out of the four laid down by a Five-Judge Bench of the Allahabad High Court in the matter of Kalu Ram vs. Babu Lal, AIR 1932 All 485 (Five-Judge Bench) for a 'consequential relief' have been declared as not justified. See : **Chief Inspector of Stamps, U.P., Allahabad vs. Mahanth Laxmi Narain, 1970 ALJ 119 (All—Seven-Judge Bench)**

(D) **'Consequential relief' & its meaning** : Explaining Sec. 7(iv)(a) of the Court-Fees Act, 1870 as amended in U.P., it has been held that the consequential relief is one which necessarily flows from and is dependent on principal relief. Consequential relief in this sense does not change its character merely because it is asked for as separate relief. Substance and not form of relief is important. Relief for injunction can be held as consequential relief. A

consequential relief means a relief which necessarily flows from the principal relief sought. It is a relief which in the circumstances of the case cannot be allowed if the principal relief is refused. See : **Sahu Madan Mohan vs. Tejram George Coronation Hindu School Association, AIR (36) 1949 All 207 (D.B.)**

(E) **Suit for injunction only & court-fee** : Court-fees are payable only u/s. 7(vi-B) (b) of the Court-fees Act, 1870, as amended in U.P., on a suit praying for a permanent injunction restraining the State from realizing or proceeding to realize sugar cane cess and purchase tax charged under certain enactments on the ground that these Acts were invalid and void for the reasons set out in the plaint and hence the State was not entitled to levy, collect or recover the cess and the tax. To that suit neither sub-section (iv) (a) nor sub-section (iv-A) of Sec. 7 would apply. See : **Vishnu Pratap Sugar Works (P) Ltd. vs. Chief Inspector of Stamps, U.P., AIR 1968 SC 102 (Three-Judge Bench)**

(EE) **Ad valorem court fee in injunction suit not payable when plaintiff recorded in revenue records and also in possession** : Where the plaintiff had filed injunction suit and his name was recorded in revenue records and he was also in possession of the property, it has been held by the Hon'ble Allahabad High Court that the provisions of Section 7(iv)(a) of the Court Fees Act, 1870 should be read jointly alongwith the provisions of Section 7(iv-A) read with Section 7(iv-B) and the provisions contained therein. Hence, court fee was not payable ad valorem. See : **Basant Kumar Mata Nehliya Vs. Chaowdhary Ujjair, 2011 (6) AWC 6257 (All)(LB)(DB).**

(F) **Suit for injunction restraining recovery of amount & court-fee** : Where plaintiff had filed a suit for permanent injunction for restraining recovery of Rs. 33,400/- and had paid fixed court-fee for relief of injunction alone, it has been held that the plaintiff had simply avoided payment of court-fee on the contract money i.e. Rs. 33,400/- and he was liable to pay court-fee on the full amount of Rs. 33,400/-. See : **Dinesh Kumar vs. ADJ, Roorkee, 1996 AWC 433 (All)**

(G) **Money decree & court-fee** : Decree for money or other property does not include declaratory decree. The expression “decree for money or other property” does not include decrees whereby rights have already been declared. The expression “decree for money” refers only to decrees for recovery of money and court-fee payable would be u/s. 7(iv-A) of the Court-fees Act, 1870 as amended in U.P. See : **Ram Krishna Barman vs. M.L. Sahgal, 1964 ALJ 498 (All—D.B.)**

(H) **Injunction suit & court-fee** : Generally speaking wherever an injunction is sought for court fee is payable under Clause (b) of Sub-sec. (iv-B) of Sec. 7 of the Court-fees Act, 1870. It is in very special circumstances that a relief for injunction may be deemed to amount to a declaration with a consequential relief. See : **Chief Inspector of Stamps, U.P., Allahabad vs. Vishnu Pratap Sugar Works, 1966 ALJ 223 (All)**

(I) **Declaration & injunction when sought together & court-fees** : Where the principal reliefs sought for were two declarations that (a) the plaintiff was the President of the school institution, and (b) that certain resolutions passed by the defendants were void and ultra vires, and the injunctions sought were merely further reliefs intended to prevent the other party from acting upon the said resolutions passed by them and to prevent defendant from acting as the President and also to prevent them from interfering with the plaintiff acting as President, it has been held that the injunctions were not independent reliefs, but necessarily flowed from the declarations sought for in reliefs (a) and (b). They could be granted only if the title of the plaintiff to the declarations in reliefs (a) and (b) was established. They were therefore consequential reliefs. It might be that the plaintiff chose to describe the declaration as one relief and the consequential relief as a separate relief. But the mere form in which the reliefs were claimed could not determine the amount of court-fee payable under the Court-fees Act, 1870. Court-fee will be payable on the real nature of the relief claimed. The substance of the plaint would have to be looked into for that purpose. See : **Sahu Madan Mohan vs. Tejram George Coronation Hindu School Association, AIR (36) 1949 All 207 (D.B.)**

(J) **Declaration with injunction & court-fee thereon** : Where a declaration is sought for the existence of a right and a permanent injunction is sought restraining some one from interfering with the exercise of that right the permanent injunction would clearly be a relief consequential to the declaration. The relief of permanent injunction not to interfere with the exercise of a right cannot be granted in the absence of or independently of, the declaration about the existence of that right. In such a case, the court-fee is payable u/s. (iv) (a) of the Court-fees Act as applicable in U.P. and the court-fee has to be determined in accordance with the proviso to that provision of law according to the market price of the non-agricultural immovable property. See : **Vibhuti Narain Singh vs. Municipal Board, Allahabad, AIR 1958 All 41 (D.B.)**

(K) **Suit for declaration & injunction & court-fee** : Where the plaintiff had filed suit for declaring the will deed as void document and had also sought relief of injunction to restrain

the defendant from interfering in his possession and from alienating the disputed property, explaining Sec. 7, 17, Schedule 2, Sec. 6-A(2) of the Court-fees Act, 1870, as amended in U.P., it has been held that since the suit was for declaration with consequential relief of injunction, therefore, the plaintiff was liable to pay ad valorem court-fees and fixed court-fees cannot be allowed to be paid. See : **Shyamal Kumar Ghosh vs. Malay Ghosh, AIR 2009 All 165 (D.B.)**

**(KK) Civil suit for injunction & declaration of sale deed as null and void & court fees :**

Where the plaintiff had filed civil suit for declaration that the sale deed was null and void and had also sought for permanent prohibitory injunction restraining the defendant from interfering in possession, it has been held that the case was covered by Section 7 (iv)(a) of the Court Fees Act, 1870 and the plaintiff was liable to pay court fees ad voleram on the valuation of the property covered by the sale deed. See :

- (i) **Yogendra Kumar Saini Vs. Mahesh Kumar Tayal, 2015 (1) ARC 758 (All)**
- (ii) **Khem Chad Vs. State of UP, 2011 (2) ALJ 1(All)**
- (iii) **Satheedevi Vs. Prasanna, AIR 2010 SC 2777.**

**(K-1) Declaration of will-deed as null & void to attract Section 7 (iv-A) and not Article 17(II) of The Court Fees Act, 1870 as amended by UP in 1938 :** In a suit for declaration of will-deed as null & void, Section 7(iv-A) as amended in UP in 1938 would be attracted and not Section 17(II) of the Court Fees Act, 1870. See : **Danish And Others Vs. Syed Shahenshah Husain Alias Syed Silas, C. Spear, 2014 (2) ARC 332 (All).**

**(L) Suit for declaration with consequential relief & court-fee :** In a suit for declaration with consequential relief falling u/s. 7(iv)(c), the plaintiff is free to make his own estimation of the reliefs sought in the plaint and such valuation both for the purposes of court-fee and jurisdiction has to be ordinarily accepted. It is only in cases where it appears to the court on a consideration of the facts and circumstances of the case that the valuation is arbitrary, unreasonable and the plaint has been demonstratively undervalued, the court can examine the valuation and can revise the same. See :

1. **Smt. Tara Devi vs. Sri Thakur Radha Krishna Maharaj, AIR 1987 SC 2085**
2. **Sathappa Chettiar vs. Ramanathan Chettiar, AIR 1958 SC 245**
3. **Meenakshisundaram Chettiar vs. Venkatachalam Chettiar, AIR 1979 SC 989 (Three-Judge Bench)**

**(M) Suit for declaration of ownership over tenanted portion & court-fee** : Where the plaintiff had filed suit for declaration of ownership in respect of tenancy under the defendants on the basis of a registered will deed, it has been held that court-fee is to be assessed and paid in conformity with Sec. 7(iv-A) of the Court-fees Act, 1870. See : **Brij Kishore Jain vs. Second ADJ, Aligarh, 1985 (11) ALR 118 (All) (Summary of cases).**

**(O) Suit for enforcement of mortgage & valuation & court-fees** : Where a suit was brought by the plaintiff for enforcement of a mortgage, the sum claimed under that mortgage was Rs. 2,06,091-10-3, in the plaint it was alleged that besides the mortgage in suit the plaintiff had a prior charge under a mortgage-deed. In the concluding paragraph of the plaint it was prayed that the mortgaged property be sold subject to the charge arising from the prior mortgage. The plaintiff paid court-fee on the sum of Rs. 2,06,091-10-3 alleged to be due under the puisne mortgage in suit. No separate court-fee was paid in respect of the prior mortgage: Held: that beyond alleging the existence of the prior mortgage and claiming the relief of sale of the mortgaged property in enforcement of subsequent mortgage subject to the prior encumbrance, the plaintiffs had not claimed any consequential relief. The plaintiffs had only claimed the mortgage-money due under the puisne mortgage coupled with a declaration that the prior mortgage is valid and binding on the defendants. In this view, the plaintiff were not bound to pay court-fee ad valorem on the amount due under the prior mortgage. The plaintiffs' suit should be considered to be one for recovery of money due under the subsequent mortgage and a declaration in respect of the prior mortgage and as such they were bound to pay an additional court-fee of Rs.10. See : **Ishwar Dayal vs. Anna Saheb, AIR 1935 All 100 (D.B.)**

**(P) Redemption of mortgage & valuation & court-fee** : A mortgagor mortgaged his property in favour of two persons for a consideration of Rs. 8,500 and each of the mortgagees had advanced Rs. 4,250. The mortgagor acquired the interest of one of the mortgages and brought a suit for redemption and valued the suit at Rs.4,250. Held, that the valuation was proper within meaning of Sec. 7(9), Court-fees Act, 1870. For all practical purposes the interest of the two mortgagees were quite distinct and with the acquisition of the right of one of the mortgagees by the mortgagor half of the mortgage stood extinguished and only half of it remained to be redeemed and the mortgage money secured expressed in the instrument would be deemed to be Rs.4,250 for the purposes of redemption. In such a case the integrity of the mortgage could not be held to be broken. The case not having been covered by Sec. 4 of the Suits Valuation Act, 1887 the suit has to be valued in terms of Sec. 7 sub-clause (9) of the

Court-fees Act read with Sec. 8 of the Suits Valuation Act, as such the valuation for the purposes of jurisdiction will be the same as that for the purposes of court-fees. See : **Pooran Mal Bansal vs. Smt. Chhutto Devi, AIR 1970 All 188**

**(Q) Suit for setting aside decree & valuation & court-fee** : Where a defendant seeks to set aside the whole decree passed against him the value of the subject-matter in dispute must necessarily be the value of the relief granted by the decree which the appellant wishes to disembarass himself of. In such a case, the value of the relief granted which it is sought in the appeal to get rid of, is the criterion for valuing appeal. It is not open to an appellant-defendant to avoid assessing his appeal at its full valuation merely because it may prove, as a result of the appeal itself, that the plaintiff's own valuation was excessive. It is not open to him first to decide the appeal in his own favour and then to value his appeal accordingly. The defendant having encroached upon the plaintiff's land and built a structure thereon the plaintiff instituted a suit for vacant possession of his land valued at Rs. 6,000, for demolition of the structure and damages valued at Rs. 900. the suit having been decreed in its entirety, the defendant appealed to set aside the whole decree and put his own valuation on the appeal and paid court-fee accordingly on the ground that the question whether the property was worth Rs.6,000 or not was itself at issue in the appeal. Held that the value to the defendant-appellant of getting rid of the decree could not be less than Rs.6,000 and therefore the appeal must be assessed according to the plaintiff's valuation of the subject-matter of the suit. See : **Babu Balmakund Gupta vs. Secretary of State, AIR 1941 All 295**

**(R) Composite order for correcting valuation and paying additional court-fee must not be passed simultaneously** : The Court ought not to have passed a composite order requiring the valuation of the subject-matter in the plaint to be corrected and additional court-fee to be paid on the corrected valuation. Requiring a plaintiff to increase the valuation and requiring him to pay additional court-fee are two distinct orders, with different consequences arising out of their being not complied with and must be kept separate and should never be passed simultaneously. An order requiring additional court-fee to be paid can be passed only if the valuation is increased in compliance with the other order on the valuation originally stated on the plaint the court-fee is (presumably) sufficient. If the valuation is not increased as directed by the court, the plaint must be rejected and the court has no occasion to pass the other order. It is only when the valuation is increased in compliance with the order that the question of paying additional court-fee can arise, the proper procedure in such a case is to call

for a report from the office about additional court-fee payable, if any, on the increased valuation, and to pass an order requiring the plaintiff to pay additional court-fee specifying its amount. See : **Abdul Ghani vs. Vishunath, AIR 1957 All 337 (D.B.)**

**14.01. Cancellation of void document on the ground of competency, lack of jurisdiction or title & court-fee** : Where the cancellation or adjudging void of an instrument is sought for on the ground of competency, lack of jurisdiction or title, the point in issue is the question of jurisdiction or title and judgment can be given without going into the validity of the instrument, and hence in such a case no additional court fee under sub-sec. (iv-A) of Sec. 7 of the Court-fees Act, 1870 is chargeable. But where the instrument is sought to be cancelled or adjudged void on other grounds, this sub-section comes into operation and the additional court fee shall be payable. The additional court fee under sub-sec. (iv-A) of Sec. 7 of the Court-fees Act, 1870 was payable. See : **Chief Inspector of Stamps, U.P., Allahabad vs. Vishnu Pratap Sugar Works, 1966 ALJ 223 (All)**

**14.02. Injunction suit with added relief of cancellation of sale deed by way of amendment and court-fee** : Where the suit was initially filed for injunction and relief of cancellation of sale deed was added by way of amendment, it has been held that party cannot be directed to pay court-fees on full amount of property as mentioned in plaint. Party is only liable to pay 1/5<sup>th</sup> of value of property in terms of Sec. 7 (iv-A) (2) of the Court-fees Act, 1870 as amended in U.P. See : **Her Highness Maharani Riwa Smt. Parveen Kumari vs. Sangam Upnivesh Awas & Nirman Sahakari Samiti Ltd., 2008 (3) ALJ 375 (All—D.B.)**

**14.03. Cancellation of sale deed involving agricultural bhumadhari land** : Where in a suit for cancellation of sale deed, the plaintiff had assigned a valuation by determining the market value of the property involved in the sale deed, it has been held that the market value of the property has to be ascertained by keeping into consideration the Explanation to Section 7(iv)-A of the Court Fees Act and the same cannot be discarded merely because it is different from the sale consideration set forth in the instruments. Value of the property for purposes of this sub-section shall be the market value which shall be deemed to be the value as computed in accordance with sub-section (v)(v-A) and (v-B), as the case may be, of the Court Fees Act, 1870. See : **Rajendra Prasad Yadav Vs. Ravindra Nath Singh, 2014 (102) ALR 620 (All).**

**14.04. Suit for cancellation of sale deed by adjudging it as void or voidable & court-fees** : Sec. 7 (iv-A) covers not merely suits for cancellation of instruments described therein but also for adjudging them void or voidable and it goes farther and embraces not only suits for

cancellation of suit instruments or adjudging them void or voidable, but also suits involving such cancellation or adjudging. See : **Smt. Bibbi vs. Shugan Chand, AIR 1968 All 216 (F.B.)**

**14.05. Civil suit for cancellation of decree and declaring it null and void & court fee : -**

Article 17(iii) of Schedule II of the Court Fees Act is applicable in cases where the plaintiff seeks to obtain a declaratory decree without any consequential relief and there is no other provision under the Act for payment of fee relating to relief claimed. Article 17(iii) of Schedule II of the Court Fees Act makes it clear that this article is applicable in cases where plaintiff seeks to obtain a declaratory decree without consequential reliefs and there is no other provision under the Act for payment of fee relating to relief claimed. If there is no other provision under the Court Fees Act in case of a suit involving cancellation or adjudging/declaring void or voidable a will or sale deed on the question of payment of court fees, then Article 17(iii) of Schedule II shall be applicable. But if such relief is covered by any other provisions of the Court Fees Act, then Article 17(iii) of Schedule II will not be applicable. On a comparison between the Court Fees Act and the U.P. Amendment Act, it is clear that Section 7(iv-A) of the U.P. Amendment Act covers suits for or involving cancellation or adjudging/declaring null and void decree for money or an instrument securing money or other property having such value. The suit, in this case, was filed after the death of the testator and, therefore, the suit property covered by the will has also to be valued. Since Section 7(iv-A) of the U.P. Amendment Act specifically provides that payment of Court fee in case where the suit is for or involving cancellation of adjudging/declaring null and void decree for money or an instrument, Article 17(iii) of Schedule II of the Court Fees Act would not apply. The U.P. Amendment Act, therefore, is applicable in the present case, despite the fact that no consequential relief has been claimed. Consequently, in terms of Section 7(iv-A) of the U.P. Amendment Act, the court fees have to be commuted according to the value of the subject matter and the trial Court as well as the High Court have correctly held so. See :

- (i) **Shailendra Bhardwaj Vs. Chandra Pal, 2012 (30) LCD 2525 (SC)**
- (ii) **Mohd. Ibrahim Vs. Smt. Sadika Begum, 2012 (116) RD 259 (All)(DB)**

**14.07. Suit for declaration of sale deed as null and void & possession & cancellation :**

Relying upon Supreme Court Decision rendered in the case of Shamsheer Singh vs. Rajinder Prashad, AIR 1973 SC 2384, it has been held that where the suit has been filed for declaring the sale deed as null and void and delivery of possession, the declaration claimed by the

plaintiff necessarily involved a prayer for consequential relief of cancellation of the sale deed and the court-fee is payable u/s. 7(iv)(c) of the Court-fees Act, 1870 as the plaintiff's being parties to the sale deed, are prima facie bound by it and the relief of declaration simpliciter is not available. See : **Shyamacharan Paul vs. M/s. Roopali Promoters & Construction, AIR 2009 MP 117 (D.B.)**.

**14.08. Suit for cancellation of agreement for sale & also declaring the same as null and void and court fees** : An agreement for sale cannot be treated at par with sale deed. Suit for declaration of an agreement for sale as void and also for cancellation of the same would not fall within the meaning of "instrument securing property" as per Section 7 (iv-A) of the Court Fees Act, 1870. Such a suit cannot be valued on the value of immovable property in accordance with the provisions of Section 7(v) of the Act. See : **Altaf Hussain Vs. VI<sup>th</sup> Addl. District Judge, Saharanpur, 2013 (120) RD 734 (All)**.

**14.09. Cancellation of instrument & court-fees** : (A) The expression "consequential relief" in Sec. 7(4)(c) of the Court-Fees Act, 1870 means some relief which would follow directly from the declaration given, the valuation of which is not capable of being definitely ascertained which is not specifically provided for anywhere in the 1870 Act and cannot be claimed independently of the declaration as a substantive relief. Consequently where a suit is for the cancellation of an instrument under the provisions of Sec. 39, Special Relief Act, the relief is not a declaratory one. It falls neither u/s. 7(4)(c) nor under Schedule 2, Article 13(3), but under the residuary article Schedule 1. See : **Kalu Ram vs. Babu Lal, AIR 1932 All 485 (Five-Judge Bench)**

**14.10 Cancellation of void or voidable document & court-fee** : A suit involving cancellation or adjudication as void or voidable of a document is certainly covered by Sec. 7(IV-A) of the Court-fees Act, 1870, as amended in U.P. In the matter of cancellation of a Will deed, it has been further held that so long as the Will has not become operative on account of death of the testator, the Will is not a document or an instrument securing property having money value but once the testator dies and a suit is filed after the death of the testator that will become an instrument securing the property having money value. Since Sec. 7(iv-A) as amended in U.P., specifically provides for payment of court-fee in case where the suit is for or involving cancellation or adjudging void or voidable an instrument securing property having money value, Art. 17(iii) of Schedule 2 of the Court-fees Act, 1870 shall not be applicable. See : **Kailash Chand vs. Vth Addl. Civil Judge, Meerut, 1999 ALJ 940 (All—D.B.)**

**14.11. Cancellation of sale deed involving agricultural bhumadhari land** : Interpreting Sec. 7(iv-A), (v) (1) (b) of the Court-fees Act, 1870 and Rule 3(b) of the U.P. Suits Valuation Rules, 1942, it has been held that in a suit involving cancellation of sale deeds of bhumidhari land (agricultural land), the valuation for purposes of payment of court-fees is **ten times the land revenue and for purposes of jurisdiction it is 30 times of the land revenue**. See : **Haji Mustafa vs. Lal Mani, 1968 All.W.R. 501 (All)**

**14.12. Cancellation of sale deed involving agricultural bhumadhari land** : Where in a suit for cancellation of sale deed, the plaintiff had assigned a valuation by determining the market value of the property involved in the sale deed, it has been held that the market value of the property has to be ascertained by keeping into consideration the Explanation to Section 7(iv)-A of the Court Fees Act and the same cannot be discarded merely because it is different from the sale consideration set forth in the instruments. Value of the property for purposes of this sub-section shall be the market value which shall be deemed to be the value as computed in accordance with sub-section (v)(v-A) and (v-B), as the case may be, of the Court Fees Act, 1870. See : **Rajendra Prasad Yadav Vs. Ravindra Nath Singh, 2014 (102) ALR 620 (All)**.

**14.13. Declaratory suit for avoiding an instrument without seeking cancellation thereof & court-fees** : A suit u/s. 39, Specific Relief Act, for avoiding an instrument, even if there be no prayer for cancellation, carries with it by implication a prayer that the Court may further use the discretion given to it by Sec. 39, so as to order the said instrument to be delivered up and cancelled. Where the contents of the plaint indicates that the plaintiff wants something more than a declaration, and wants the instrument to be cancelled and got rid of, Schedule 2, Art. 17(3), Court-fees Act, 1870, is not applicable to this case; and that ad valorem court-fee is payable under Schedule 1, Article 1 as though there had been a definite prayer for cancellation. See : **Akhlaq Ahmad vs. Mt. Karam Ilahi, AIR 1935 All 207 (D.B.)**

**14.14 Injunction suit with added relief of cancellation of sale deed by way of amendment and court-fee** : Where the suit was initially filed for injunction and relief of cancellation of sale deed was added by way of amendment, it has been held that party cannot be directed to pay court-fees on full amount of property as mentioned in plaint. Party is only liable to pay 1/5<sup>th</sup> of value of property in terms of Sec. 7 (iv-A) (2) of the Court-fees Act, 1870 as amended in U.P. See : **Her Highness Maharani Riwa Smt. Parveen Kumari vs. Sangam Upnivesh Awas & Nirman Sahakari Samiti Ltd., 2008 (3) ALJ 375 (All—D.B.)**

**(SS) Declaration of Sale Deed As Void & Injunction & Court Fee....** In a suit for Declaration of sale deed as null & void & also for permanent prohibitory injunction, advalorem court fee would be payable u/s 7(iv) of the court fees act 1870 see... **Khem Chand Vs. State of U.P. 2011 (2) (All) = 2011 (2) ALJ 1 (All).**

**(V) Declaration based on will deed, wakf, sale, inheritance & court-fee thereon** : A Hindu widow inherited properties from her husband under a will. She executed deeds of sale and wakf in respect of a portion of the same. A reversioner filed a suit for a declaration that the sale deed and the wakf deed were not binding on him after the widow's death, she being a Hindu widow and the alienations being bad in law, Court-fee on 1/5<sup>th</sup> of the aggregate amounts of the sale deed and the wakf deed u/s. 7(iv-A) (2) was additional Court-fee was necessary since the suit involved cancellation of the will or its being adjudged void or voidable, in addition to the relief of adjudging the two deeds void or voidable. Held, that the Court-fee paid was sufficient. No relief in respect of the will was claimed, but only a declaration that the two deeds would not bind the plaintiff after the widow's death and this depended on his proving that the widow was in possession as a Hindu widow. It was for the defendant to set up the will and to show that the widow was an absolute owner. The plaintiff had nothing to do with the will and he claimed no relief either expressly or impliedly in respect thereof. See : **Kishan Lal vs. A.S. Higher Secondary School, AIR 1963 All 330 (D.B.)**

**(W) Declaration of title to money or other property & its meaning & court-fee** : A decree for declaration of title to money or other property is not "a decree for money or other property." The expression in Sec. 7(iv-A) (U.P.) means only a decree for recovery of money or other property. It does not include a decree concerning title to money or other property. A decree in invitum is not an instrument securing money or other property: such a decree is a record of the formal adjudication of the Court relating to a right claimed by a party to a suit. It does not by its own force secure money or property. A suit for a mere declaration that the plaintiff is a owner of certain properties does not fall u/s. 7(iv-A) (U.P. See : **State of U.P. vs. Ramkrishan Burman, AIR 1971 SC 87 (Three-Judge Bench)**

**(X) Declaration of share & court-fee** : Where the plaintiff had filed suit for declaration that the compromise decree passed in earlier suit was void and inoperative as a result of fraud, it has been held that the subject matter of suit for purposes of Sec. 7(iv-A) (1) of the Court-fees Act, 1870 is value of plaintiff's share in entire property involved in the decree and the court-

fee would be payable according to the share of the plaintiff u/s. 7(iv-A) of the aforesaid Act.  
See : **Lalit Poorwal vs. Sahu Narain Das Gujrati, 1966 ALJ 633 (All—D.B.)**

(Y) **When two or more reliefs sought together & court-fee** : Section 7(iv)(c) and Art. 17 of Schedule II read together lead to only irresistible conclusions that if no consequential relief is prayed for Sec. 7(iv)(c) would not be applicable and plaintiff is not liable to pay the Court-fees on the market value of the property as a simple declaration would be sufficient. The true test for ascertaining whether the consequential relief in fact flows from the declaratory relief is as to whether the said consequential relief can be claimed independently of the declaration as a substantial relief or not. Every injunction in a suit for declaration would not follow from the declaration. In a case where plaintiff is in possession of the property in his own rights, comes before the Court and seeks declaration that the property belongs to him and the other party cannot interfere with his possession then it cannot be said that plaintiff is required to pay the ad valorem Court-fees because the relief of injunction is a consequential relief. See : **Smt. Sabina @ Farida vs. Mohd. Abdul Wasit, AIR 1997 MP 25**

(Z) **Scope of Sec. 17 of the C.F. Act in the event of two or more reliefs** : Sec. 17 provides only for two contingencies, namely, where the suit is for two or more separate and distinct cause of action, i.e., where the suit combines causes of action which could have been separately sued upon under the law and also where the suit is for alternative reliefs based upon the same cause of action. The section does not provide for a case where distinct reliefs arising out of the same cause of action are claimed. But since the provisions of the Court-fees Act, being a fiscal enactment, are to be construed strictly and in case of doubt in favour of the subject, where distinct reliefs arising out of the same cause of action are claimed in the suit, court-fee is payable on the consolidated amount of all the reliefs. See : **Chief Inspector of Stamps vs. Suraj Karan, AIR (36) 1949 All 170 (D.B.)**

(AA) **Two reliefs regarding possession & cancellation of compromise & court-fee** : In a suit by a Hindu widow, the only relief claimed in the plaint was one for possession of her deceased husband's property. It was however stated in the plaint that a compromise entered into on her behalf during her minority under which a certain share of the property was given to the defendant was not binding on her. No relief was however claimed for adjudging void the compromise or for declaration that the compromise was not binding on her. The plaintiff paid a court-fee u/s. 7(v) only for the relief of possession. Held that as the suit involved the relief of cancellation of the compromise, the plaintiff was bound to pay court-fee u/s. 7(iv-A) also;

Held further, that Sec. 17 was clearly not applicable to the case as the adjudging of the compromise as void and giving the plaintiff a decree for possession were not based on two causes of action nor did they amount to alternative reliefs. The plaintiff was not, therefore, bound to pay separate court-fee u/s. 7 (iv-A) and (v). The proper order was that the plaintiff should be asked to pay court-fee on the aggregate amount of the two reliefs. See : **Mt. Jileba vs. Mt. Parmesra, AIR (36) 1949 All 641 (D.B.)**

**(BB) Two reliefs forming one relief & court-fee** : Where the relief sought consist of two parts which are such that the first is the foundation for the second, and the second part is a necessary consequence of the grant of the first part, then the two can be taken together as really constituting one relief, which is quite enough for the purpose of decreeing the plaintiff's claim. On the other hand, if the two parts are such that the second does not necessarily follow the first or that the first goes further than what is necessary for the granting of the second part of the relief, then one sum of Rs.10 would not be sufficient. Where, therefore the plaintiff claims a declaration that the property in suit is wakf alal-aulad and is not attachable and saleable in satisfaction of a debt, due by one of the defendants to the others, one sum of Rs.10 as court-fee is sufficient as the declaration that the property is wakf-alal-aulad is the foundation for and would necessarily involve the granting of the relief that the property is not attachable and saleable for the satisfaction of the particular debt. Where however the plaintiff claims a declaration that the property in the suit is owned and possessed by the plaintiff and is not fit for attachment and sale in satisfaction of a decree in favour of the defendant against the proforma defendant, two reliefs are claimed by the plaintiff. So far as ownership of property and non-liability of the property attachment and sale are concerned the dispute is between the plaintiff on the one hand and attaching creditor on the other and the question whether the plaintiff is actually in possession of the property raises a dispute between him on the one hand and possibly the judgment-debtor on the other, and in asking of a declaration as to possession, the plaintiff asks for more than is actually necessary for the granting of the second part of the relief and two reliefs having been claimed two sums of Rs. 10 must be paid by the plaintiff as court-fees. See : **Abdul Shakur vs. Badaruddin, AIR 1936 All 874 (D.B.)**

**(CC) Tenancy rights & court-fees** : When the owner takes legal action against the allottee, the subject matter of the suit is the tenancy right, and not full rights that any person can have in the building. Where tenancy right in immovable property is the subject-matter of the suit, court fee shall be payable on the annual rent or letting value of the building. This shall be

irrespective of whether the suit had been instituted by the owner or by the tenant. Court-fee would be payable u/s. 7(iv) of the Court-fees Act, 1870. See : **Kanhaiya Lal vs. S.N. Pandey, 1964 ALJ 1061**

**(DD) Suit for rent & ejection in between landlord & tenant & C.F.** : Explaining Sec. 17 of the Court-fees Act, 1870, as amended in U.P., it has been held that in a suit for rent and ejection, the reliefs for ejection and rent does not arise out of same of action. Both the reliefs should be separately valued and court-fee should be separately paid on them. See : **Chief Inspector of Stamps vs. Anjuman Islamia Ltd., Bareilly, AIR (36) 1949 All 348**

**(EE) Tenant when questioning title of landlord & court-fees** : Where in a suit by landlord against the tenant for recovery of tenanted house, the defendant/tenant questioned the title of the plaintiff/landlord over the house in question, interpreting Sec. 7 (x)(i) (cc) of the Court-fees Act, 1870, it has been held that mere questioning of the title of the landlord by the tenant does not change the nature of the suit and the basis for valuation of such suit for purposes of court-fees and jurisdiction would be annual rent of the house and not the value of the house in dispute. See : **Paramhansanand Shiksha Mandir Ashram vs. VII ADJ, Deoria, 1994 ALJ 994 (All)**

**(FF) Suit by lessor against lessee for possession & court-fee** : Where a suit was filed by a lessor against a lessee (Thekedar or tenant) for ejection and possession on the ground that the tenant was holding over after the expiry of the period of the theka u/s. 214 of the U.P. Tenancy Act, 1939, it has been held that the suit was not one of the nature mentioned in Sec. 7(xi)(cc), Court-fees Act against a tenant. As such it was not covered by Sec. 4, Suits Valuation Act. The suit was governed by the provisions contained in Sec. 8 of the same Act; consequently, the valuation for the purposes of payment of court-fee and jurisdiction would be same, as the valuation of the suit for the purpose of payment of Court-fee was to be fixed according to the annual rental. See : **Mohd. Ibrahim vs. Ishrat Husain, AIR 1952 All 658 (D.B.)**

**(GG) Valuation & court-fee on composite relief of declaration & injunction** : Where the plaintiff had sought twin reliefs regarding declaration plus injunction, it has been held that both formed one composite relief though they had been put down as two reliefs. Instead of giving the valuation for this composite relief at one place the plaintiff had chosen to put it down at five different places and in that event the true valuation of what relief was claimed in the plaint would be the total amount of the five different reliefs put down in the plaint. The suit in such matter was governed by Sec. 8 of the Suits Valuation Act, 1887. Plaintiff in such a suit

was bound to put down the valuation for the purpose of the court-fee at the same figure at which it was valued for purposes of jurisdiction i.e. the total amount at which he had valued the five reliefs. In a suit for declaration and injunction, if the relief of injunction is not dependent on declaration, then Sec. 7 (iv-B)(b) and not Sec. 7(iv)(a) of the Court-fees Act, 1870, as amended in U.P., applies. See :

1. **Murli Dhar vs. Bansidhar, AIR 1963 All 86 (D.B.)**
2. **Sahu Madan Mohan vs. Tejram George Coronation Hindu School Association, AIR (36) 1949 All 207 (D.B.)**

**(HH) Suit for injunction without declaration & court-fee :** Where some of the parsis of Allahabad brought a suit for injunction restraining the defendants who were also members of the Parsi community from interfering with the right of the plaintiffs or other parsis of Allahabad to enter peacefully in the Fire Temple and perform the religious rites etc., it has been held that the relief for injunction was claimed because of the certain alleged acts on the part of the defendants and in such a suit it was not at all necessary for the plaintiffs to claim a declaration of their right of worship as the suit was a representative suit under order 1, rule 8 CPC and it was not necessary for the court to give any declaration about the plaintiff's right of worship. What the court has to decide is the nature of dedication, if any. In a case of this type relief for injunction could only be claimed as a substantive relief and not as consequential relief with some express or implied declaration as contemplated by Sec. 7(iv)(a) of the Court-fees Act, 1870. It was suit to obtain a mere relief for injunction provided for in Sec. 7(iv-B)(b) of the Court-fees Act, 1870 and the court-fee payable was u/s. 7(iv-B)(b) and not u/s. 7(iv)(a) of the Court-fees Act, 1870. See :

1. **Chief Inspector of Stamps, U.P., Allahabad vs. N.A. Gazder, AIR 1963 All 89**
2. **Sri Krishna Chandraji vs. Shyam Behari Lal, AIR 1955 All 177**
3. **Murli Dhar vs. Bansidhar, AIR 1963 All 86 (D.B.)**

**(II) Suit for mandatory injunction & payment of value of goods with interest :** In the matter where relief has been claimed specifically for recovery of money with interest and damages, no such relief can be said to be the same in nature which was sought by way of declaratory relief and the plaintiff is required to pay court-fee according to the valuation of the goods. See : **Amin Sons Ltd. (M/s) vs. Shyam Transport and Forwarding Agency, 2002 (1) LCD 37 (All)**

**(KK) Suit for declaration of sale deed as null and void with no consequential relief :**

Where a suit for declaration of sale deed as null and void was filed without seeking any consequential relief, it has been held that sale deed being document securing other property within the meaning of Sec. 7(iv-A) of the Court-fees Act, 1870, suit would fall within four corners of Sec. 7(iv-A) and the court-fees shall be payable upon market value of the subject-matter of sale-deed and shall not be covered by Art. 17(iii) of Schedule 2 of the Court-fees Act, 1870. See :

1. **Ajay Tiwari vs. Hirday Ram Tiwari, AIR 2006 All 333 (D.B.)**
2. **Chief Inspector of Stamps vs. Mahanth Laxmi Narain, AIR 1970 All 488 (F.B.)**

**(LL) Suit for declaration of ownership & sale deed as null and void & court-fee :**

Where a suit for declaration that plaintiff was owner of suit property and that the alleged sale deed was null and void was filed, it has been held that the word “securing” occurring in the words “other document securing money or other property having such value” used in clause (iv-A) of Sec. 7 of the Court-fees Act, 1870 is not only related to the money part of the decree but other property as well and therefore word “securing” relates to recovery or possession of the other property, otherwise putting this word “securing” in this provision becomes meaningless. As such where money part or any other property is claimed by way of securing it, the plaintiff is certainly required to pay ad valorem court fee i.e. 1/5<sup>th</sup> of the value of the subject matter of the property. But where no relief is claimed in terms of the above referred provision, then certainly payment of court shall be governed under Article 17 Schedule II of the Court-fees Act, 1870. The payment of court fee depends upon the averments of the plaint and the relief claimed and not on the averments of the written statement. A suit for mere declaration that the plaintiff is owner of the property in suit and incidentally claiming a declaration that the alleged sale deed be declared null and void, does not fall within the ambit of Sec. 7(iv-A) of the Court-fees Act, 1870 as amended in U.P. See : **Smt. Shefali Roy vs. Hero Jaswant Dass, AIR 1992 All 254 (D.B.)**

**(MM) Suit for declaration of will deed as null and void & court-fee :** Explaining Sec. 7(iv-A), Article 17(iii), Schedule 2 of the Court-fees Act, 1870, a Division Bench of the Allahabad High Court has been held that where the suit was filed for declaration that the will deed executed was null and void, suit if decreed would have effect of extinguishing the right of a person in property or properties under the will and such a suit cannot be entertained on the basis of fixed court-fees. In such a suit the direction issued by the trial court to the plaintiff to

pay ad valorem court-fees has been held proper. It has been further held that there is a big gap between the declaration simpliciter and relief in the garb of declaration. If a person makes a prayer to declare right, title or interest of a property in his favour then it can be construed as declaration simpliciter but when a plaintiff seeks any declaration to disentitle others right into a property, such type of circumvent prayer cannot be treated to be declaration simpliciter. In other words, he is not asking any relief for himself but wants to prevent his opponent from enjoying fruits of the property. Therefore, such type of relief is virtually in the nature of injunction at first with the nomenclature of the “declaration”. Therefore, it is required for the Court to go into the real nature of dispute arising out of the plaint to ascertain the cause and incidental cause which helps it. A Will is execution of document of a testator to give his property to a person of a choice. Such ‘Will’ will be enforceable only after the death of the testator. See :

**1. Smt. Rajni Swami vs. Smt. Shakuntala Sharma, AIR 2009 All 152 (D.B.)**

**2. Smt. Bina Rani s. Fakir Chand, 1985 (2) ARC 440 (All)**

**(NN) Plaintiff’s plea that defendant’s document is forged & court-fee :** Interpreting Sec. 7(iv-A ) of the Court-fees Act, 1870, it has been held that a bonafide plea of plaintiff that a document produced by the defence is forged and in the alternative invalid, is not a suit for declaration of its invalidity. A plaintiff does not have to pay court-fee on such a plea particularly when it becomes immaterial after the court finding that the document is forged. See : **Gulab Devi vs. Chief Inspector of Stamps, U.P., Lucknow, 1966 ALJ 570 (All)**

**(O) Suit for specific performance & valuation & court-fee :** Suit for specific performance of agreement comes u/s 7, para (x) (a) of the Court-fees Act, 1870 and its value is the amount of consideration. Normally it is the market value. The valuation of a suit for the purpose of jurisdiction and Court-fee in respect of a suit for specific performance is in effect the market value of a property on the date when it was agreed to be sold. It is an enforcement of a contract as agreed. The valuation is to be calculated on the basis of such agreement having relevance to the date of institution of the suit. See : **Ram Govind Mishra vs. Chief Controlling Revenue Authority, U.P., Allahabad, 2000 (2) ARC 118 (All).**

**(OO) Suit for declaration of non-liability of plaintiff to execute sale deed under agreement for sale and against return of consideration & court-fee :** Where the plaintiff had filed a civil suit for declaratory decree that the plaintiff was not bound to execute sale deed in accordance with the agreement and was also not liable to return the entire amount of sale

consideration and had right to get declaration for forfeiture of the entire sale consideration, it has been held that the second relief sought by the plaintiff was independent and substantial relief and the plaintiff was liable for payment of court fee on both the reliefs for the reason that the second relief sought by the plaintiff could not be termed as consequential relief. See : **Ashok Kundalia Vs. Dr. Nanak Chand Khanduja, 2013 (2) AWC 1170 (All)**

**(PP) Suit for specific performance & valuation & court-fee** : The valuation of a suit for specific performance of contract has to be determined in accordance with Sec. 7(x)(a) of the Court-fees Act, 1870. For the purposes of the valuation of the suit for specific performance of the agreement, the amount of sale consideration as disclosed in the agreement should be taken for the purpose of valuation of the suit. The fact that such plaintiff claims to have already paid any amount towards the sale consideration shall not be taken into account for the purpose of valuing the suit because the words used in clause (x) of Sec. 7 of the Court-fees Act mean consideration payable in respect of the contract and not the amount of the consideration which according to the plaintiff is payable at the time the suit is decreed. The valuation of the suit has to be made according to the amount of the consideration as mentioned in the agreement irrespective of the fact that any amount of sale consideration might have been paid to the vendor. The words “the amount of the consideration” used in clause (x) of Sec. 7 of the Court-fees Act contemplates the consideration of the property which is subject matter of sale under the agreement. The consideration is correlated with the property. The contract relates to property and the amount of the consideration relates for such property. Where there was an agreement for sale of shop for Rs.30,000/- and half portion of the shop was sold in the name of the wife of the vendee for Rs. 24,500/- and the suit for specific performance of the agreement by the vendee for sale of remaining half portion of the shop was valued at Rs.5,500/-, it has been held that for purposes of valuation of the suit and payment of court-fees, the valuation of half portion is to be done at Rs. 15,000/- and not at Rs. 5,500/-. See :

1. **Smt. Saroj Gupta vs. IVth ADJ, Etah, 1994 ALJ 119 (All)**
2. **S.P. Gupta vs. Abdul Rahman, AIR 1958 All 851 (D.B.)**

**(QQ) Suit for possession by Mutwalli over waqf property & court-fees** : In a suit brought by mutwalli to recover possession of wakf property alienated by a former mutwalli, if the principal relief is for declaration and the plaintiff's right to possession depends upon his being entitled to that declaration the suit may legitimately come for under Sec. 7(iv)(c). In such a case the relief for possession may be regarded as a consequential relief; but where, as in

the present case, there is no prayer for any declaration and the only prayer is for recovery of possession, the case does not come u/s. 7(iv)(c) but falls u/s. 7(v) of the Court-fees Act. See : **Hafiz Md. Fateh Nasib vs. Haji Abdur Rub, AIR 1954 Calcutta 101 (D.B.)**

**15. Duty of court in ascertaining correct court-fee** : The court has to see what is the nature of the suit and of the reliefs claimed, having regard to the provisions of Sec. 7 of the Court-fees Act, 1870. If a substantive relief is claimed though clothed in the garb of a declaratory decree with a consequential relief, the Court is entitled to see what is the real nature of the relief and if satisfied that it is not a mere consequential relief but a substantive relief, it can demand the proper court-fee on that relief irrespective of the arbitrary valuation put by the plaintiff in the plaint on the ostensible consequential relief. See : **Kalu Ram vs. Babu Lal, AIR 1932 All 485 (Five-Judge Bench)**

**16. Declaratory decree & court-fees** : The court has to see what is the nature of the suit and of the reliefs claimed, having regard to the provisions of Sec. 7 of the Court-Fees Act, 1870. If a substantive relief is claimed though clothed in the garb of a declaratory decree with a consequential relief, the Court is entitled to see what is the real nature of the relief and if satisfied that it is not a mere consequential relief but a substantive relief, it can demand the proper court-fee on that relief irrespective of the arbitrary valuation put by the plaintiff in the plaint on the ostensible consequential relief. No claim for consequential relief can be read in claim for declaration. See :

**1. Kalu Ram vs. Babu Lal, AIR 1932 All 485 (Five-Judge Bench)**

**2. Nemi Chand vs. Edward Mills Co., AIR 1953 SC 28 (Four-Judge Bench)**

**17. Substantive relief versus consequential relief & court-fees** : The court has to see what is the nature of the suit and of the reliefs claimed, having regard to the provisions of Sec. 7 of the Court-Fees Act, 1870. If a substantive relief is claimed though clothed in the garb of a declaratory decree with a consequential relief, the Court is entitled to see what is the real nature of the relief and if satisfied that it is not a mere consequential relief but a substantive relief, it can demand the proper court-fee on that relief irrespective of the arbitrary valuation put by the plaintiff in the plaint on the ostensible consequential relief. See : **Kalu Ram vs. Babu Lal, AIR 1932 All 485 (Five-Judge Bench)**

**18. Meaning of “Consequential relief” & court-fees** : The expression “consequential relief” in Sec. 7(4)(c) of the Court-Fees Act, 1870 means some relief which would follow directly from the declaration given, the valuation of which is not capable of being definitely

ascertained which is not specifically provided for anywhere in the 1870 Act and cannot be claimed independently of the declaration as a substantive relief. Consequently, where a suit is for the cancellation of an instrument under the provisions of Sec. 39, Special Relief Act, the relief is not a declaratory one. It falls neither u/s. 7(4)(c) nor under Schedule 2, Article 13(3), but under the residuary article of Schedule 1. See : **Kalu Ram vs. Babu Lal, AIR 1932 All 485 (Five-Judge Bench).**

**20. Suit for cancellation for decree & court-fee :** A relief for the cancellation of a decree is not a declaratory relief only. The effect is to render the decree void and incapable of execution and to free the plaintiff from all further liability under it. Where the relief claimed is that the compromise, the preliminary decree and the absolute decree passed in a mortgage suit be cancelled the suit falls under Schedule 1, Article 1. The cancellation of the compromise, the preliminary and final decree are not distinct subjects within Sec. 17 and the court-fee is payable on the value of the final decree only. See : **Kalu Ram vs. Babu Lal, AIR 1932 All 485 (Five-Judge Bench)**

**23. Declaratory suit & court-fee :** A suit for a declaration that the sale of the ancestral residential house of the plaintiffs by the Official Receiver appointed in insolvency proceedings against their father is illegal and not binding on the plaintiffs or on their share does not involve the cancellation of the sale deed nor can the sale deed be said to be a document securing money or other property within the meaning of Sec. 7(iv-A) of the Court-fees Act, 1870 as amended in U.P. See : **Chief Inspector of Stamps vs. Jash Pal Singh, AIR 1956 All 168**

**24. Writ petition under Article 226 of the Constitution & court-fees :** Sections 3, 4 and 5 of the Court-Fees Act, 1870 as amended in the year 1958, do not apply to the writ petitions filed in the High Court under its extraordinary jurisdiction under Article 226 of the Constitution. Court-fee payable on writ petitions under Article 226 is governed by Rule 40, Chapter VIII of the Allahabad High Court Rules, 1952. See : **Jadunandan Prasad vs. G.M., NER, Gorakhpur, AIR 1960 All 179**

**25. Sec. 6(2) of the Court-Fees Act, 1870 not to apply to High Court :** Sec. 4, Court-Fees Act, 1870 which applies to High Courts and Courts of Small Causes in Presidency-towns is not subject to or controlled by the provisions and principles underlying, Sec. 6 of the Court-Fees Act, 1870 as it stands amended. In U.P. Section 6(2) does not apply to the High Court

and therefore the High Court is not bound to give thereunder time even at least once to make good the deficiency when an insufficiently stamped memorandum of **appeal** is presented to it. See : **S. Wajid Ali vs. Mt. Isar Bano, AIR (38) 1951 All 64 (Five-Judge Bench)**

**26(A). Valuation of appeal for purposes of Court-fee when to be done** : Where ad valorem court-fee is payable, the taxing judge shall be competent to determine the valuation of the appeal for purposes of court-fee. Sec. 5 of the Court-Fees Act, 1870 applies both to valuation and rate of court-fee payable. Sec. 5 will apply irrespective of whether the dispute chiefly pertains to the valuation of the appeal or pertains to both valuation and the rate or merely relates to rate at which court-fee is chargeable. The valuation of the appeal for purposes of court-fee shall be the difference between the amount which can, under the decree, be recovered from the appellant, irrespective of whether the liability is joint or personal and the amount, which according to him, can be so recovered from him and that ad valorem court-fee u/s. 7(1) of the Court-fees Act, 1870 shall be chargeable on this valuation. See : **Smt. Prem Lata Agarwala vs. Kamla Kant, 1973 ALJ 602 (All)**

**26(B). Deficiency in court fee occurred in trial court can be directed to be made good even at appellate stage** : It is well known legal position that appeal is continuation of suit and power of appellate court is co-extensive with that of the trial court. Deficiency in court fee occurred in trial court can be directed to be made good even at appellate stage. See : **Sardar Tajendra Singh Gambhir Vs. Sardar Gurpreet Singh, 2015 (1) ARC 616 (SC).**

**27(A). Whether a decree passed in an under valued suit can be set aside on the ground that true valuation, if done, would have ousted the pecuniary jurisdiction of the court?** : Where plaintiff appellant valued his suit at Rs.2,950/- and the defendant did not object to the (pecuniary) jurisdiction of the court and on losing the suit after an elaborate trial, the plaintiff appellant filed appeal to the district court which he was bound to do on his valuation and the appellate decision also went against the plaintiff appellant on merits and the plaintiff appellant then filed appeal in the High Court and the stamp reporter then valued the plaint at Rs.9,980/-, the plaintiff appellant then paid the additional court-fee and raised the contention that on the revised valuation, the (first) appeal lay to the High Court and that the decree passed by the district court/first appellate court was nullity as the district court had no jurisdiction, it has been held by the Supreme Court that it would be an unfortunate state of the law if the plaintiff who had initiated proceedings in a court of his own choice could subsequently turn round and

question its jurisdiction on the ground of an error in valuation which was his own. The prejudice on the merits contemplated by Sec. 11 must be directly attributable to over-valuation or under-valuation. An error in a finding of fact reached on a consideration of the evidence cannot possibly be said to have been caused by over-valuation or under-valuation. Mere errors in the conclusions on the points for determination cannot, therefore, be held to be prejudice within the meaning of that section. Further an appellate Court has no power u/s. 11, Suits Valuation Act, to rehear the appeal and to consider whether the findings of fact recorded by the lower Court are correct. The jurisdiction that is conferred on appellate Courts u/s. 11 is an equitable one, to be exercised when there has been erroneous assumption of jurisdiction by a Subordinate Court as a result of over valuation or under-valuation and a consequential failure of justice. It is neither possible nor even desirable to define such a jurisdiction closely, or confine it within stated bounds. It can only be predicated of it that it is in the nature of a revisional jurisdiction to be exercised with caution and for the ends of justice whenever the facts and situations call for it. Whether there has been prejudice or not, is accordingly, a matter to be determined on the facts of each case. That, if clauses (a) and (b) of Sec. 11 are read conjunctively, notwithstanding the use of the word “or”, the plaintiff would be precluded from raising the objection about jurisdiction in an appellate Court. But even if the two provisions are to be construed disjunctively and the parties held entitled u/s. 11(1)(b) to raise the objection for the first time in the appellate Court, even then, the requirement as to prejudice has to be satisfied, and the party who has resorted to a forum of his own choice on his own valuation cannot himself be heard to complaint of any prejudice. See : **Kiran Singh vs. Chaman Paswan, AIR 1954 SC 340 (Five-Judge Bench)**

**27(B). Report of the Stamp Reporter as to deficiency in court fee can be challenged only before the High Court under Article 226 of the Constitution** : Relying upon a Full Bench decision of the Allahabad High Court reported in **Smt. Gindori Bibi Vs. Taxing Officer, AIR 1973 All 490 (Full Bench)**, it has been held by the Hon'ble Allahabad High Court, in the case noted below that the report of the Stamp Reporter as to deficiency in court fee can be challenged only before the High Court under Article 226 of the Constitution otherwise the plaintiff will have to make good the deficiency in the court fees . See : **Rahul Sharma Vs. Laxita Sharma, 2014 (102) ALR 529 (All)**.

**28. Discretion of court in granting time for making good the deficiency in court-fee (Sec. 149 CPC)** : Sec. 149 CPC empowers the court to grant time for making good the

deficiency in court-fees in its discretion. The discretion must be a judicial discretion and cannot be arbitrary. Court can extend time u/s. 148, 149 and 151 CPC for payment of deficit court-fee. Sec. 4 of the Court-fees Act, 1870 and Sec. 149 CPC should be read harmoniously. Sec. 149 CPC can be read as a proviso to Sec. 4 of the Court-fees Act, 1870 and time can be granted to make good the deficiency in court-fees within a period of time to be fixed by the court. See :

1. **Mannan Lal vs. Mst. Chhotaka Bibi, 1971 (1) SCR 253**
2. **Mahanth Ram Das vs. Ganga Das, AIR 1961 SC 882 (Three-Judge Bench)**
3. **S. Wajid Ali vs. Mt. Isar Bano, AIR (38) 1951 All 64 (Five-Judge Bench)**
29. **Power u/s. 149 CPC to make good deficit in court-fee when to be exercised :**

Power u/s. 149 CPC to make good deficit in court-fee can be exercised under the following conditions :

- (i) At the time of institution of the suit.
- (ii) After amendment of plaint on the amended claim.
- (iii) Sec. 149 CPC has no application when court-fee due on plaint as per valuation of suit is fully paid but subsequently in the course of the proceedings, it is found that a larger amount is due to the plaintiff. Sec. 149 CPC is an exception to the bar of Sec. 4 of the Court-fees Act, 1870. See : **K.C. Skaria vs. Govt. of State of Kerala, (2006) 2 SCC 285**

30. **Deficiency in court-fee & grant of time to make good the deficiency—(A)** Sec. 149 CPC has to be read as a proviso to Sec. 4 of the Court-fees Act, 1870 in order to avoid contradiction between the two sections. As a result of reading the two sections together in this light, the law may be stated thus :

- (i) Ordinarily a document insufficiently stamped is not to be received, filed, exhibited or recorded in a Court.
- (ii) When, however, an insufficiently stamped document is presented to the Court, the Court has to decide whether it will exercise its discretion in allowing time to the party presenting the document to make good the deficiency.
- (iii) If the court decides that time should not be granted, it will return the document as insufficiently stamped.
- (iv) If the court decides that time should be granted, it will give time to the party to make good the deficiency, and in order to enable the party to make good the

deficiency within the time allowed, the Court will tentatively for that limited purpose receive the document.

- (v) If the deficiency is made good within the time fixed, the document is to be deemed to have been presented and received on the date on which it was originally filed.
- (vi) If the deficiency is not so made good, the document is to be returned as insufficiently stamped by virtue of Sec. 4 of the 1870 Act. See : **S. Wajid Ali vs. Mt. Isar Bano, AIR (38) 1951 All 64 (Five-Judge Bench)**

**(B) Enlargement of time for correction of valuation or make good the deficiency in court-fees when not to be granted (Proviso to Order 7, Rule 11 CPC)** : According to the proviso to Order 7, Rule 11 CPC, the court should not ordinarily extend the time for correction of valuation or make good the deficient court-fee. The aforesaid proviso reads as under :

“Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-papers shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-papers, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.”

**(C) Enlargement of time for correction of valuation or make good the deficiency in court-fees when not to be granted (Proviso to Order 7, Rule 11 CPC)** : Ordinarily discretion should be exercised u/s 149 CPC in favour of litigating parties to make up deficiency of court fee unless there are manifest grounds of mala fides. Concealment of material facts while making application for extension of date for payment of court fee can be a ground for dismissal of plaint under Order 7, rule 11(b) & (c) CPC. See : **Manoharan Vs. Sivarajan, (2014) 4 SCC 163.**

**31. Rejection of plaint u/o. 7, Rule 11(b), (c) CPC for deficient court-fee** : (A) Where the suit filed by plaintiff for permanent injunction and demolition of unauthorized construction was found by the court as under-valued and the court-fee insufficiently paid and the court directed the plaintiff to amend pleadings within fixed time but the plaintiff failed to amend the plaint and make good the deficiency in the court-fees within the fixed time and subsequently moved application for amendment of the plaint but the court rejected the application and the plaint also u/o. 7, Rule 11(b) of the CPC, it has been held that the order passed by the trial

court was justified and proper. See : **Murti Sri Sheoji Bhagwan vs. Hindalco Renukoot, Mirzapur, 1997 (2) AWC 647 (All)**

**(B) Construction pendente lite, demolition & possession & valuation & court-fees :**

The plaintiff claimed permanent injunction, a prohibitory injunction, possession and demolition of the constructions already made by the defendants or which they might make during the pendency of the suit. The court below, should have found out by taking evidence of the parties what construction had already taken place before the filing of the suit and what constructions had been made by the contesting defendant after the filing of the suit and regarding which there was a prayer for demolition. After valuing these constructions etc., the court should then have proceeded with the decision of the question of jurisdiction and court-fees. See : **Chandrapati Tripathi vs. Suryamani, AIR 1975 All 430**

**(C) Suit for possession of land & demolition of building & valuation & court-fee :**

If a plaintiff brings a suit stating that he owns certain land and also the buildings standing thereon, that he has been dispossessed by the defendant from the land as well as the buildings and he seeks possession over both the land and the buildings, the subject matter of dispute will certainly be the land as well as the buildings. But if the plaintiff comes with the allegation that he owns the land and that the defendant has unlawfully taken possession of the land and made constructions thereon without his consent and if he further prays that the land alone be delivered to him and the buildings be allowed to be removed by the defendant, the buildings standing thereon are not the subject matter of the suit. Since possession is not sought over the buildings court-fee cannot be levied in respect of the price of the buildings. To hold that in such a case also the buildings would be the subject matter of the suit would mean placing this class of case on the same level with a suit in which possession is sought over the land as well as the buildings. The case falls u/s. 7(iv)(I)(c) (U.P.). But while in such a case the value of the buildings is to be excluded from consideration when the plaintiff asks for the relief of demolition, a separate court-fee must also be paid for the relief of demolition. That court-fee will not be paid u/s. 7(v) but under Art. 17(vi) (U.P.) of Schedule 2, Court-fees Act, 1870, that is a fixed court-fee of Rs. 18/12. The relief in question is, in substance, a combination of two reliefs, i.e. a relief for possession of land, which is governed by Sec. 7(v)(I)(c), and a relief for demolition in respect of which court-fee is payable under Art. 19(iv) (U.P.) of Schedule 2, Court-fees Act. See : **Mt. Kulsumunn-isan vs. Khushnudi Begum, AIR 1954 All 188**

**(D) Suit for possession of land after demolition of construction & valuation & court-fee** : The opposite party filed a suit against the applicant for possession of a piece of land after demolition of a construction made thereon by the applicant. For purposes of jurisdiction and also of court-fee he valued the land only according to its market price; he did not include in the valuation the value of the construction standing upon it. Held, that it was open to the application to remove the construction himself before the suit was decreed or ever before the possession over the land was delivered to the opposite party in execution of the decree. So long as the applicant was not prevented from removing it, if he so desired it would not be said that it was included within the scope of the suit and that its price should be added to the price of land to arrive at the valuation for purposes of jurisdiction and court-fee. See : **Abdul Ghani vs. Vishunath, AIR 1957 All 337 (D.B.)**

**(E) Rejection of plaint u/o. 7, Rule 11(b) CPC for non-payment of court-fee** : Explaining Sec. 12 of the Court-fees Act, 1870, it has been held that where the court has ordered that if the valuation of the suit is not corrected in accordance with the order passed by the court and the court-fee on the corrected valuation is not paid, the plaint would stand rejected under Order 7, Rule 11 (b) of the CPC. See—**Mohd. Ajmal vs. Firm Indian Chemical Co., AIR 1978 All 21**

**32. Insufficiently stamped document when to be returned** : Sec. 149 CPC has to be read as a proviso to Sec. 4 of the Court-fees Act, 1870 in order to avoid contradiction between the two sections. As a result of reading the two sections together in this light, the law may be stated thus :

- (i) Ordinarily a document insufficiently stamped is not to be received, filed, exhibited or recorded in a Court.
- (ii) When, however, an insufficiently stamped document is presented to the Court, the Court has to decide whether it will exercise its discretion in allowing time to the party presenting the document to make good the deficiency.
- (iii) If the court decides that time should not be granted, it will return the document as insufficiently stamped.
- (iv) If the court decides that time should be granted, it will give time to the party to make good the deficiency, and in order to enable the party to make good the deficiency within the time allowed, the Court will tentatively for that limited purpose receive the document.

- (v) If the deficiency is made good within the time fixed, the document is to be deemed to have been presented and received on the date on which it was originally filed.
- (vi) If the deficiency is not so made good, the document is to be returned as insufficiently stamped by virtue of Sec. 4 of the 1870 Act. See : **S. Wajid Ali vs. Mt. Isar Bano, AIR (38) 1951 All 64 (Five-Judge Bench)**

**33. Poverty when to be treated as inability to pay court-fee?** : The question whether poverty or inability to pay full court-fee at the time of filing an appeal be regarded as a sufficient ground for the exercise of the discretion of the Court in extending time u/s. 149 CPC can be answered only with reference to the facts of a particular case. A mere allegation that a party was unable to pay court-fee on the date when he presented an insufficiently stamped document is not enough for the exercise of discretion in his favour. If, however, further circumstances are shown which satisfy the Court that the inability to pay court-fee has been caused by circumstances beyond the litigant's control or if substantial amount of court-fee has been paid and a comparatively small amount remains to be paid thus showing the bonafides by the litigant, time may be extended to pay the requisite court-fee. See : **S. Wajid Ali vs. Mt. Isar Bano, AIR (38) 1951 All 64 (Five-Judge Bench)**

**34. Effect of return or rejection of appeal for deficiency in court-fee** : A memorandum of appeal which is found to be defective for want of proper court-fee and is not admitted in view of Sec. 4 of the Court-fees Act, 1870 and is returned or even "rejected" on that ground cannot be treated as an appeal when the Court has refused to admit or register it as an appeal. In such a case it must be held that there has been no appeal from the decree sought to be executed within the meaning of Article 182(2) of the Limitation Act. See : **Hari Har Prasad Singh vs. Beni Chand, AIR (38) 1951 All 79 (F.B.)**

**35. Mesne profit & court-fee** : Order 20, Rule 12 of the CPC enables the court to pass a decree for both past and future mesne profits, but there are important distinctions in the procedure for enforcement of the two claims. With regard to past mesne profits the plaintiff has an existing cause of action on the date of institution of the suit. In view of Order 7, rule 1, 2 and 7 of the CPC, and Sec. 7(1) of the Court-fees Act, a plaintiff must plead his cause of actions, specifically claim a decree for past mesne profits, value the claim approximately and

pay court fees thereon. With regard to future mesne profits, the plaintiff has no cause of action on the date of institution of the suit and it is not possible for him to plead this cause of action or to value it, or to pay court fees thereon at the time of institution of the suit. Moreover, he can obtain relief in a suit in which provisions of Order 20, Rule 12 apply. But in a suit to which the provisions of Order 20, Rule 12 apply, the court has discretionary power to pass a decree directing an enquiry into future mesne profits and the court may grant a general relief though it is not specifically asked for in the plaint. See : **Gopalakrishna Pillai vs. Meenakshi Ayal, AIR 1967 SC 155 (Three-Judge Bench)**

**36. Taxing Officer's decision final when difference between Chief Inspector of Stamps & suitor** : In view of Sec. 5 of the Court-Fees Act, 1870, in the Allahabad High Court, the Chief Inspector of Stamps is an officer whose duty it is to see that the fee is paid under Chapter 2 of the Act and the decision of the taxing officer on a difference of opinion between the Chief Inspector of Stamps and the suitor is final decision. Decision of Taxing Judge is final u/s. 5 of the Court-fees Act, 1870. See :

1. **Sathappa Chettiar vs. Ramanathan Chettiar, AIR 1958 SC 245 (Five-Judge Bench)**
2. **Mt. Bhagwanti vs. Mt. Dhanwani, AIR 1932 All 319 (D.B.)**
3. **Nemi Chand vs. Edward Mills Co., AIR 1953 SC 28 (Four-Judge Bench)**

**37. Decision of Taxing Judge to be final** : (A) Decision of Taxing Judge on reference u/s. 5 of the Court-fees Act, 1870 if final and not open to appeal. However, even though the order of the Taxing Judge may be final u/s. 5 of the Court-fees Act, 1870, the power of the Supreme Court under Article 136 of the Constitution will over-ride any stamp of finality given by a statute. The finality u/s. 5 of the Court-fees Act, 1870 cannot derogate from the power conferred by the Constitution on the Supreme Court. See :

1. **Om Prakash vs. State of U.P., AIR 1977 All 122 (D.B.)**
2. **Smt. Gindori Bibi vs. Taxing Officer, AIR 1973 All 490 (F.B.)**
3. **Diwan Bros. vs. Central Bank, 1976 Suppl. SCR 664 (Three-Judge Bench)**

(B) **Order declaring court-fee as sufficient not final** : Where during the pendency of appeal, the High Court passed order that the court-fees paid was sufficient, it has been held that such an order passed during the pendency of appeal that the court-fee paid was sufficient is not final order or for judgment within the provisions of Article 133(1) of the Constitution.

See : **Chief Inspector of Stamps, U.P., Allahabad vs. Mrs. Panzy Ferunadas, AIR 1964 All 66 (F.B.)**

**38. Court-fee on copies of orders/judgments in criminal cases** : Explaining Sec. 4 of the Court-fees Act, 1870, it has been held by the Supreme Court that every document which falls within the purview of Sec. 4 must bear the court-fees prescribed by the relevant provision; and so the question as to whether a particular document falls within Sec. 4 and as such must pay the court-fees prescribed for it must be decided solely by reference to the relevant provisions of the Act. In the construction of the said provisions any hypothetical considerations about the policy of the provisions of the Cr.P.C. in supplying relevant documents to the accused free of charge would hardly be of any assistance. Similarly it would be idle to rely on the principle of liberal construction of Schedule 1, Article 9 unless it is shown that the said article is capable of two construction. The words used in Art. 9 are clear and unambiguous. Whether or not the effect of Art. 9 is equitable, fair or just would be irrelevant if the meaning of the article is plain and clear. If a copy of a statement made in a criminal court is filed it must bear the court-fees prescribed by Article 9. The proceeding in a criminal court is a judicial proceeding. Hence if a copy of an order or judgment delivered in a criminal proceeding is intended to be filed before the High Court in a Criminal Appeal it clearly attracts the provisions of Article 9. See : **Bibhuti Bhusan Chatterjee vs. State of Bihar, AIR 1960 SC 128**

**39. Court when to decide question of court-fee first before any other matter?** : Whenever a question of the appropriate amount of court-fee payable is raised otherwise than under sub-sec. (3) of Sec. 6 of the Court-fees Act, 1870, the court shall decide such question before proceeding with any other issue. The difference in the language and contents of sub-sec. (3) and sub-sec. (4) of Sec. 6 is striking. In sub-section (3), it has been laid down that if an objection with regard to the court-fees in respect of any plaint is raised by an officer mentioned in Sec. 24-A of the Court-fees Act, the Court, shall, before proceeding further with the suit, record a finding whether the court-fee paid is sufficient or not. While sub-sec. (4) of Sec. 6 says that when a question of appropriate amount of court-fee payable is raised otherwise than under sub-sec. (3) of Sec. 6, the court shall decide such question before proceeding with any other issue. It will, therefore, be noticed that under sub-sec. (3) of Sec. 6, the court is prohibited from proceeding with the suit, while under sub-sec. (4) the court is directed to decide such question before proceeding with any other issue. In my view, therefore, when the

objection as regards court-fee is raised by an officer, the court is totally prohibited from proceeding with the suit, but when the objection is raised by a person other than such an officer, the court is mandated to decide the issue of court-fee before deciding other issues. See :

1. **Umesh Chandra vs. Krishna Murari Lal, AIR 1980 All 29**
2. **Hamid Hussain Khan vs. Masood Hussain Khan, AIR 1952 All 279**

**40. Plaintiff's option of valuation when no definite or precise mode of valuation :**

Explaining the provisions of Sec. 7 (iv) of the Court-fees Act, 1870, the Supreme Court has held that if the scheme laid down for the computation of fees payable in suits covered by the several sub-sections of Sec. 7 is considered, it would be clear that, in respect of suits falling under sub-sec. (iv) of Sec. 7, a departure has been made and liberty has been given to the plaintiff to value his claim for the purposes of court-fees. The theoretical basis of this provision appears to be that in cases in which the plaintiff is given the option to value his claim, it is really difficult to value the claim with any precision or definiteness. See : **Sathappa Chettiar vs. Ramanathan Chettiar, AIR 1958 SC 245 (Five-Judge Bench)**

**41. Valuation for purposes of jurisdiction & valuation for purposes of court-fees distinguished :**

(A) The effect of the provisions of Sec. 8 of the Suits Valuation Act, 1887 is to make the value for the purpose of jurisdiction dependent upon the value as determinable for computation of court-fees. The computation of court-fees in suits falling u/s. 7 (iv) of the Court-fees Act, 1870 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 of 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. See :

1. **Sathappa Chettiar vs. Ramanathan Chettiar, AIR 1958 SC 245 (Five-Judge Bench)**
2. **Jhari Mahto vs. Sagar Mahto, AIR 2009 (NOC) 913 (Jharkhand)**

**(B) Valuation for purposes of jurisdiction & court-fee in respect of agricultural land** : Interpreting Sec. 7(iv-A), (v) (1) (b) of the Court-fees Act, 1870 and Rule 3(b) of the U.P. Suits Valuation Rules, 1942, it has been held that in a suit involving cancellation of sale deeds of bhumidhari land (agricultural land), the valuation for purposes of payment of court-fees is **ten times the land revenue and for purposes of jurisdiction it is 30 times of the land revenue**. See : **Haji Mustafa vs. Lal Mani, 1968 All.W.R. 501 (All)**

**(C) Plaintiff not to be allowed to value arbitrarily to chose forum & decide jurisdiction** : Explaining the provisions of Sec. 4 of the Suits Valuation Act, 1887 and Rule 3 of the U.P. Suits Valuation Rules, 1942, as amended in U.P., it has been held that valuation of suit for purposes of jurisdiction should be determined by the court. Plaintiff cannot be allowed to put value arbitrarily to chose his forum. See :

1. **Devendra Singh vs. Bhola Ram, 1991 AWC 281 (All)**
2. **Inayat Husain vs. Bashir Ahmad, AIR 1932 All 413 (D.B.)**

**42. Tax & Fee distinguished** : There is no generic difference between a tax and a fee and both are different forms in which the taxing power of a State manifests itself. Our Constitution, however, has made a distinction between a tax and a fee for legislative purposes and while there are various entries in the three lists with regard to various forms of taxation, there is an entry at the end of each one of these lists as regards fees which could be levied in respect of every one of the matters that are included therein. A tax is undoubtedly in the nature of a compulsory exaction of money by a public authority for public purposes, the payment of which is enforced by law. But the essential thing in a tax is that the imposition is made for public purposes to meet the general expenses of the State without reference to any special benefit to be conferred upon the payers of the tax. The taxes collected are all merged in the general revenue of the State to be applied for general public purposes. Thus, tax is a common burden and the only return which the tax-payer gets is the participation in the common benefits of the State. Fees, on the other hand, are payments primarily in the public interest but for some special service rendered or some special work done for the benefit of those from whom payments are demanded. Thus, in fees there is always an element of 'quid pro quo' which is absent in a tax. Two elements are thus essential in order that a payment may be regarded as a fee. In the first place, it must be levied in consideration of certain services which the individuals accepted either willingly or unwillingly. But this by itself is not enough to make the imposition a fee, if the payments demanded for rendering of such services are not set apart

or specifically appropriated for that purpose, but are merged in the general revenue of the State to be spent for general public purposes. See : **Sri Jagannath Ramanuj Das vs. State of Orissa, AIR 1954 SC 400 (Five-Judge Bench)**

**43. Defendant not to challenge deficiency in court-fees :** (A) The question of payment of court-fees is primarily a matter between the Government and the person concerned and therefore where the High Court in the exercise of its discretion allows the appellant to amend his memorandum of appeal and grants time for payment of deficient court-fee u/s. 149 of CPC, the other party cannot attack the order on ground that it takes away his valuable right to plead the bar of limitation. Question of court-fee is a matter between the court and plaintiff. See :

1. **Sidh Nath Agarwal vs. Vinod Kumar Agarwal, 2002 (4) AWC 3096**
2. **Mahasay Ganesh Prasad Ray vs. Narendra Nath Sen, AIR 1953 SC 431 (Three-Judge Bench)**

(B) **Defendant or officers of state or revenue or any other person may also raise question of deficiency and court-fees** : Explaining Sec. 6(4) of the Court-fees Act, 1870, it has been held that question of deficiency or payment of proper amount of court-fees can also be raised by persons other than officers of state or revenue. Court is empowered to decide question of payment of proper amount of court-fees even if it has not been raised by officers of state or revenue. See : **Ajay Tiwari vs. Hirday Ram Tiwari, AIR 2006 All 333 (D.B.)**

(C) **Question of court-fee when raised with the question of jurisdiction** : Revision u/s. 115 CPC against question of deficit court-fee not involving (pecuniary) jurisdiction of court, is not maintainable. A defendant has no right to move superior courts by way of appeal or revision against order adjudging payment of court fee even though believing honestly that proper court-fee is not paid. See :

1. **Gemini Continental (P) Ltd. vs. District Judge, Lucknow, 1999 (1) AWC 2(18) (L.B.)**
2. **Siddhartha Gautam Ram vs. Sarveshwari Samooh Kustha Sewashram, Rajghat, AIR 1995 All 52**
3. **Shamsher Singh vs. Rajinder Prasad & others, AIR 1973 SC 2384**
4. **Sri Rathnavarmaraja vs. Smt. Vimla, AIR 1961 SC 1299**

(D) **Deficiency in court-fee open to challenge despite the Inspector of Stamps not going in revision u/s. 6-B** : Where in a suit for declaration that the sale deed was

unauthorized, void, illegal and ineffective as against the plaintiff, the Inspector of Stamps raised the question of deficiency in Court fee on the ground that the relief claimed was covered by Sec. 7(iv-A) of the Court-fees Act, 1870, as amended in U.P., and not by Schedule 2 Article 17 (iii) and the trial Court found that the Court-fee paid was sufficient and the Inspector of Stamps did not file a revision u/s. 6-B of the Court-fees Act, 1870 against the decision of the trial Court on the question relating to Court fee payable for the suit has not become final, inspite of the fact that no application for revision u/s. 6-B was made. See : **Smt. Bibbi vs. Shugan Chand, AIR 1968 All 216 (F.B.)**

**(E-1) Revision by defendant u/s 115 CPC against order deciding court fee not maintainable** : Interpreting the provisions of Section 115 CPC and Section 12(1) of the Court Fees Act, 1870, it has been ruled by the Hon'ble Supreme Court that a defendant has no right to file revision u/s 115 CPC against the decision regarding the amount of court fee chargeable from the plaintiff. See :

- (i) **Danish Vs. Syed Shahenshah Husain alias Syed Silas, C. Spear, 2014 (2) ARC 332 (All)**
- (ii) **A. Nawab John Vs. V.N. Subramaniam, 2012 (30) LCD 1377 (SC)=2012 (117) RD 249 (SC).**
- (iii) **Sri Ratnavarmaraja Vs. Smt. Vimla, AIR 1961 SC 1299.**

**(E-2) Defendant cannot file appeal u/s 6-A against deficiency in court fee** : Normally an appeal u/s 6-A of the Court Fees Act, 1870 may be filed by the plaintiff as is evident from the provisions of Section 6(2) of the Act. However, in case the defendant makes counter claim in a suit under Order 8, rule 6A of the CPC, the appeal by defendant u/s 6A of the Court Fees Act, 1870 may be filed because such a defendant will be in the position of plaintiff as regards the counter claim. See :

- (i) **Nagar Panchayat, Akbarpur, Kanpur Dehat Vs. Bajrang Bali Rice Mills, 2011 (2) AWC 1329 (All)(DB)**
- (ii) **Mst. Kulsuman Nisam Vs. Khushnudi Begum, AIR 1954 All 188**

**(EE) Revision u/s. 12 of the Court-fees Act against deficient court-fee** : Where the decision as to question of payment of court-fee raised before the executing Court relates to its jurisdiction to execute the decree a revision against the decision is maintainable at the instance of the judgment-debtor. Relying upon the decision of the Supreme Court reported in Shamsher Singh vs. Rajinder Prasad, AIR 1973 SC 2384, it has been held that where the executing court decides that its jurisdiction to execute the decree for possession of immovable property is not barred by Sec. 11, Court-fees Act on account of non-payment of court-fees on the excess

amount of mesne profits decreed, the decision can hardly be called a decision relating to the court-fee for purposes of barring a revision. See : **Ganesh Prasad Varma vs. Goverdhan Dass, AIR 1975 All 146**

(F) **Defendant not to challenge in revision the deficiency in court-fee** : Revision by defendant does not lie u/s. 115 CPC on a question of insufficiency of court fee where no question of jurisdiction is involved. Defendant has no legal right to challenge insufficiency of court fee. See :

1. **Siddhartha Gautam Ram vs. Sarveshwari Samooh Kustha Sewashram, Rajghat, AIR 1995 All 52**
2. **Shamsher Singh vs. Rajinder Prasad & others, AIR 1973 SC 2384**
3. **Sri Rathnavarmaraja vs. Smt. Vimla, AIR 1961 SC 1299**

**Note:** In the case of **Ram Krishna Dhandhanian vs. Civil Judge (SD), Kanpur Nagar, 2005 (2) ARC 531 (All—D.B.)**, the Allahabad High Court, interpreting the provisions of Sec. 12 of the Court Fee Act, 1870 (as amended, updated and applied in the State of U.P.), Sec. 149 CPC r/w Order VII, r. 11 CPC, has held that the defendant has a right to raise all objections on the valuation and deficiency of the Court fees. The matter is to be adjudicated upon and decided by the Court u/s. 12 of the Court Fee Act, 1870 and the decision so taken by the trial Court shall be final. The defendant cannot raise the grievance against the said decision unless the valuation suggested by him affects the jurisdiction of the Court. However, the appellate or revisional Court can always test the issue suo-motu and make the deficiency good as the purpose of the Act is not only fixing the pecuniary jurisdiction of the Court but also creating revenue for the State. Similarly, in the case of **Arun Kumar Tiwari vs. Smt. Deepa Sharma, 2006 (1) ARC 717 (All—D.B.)**, interpreting the provisions of Sec. 34 and 37 of the Specific Relief Act, 1963, Sec. 6-A (2) of the Court Fee Act, 1870 and Order 39, r. 1 & 2 CPC, a Division Bench of the Allahabad High Court has held that when there is challenge to jurisdiction, valuation, sufficiency of Court fee or maintainability of suit, the Court is to first decide these issues and then to decide injunction application and other matters.

**44. Compensation & court-fee** : (A) On acquisition of land and award of compensation, the court-fees as provided u/s. 8 of the Court-fees Act, 1870 (as amended in U.P.) and not under Schedule II, Article 1 of that Act were leviable. See : **Om Prakash Gupta vs. State of U.P., AIR 1976 All 371**

(B) **Enhanced amount of compensation in appeal & additional court-fee**—Where during the pendency of appeal under Land Acquisition Act, 1894, the amount of compensation was enhanced and application for permission to make up the deficiency in the court-fee was moved, it has been held that the application should not have been rejected and time for making up the deficiency in the court-fee should have been granted. See :

1. **Chand Kaur vs. Union of India, (1994) 4 SCC 663**

*(Note: Two-Judge Bench decision in Chand Kaur vs. Union of India has been overruled by a Five-Judge bench of the Supreme Court vide Buta Singh vs. Union of India, (1995) 5 SCC 283 (Five-Judge Bench)*

2. **Bhag Singh vs. Union Territory of Chandigarh, AIR 1985 SC 1576**

(C) **Enhancement of compensation & court-fee on market value when not proper** : In the matter of enhancement of compensation under Land Acquisition Act, 1894, the applicant was directed by the ADJ to pay court-fee on the basis of market value of the land. The ADJ had compared a smaller plot with bigger plot and directed to determine the market value on the basis of square yard and reasonable deduction was not made. Vendor and vendee were also not produced and the case was dealt with very hurriedly. It has been held that the ADJ fell into grave error in fixing market value by comparison of smaller plot with bigger plot and determining the market value on square yard basis. Justice delayed is justice denied and justice hurried is justice buried. The court-fees was directed to be refunded to the applicant u/s. 13 of the Court-fees Act, 1870. See-- **State of U.P. vs. Suresh Chandra, 1998 (1) AWC 2(50) (NOC) (All—D.B.)**

45. **Probate or Letter of Administration involving Trust Property & Court-fee** : (A) Explaining the provisions of Sec. 19-D of the Court-fees Act, 1870 and the Suits Valuation Act, 1887, it has been held that no court-fee is payable on an application for probate or letters of administration in respect of trust properties, irrespective of the extent of trust property involved in a particular 'will'. Section 19-D makes it clear that even though no court-fee may have been paid on trust property yet probate once granted would be effective qua trust property. Where the entire property which was subject-matter of the 'will' related exclusively to trust, no Court-fee would at all be payable. See : **Kalicharan Gupta vs. Smt. Prag Devi, AIR 1972 All 117 (D.B.)**

(B) **Probate of will in U.P. & court-fee thereon** : A 'will' is execution of document of a testator to give his property to a person of his choice. Such 'Will' will be enforceable only

after the death of the testator. In some of the States of India, grant of probate by the appropriate Court of law on the 'will' is compulsory and in some of the State it is optional. In the State of U.P. to obtain probate on the 'will' is optional, therefore, as soon as the testator dies and 'will' comes into light, it operates as a valuable instrument in favour of the person in whose favour property is devolved by such will. If such person seeks a probate before the Court by filing it, no question of ad valorem Court-fee will be applicable but it will be paid as soon as Court will grant such probate in his favour. See : **Smt. Rajni Swami vs. Smt. Shakuntala Sharma, AIR 2009 All 152 (D.B.)**

(C) **Application for probate of 'will' & court-fee** : According to Sec. 7 of the Court-fees Act, 1870 and its Schedule 1, Article 11, no court fee is required to be paid on application for probate of will. Court fee prescribed on amount or value as prescribed in second and third column of Article 11 is based on valuation but this is to be affixed on probate of a 'will' not on application. Application cannot be said to be probate of 'will'. See : **Pishorilal Sethi vs. Arvind K. Jauhar, AIR 2009 MP 128 (D.B.)**

(D) **Letter of Administration & court-fee** : Section 19(I) of the Court-fees Act does not authorize the making of any order; it only prohibits the grant of letters of administration so long as the petitioner has not filed valuation and has not paid the court-fee payable on such valuation. An order requiring the petitioner to pay the court-fee or an order requiring the bank which has custody of the money belonging to the deceased to remit it so that the court-fee may be paid out of it is not an order contemplated by Section 19(1) of the Court-fees Act at all. If the petitioner does not file the valuation or does not pay the court-fee, all that the District Judge has to do is to refuse the letters of administration to him. There is, therefore, no question of any order being made by the District Judge u/s. 19(1). See : **Smt. Rajeshwari Misra vs. Markandeshwar Mahadeo Trust, AIR 1965 All 211 (D.B.)**

(E) **Petitioner must seek probate in respect of entire property bequeathed** : Although u/s. 211, the entire property of the testator vests in the executor or administrator appointed under the will and in law he is the legal representative of the deceased person for all purposes and he is entitled to administer the properties in any manner that he desires but once he decides to obtain probate of the will, he must do so in respect of the entire property devised under the will. All the assets have to be included in the schedule required to be filed u/s. 191-I of the Court-fees Act, 1870 (as amended in U.P.). The mere fact that the petitioner lays claim to one of the items of the property mentioned in the 'will', will not entitle petitioner to exclude such

property from the schedule. The jurisdiction of the Probate Court is limited only to the consideration of the validity of the will and it cannot concern itself with the disputed questions of title to the property which must be decided by a regular civil court. See : **Smt. Kamala Rajamanikkam vs. Smt. Sushila Thakur Dass, AIR 1983 All 90**

(F) **Discovery of deficiency in court-fee paid on probate & remedy** : Sec. 19-E does not provide for the calling upon any person to produce the probate or the letters of administration before the Chief Controlling Revenue Authority. If the person, to whom the probate or letters of administration has or have been granted, does not make any application u/s. 19-E and does not produce the probate or letters of administration before the Chief Controlling Revenue Authority, none of the actions contemplated by the section can at all be taken by the Authority. The section comes into operation only when the person to whom the probate or the letters have been granted discovers that, by mistake or ignorance, he had not correctly evaluated the estate and had not paid proper court-fee and he then moves the Chief Controlling Revenue Authority to rectify the defect by accepting the full proper court-fee and by causing the probate or letters to be duly stamped. In the absence of such application the Authority has no jurisdiction to take any action or pass any order under the section. See : **Rana Rudra Pratap Jung Bahadur vs. State of U.P., AIR 1975 All 362 (D.B.)**

46. **Refund of court-fee when to be ordered** : (A) The jurisdiction or the duty of a Collector u/s. 30-A of the Court-fees Act, 1870 to pay the money exists only where refund is permitted on the strength of a certificate granted by a Court i.e. where there exists a statutory provision allowing refund on the strength of a certificate. Thus, there must be a provision permitting refund and then only a Collector will honour the certificate issued by a Court. The only provisions which permit refund on the strength of a certificate are those contained in Sections 13, 14 and 15 of the Court-fees Act, 1870. In the State of U.P. a Court has no inherent power to grant a certificate for refund of court-fee. And if a Court grants a certificate in the supposed exercise of its inherent powers, it is not a case of refund being permitted on the strength of a certificate. Section 151 CPC does not permit refund on the strength of a certificate; it does not say anything about court-fee or refund of court-fee. If a Court grants a certificate u/s. 151 CPC, the Collector before whom it is produced is not bound by any law to honour it and to give money to the party producing it. See : **Tej Bahadur vs. Pearelal, AIR 1957 All 734 (D.B.)**

**(B) Remand of appeal & refund of court-fee** : Refund of Court-fee paid in appeal can be ordered u/s. 13 of the Court-Fees Act, 1870 even where the remand is made in the interest of justice as provided by the provisions of Order 41, Rule 23 as amended by the High Court of Allahabad. The provisions of Sections 2(1), 2(18), 121, 122 and 127 of CPC make it abundantly clear that the rules made by a High Court altering the rules contained in the first schedule as originally enacted by the legislature shall have the same force and effect as if they had been contained in the first schedule and therefore, necessarily became part of the Code for all the purposes. That is the clear effect of the definitions of the expressions 'Code' and 'Rules' and Sections 121, 122 and 127. Therefore it cannot be said that the reference to any provision of the CPC, 1908 pursuant to Section 158 of the Code must be to a provision occurring in the body of the main code consisting of the provisions from Section 1 to Section 158 and not to the provisions of the rules in the first schedule. It cannot also be said that even if reference to the rules in the first schedule was permissible it should only be to the rules as enacted by the legislature itself and not as amended by the High Court. See : **State of U.P. vs. Chandra Bhushan Misra, AIR 1980 SC 591**

**(C) Award of Lok-Adalat & return of court-fee** : U/s. 21(1) of the Legal Services Authorities Act, 1987, every award of the Lok Adalat shall be deemed to be a decree of a civil court or, as the case may be, an order of any other court and where a compromise or settlement has been arrived at, by a Lok Adalat in a case referred to it under sub-section (1) of section 20, the court-fee paid in such case shall be refunded in the manner provided under the Court-fees Act, 1870.

**(D) Refund of court-fee under Lok Adalat scheme 1999** : For proper and effective functioning of the Lok Adalats in the State of U.P., the U.P. State Legal Services Authority, Lucknow has formulated certain regulations called "Lok Adalat Scheme 1999". Under regulation No. 14(1) and (2) of the 1999 Scheme, it is mandatory for the Lok Adalats to mention in their awards that the parties shall be entitled to the refund of the court-fees paid by them in the cases decided by the Lok Adalats. The court-fees shall be refunded by the court executing the award made by the Lok Adalats. According to regulation No.13(1) of the aforesaid Scheme, the award of the Lok Adalat shall be executed by the court which had referred the case to the Lok Adalat. As per regulation No. 14(2) of the abovenoted Scheme, the court executing the award of the Lok Adalat shall refund the court-fees in accordance with the provisions in the Court-fees Act, 1870.

**47. Refund of court-fee u/s. 151 CPC :** In the State of U.P. a Court has no inherent power to grant a certificate for refund of court-fee. And if a Court grants a certificate in the supposed exercise of its inherent powers, it is not a case of refund being permitted on the strength of a certificate. Section 151 CPC does not permit refund on the strength of a certificate; it does not say anything about court-fee or refund of court-fee. If a Court grants a certificate u/s. 151 CPC, the Collector before whom it is produced is not bound by any law to honour it and to give money to the party producing it. See : **Tej Bahadur vs. Pearelal, AIR 1957 All 734 (D.B.)**

**48. Application for translation and printing & court-fee thereon :** An application made by the appellant under Rule 13 of Chapter 13 of the Rules of Court for the translation and printing of such parts of the record of the trial court as are considered necessary at the hearing of the appeal, is “filed in or received by” the court in a case coming before it in the exercise of its jurisdiction “as regards appeals from the courts subject to its superintendence”, and therefore such application must bear a court-fee stamp of Rs. 3-12-0. See—**Abdul Hamid vs. Abdul Rahim, AIR 1955 All 510 (F.B.)**

**49. Plea of set-off in W.S. & court-fee thereon :** (A) Explaining the provisions of Sec. 7(i), 19 and Schedule 1, Article 1 of the Court-fees Act, 1870 and Order 8, rule 6 CPC, it has been held that where in a suit to recover price of a thing supplied, the defendant in his written statement alleged non-supply of the thing and claimed certain sum as loss, the cause of action for the claim of damages being entirely different, it was a clear case of set-off and not of adjustment or payment and the defendant therefore must pay ad valorem court-fee on the amount claimed. See :

**1. Durga Prasad vs. Swami Avidya Nand, AIR 1958 All 574**

**2. Ratan Lal vs. Madari, AIR 1950 All 237**

(B) **Cross-suit by defendant & valuation & court-fee :** Both in the main clause of and in the proviso to Sec. 7(ii) (U.P.) the words used are “the amount claimed to be payable for one year”. The ‘claim’ referred to is the claim of the plaintiff. The fact that the court decrees the claim at a lesser rate is immaterial at least for purposes of valuation of the cross objection or the appeal. Thus, for the determination of the question of payment of court-fee in the appeal or for the purpose of cross objection, it is the value of the amount actually claimed by the plaintiff in the suit that is to be taken into consideration and not the lesser amount decreed by

the trial Court. See : **Darbari Lal vs. Smt. Dharam Wati, AIR 1957 All 541 (Five-Judge Bench).**

**50. Suit for accounts against Firm & court-fee thereon :** (A) Explaining Sec. 7(iv)(b) of the Court-fees Act, 1870, as amended in U.P., it has been held that though in a suit for accounts the plaintiff has to a certain extent been given the liberty of paying court fee on the amount at which he valued the relief in the plaint, this discretion is not absolute. He is required to value the suit according to the approximate sum due to him. It is not open to a plaintiff to arbitrarily value the relief claimed by him and to pay court fee only on such amount. If the court can discover from the plaint or material furnished by the plaintiff himself that the valuation given by the plaintiff is unacceptable being inaccurate and arbitrary, it has the power to direct the plaintiff to amend his plaint or take the risk of its being rejected in the event of non-compliance. See : See—**Mohd. Ajmal vs. Firm Indian Chemical Co., AIR 1978 All 21**

**(B) Suit for accounts & the valuation of the suit for purposes of jurisdiction :** Explaining Sec. 8 of the Suits Valuation Act, 1887 and Sec. 7 (iv)(b) of the Court-fees Act, 1870, as amended in U.P., it has been held that in a suit for accounts where the plaintiff asserts that a particular sum of money is due to him from the defendants on account of the business of partnership, it would be correct to say that it is the approximate sum due to the plaintiff within the meaning of the second proviso to cl. (b) of Sec. 7(iv) as amended by the U.P. Court Fees (Amendment) Act, 1938 and the plaintiff cannot be heard to say that the amount due to him cannot be ascertained without proper accounting. Where the plaintiff has put an arbitrary valuation, the mere fact that the defendants have denied the claim of the plaintiff in their written statement and alleged that the partnership had incurred losses, would not change the character of the valuation put by the plaintiff. See : **Om Prakash vs. Maya Ram, AIR 1964 All 430 (D.B.)**

**(C) In suits for rendition of accounts correct valuation ordinarily difficult & options of court regarding court-fee :** Explaining Sec. 7(iv)(f) of the Court-fees Act, 1870, Sec. 9 of the Suits Valuation Act, 1887 and Order 7, Rule 11(b) CPC together, it has been held by the Supreme Court that where objective standard of valuation is not available, court cannot reject a plaint on the ground of undervaluation. In a suit for rendition of accounts it is ordinarily difficult to value the relief correctly. Plaintiff's assessment in the plaint about the amount due to his share is a mere guess work in absence of any cogent material and would not constitute

objective standard of valuation. See : **M/s. Commercial Aviation and Travel Company vs. Vimla Pannalal, (1988) 3 SCC 423**

(D) **Suit for accounts & court-fees** : Sec. 7(iv)(b) of the Court-fees Act makes no reference to the right or interest claimed by the plaintiff. It refers to a suit for accounts. When the words are general the clause shall also be applicable to a suit by a person not claiming any personal interest in the properties sought to be accounted for. In other words, therefore, a suit, if for accounts, shall be governed by the above clause and the suit shall have to be valued and court-fee paid thereon as laid down in Sec. 7(iv)(b) of the Court-fees Act, 1870. See : **Chief Inspector of Stamps vs. Ramesh Chandra Ghatak, 1965 ALJ 890 (All)**

(E) **Tentative valuation by plaintiff in suit for accounts not to be arbitrary & unreasonable** : It is true that in a suit for accounts the plaintiff is not obliged to state the exact amount which would result after taking all the accounts and he may, therefore, put a tentative valuation upon the suit, but he is not permitted to choose an unreasonable and arbitrary figure for that purpose. In a suit for accounts the correct amount payable by one party to the other can be ascertained only when the accounts are examined and it is not possible to give an accurate valuation of the claim at the inception of the suit. The plaintiff is, therefore, allowed to give his own tentative valuation. Ordinarily the court shall not examine the correctness of the valuation chosen, but the plaintiff cannot act arbitrarily in this matter. If a plaintiff chooses whimsically a ridiculous figure it is tantamount to not exercising his right in this regard. In such a case it is not only open to the court but its duty to reject such a valuation. See :

1. **Abdul Hamid vs. Abdul Majid, AIR 1988 SC 1150**
2. **Meenakshisundaram Chettiar vs. Venkatachalam Chettiar, AIR 1979 SC 989 (Three-Judge Bench)**

51. **Duty of court when the plaintiff deliberately undervalues the suit** : The jurisdiction of the Court to entertain a suit must ordinarily depend on the allegations made in the plaint and not upon the denial of the plaintiff's claim in the written statement. The plaintiff cannot be allowed to choose his forum by deliberately undervaluing his suit. It is the function of the Court in which the suit is instituted to find out whether on the allegations made in the plaint the suit would be cognizable by that Court or not. If prima facie the allegations in the plaint disclose that the Court has no jurisdiction to grant the relief claimed in the suit and the plaintiff has deliberately under-valued the suit, the Court would have no option put to return the plaint

for presentation to the proper Court. See : **Om Prakash vs. Maya Ram, AIR 1964 All 430 (D.B.)**

**52. Notional valuation of the subject matter of suit** : In a case where the plaintiff has clearly stated that a particular sum is due to him from the partnership firm and it is alleged that the said partnership had earned profits in the course of its business, the plaintiff cannot be allowed to put an arbitrary or fictitious valuation on the suit for the purpose of jurisdiction. There may, however, be cases where the plaintiff states that it is not possible for him to ascertain the amount due to him without a proper accounting; there the plaintiff would be justified to give a notional valuation in the plaint for purposes of jurisdiction and payment of the court-fees. It would, therefore, depend on the facts of each case whether the valuation put down by the plaintiff in the plaint was the approximate sum due to him for the purpose of determining the valuation of the suit and the payment of court-fees. No hard and fast rule can be laid down for the purpose of determining the proper valuation that may be put by the plaintiff in a suit for accounts. The question has to be decided with reference to the facts and circumstance of each case. See : **Om Prakash vs. Maya Ram, AIR 1964 All 430 (D.B.)**

**53. Fiscal statutes & their interpretation** : The Court should bear in mind three well known canons of interpretation of fiscal statutes, namely, first such statutes are to be construed strictly, secondly the subject should not be made liable for payment of enhanced court-fee unless such a step is warranted by the clear provisions of the statute; and thirdly, where there is doubt in the matter, an interpretation favourable to the subject should be preferred. See : **Panzy Fernandes vs. M.F. Queoros, AIR 1963 All 153 (F.B.)**

**54. Increase in relief & court-fee thereon** : Plaintiff can increase the claim (relief) only by seeking amendment of plaint under order 6, rule 17 and paying additional court-fee on the amended claim. Power u/s. 149 CPC is available to the court in such cases. However permissibility of amendment would depend on limitation and may not be permitted after expiry of limitation period. See : **K.C. Skaria vs. Govt. of State of Kerala, (2006) 2 SCC 285**

**55. Succession certificate under Indian Succession Act, 1925 & consequences of non-payment of court-fee** : (A) Section 379 of the Indian Succession Act, 1925 is not mandatory to the extent that non-deposit of the amount equal to the court-fees payable on the succession

certificate would non-suit the petitioner or preclude the jurisdiction of the Court to entertain the same. After the certificate is granted, the non-deposit of court-fee would not render the same inoperative or ineffective. Only if the court-fees are not paid when the certificate is issued then only the application would be dismissed and the certificate would not be granted.

See : **Km. Rakhi vs. Ist ADJ, Firozabad, 2000 (1) AWC 323 (All)**

**(B) Court-fee not to be paid on application for succession certificate but on certificate itself** : The court-fee is not to be paid on the application for the issue of succession certificate but on the certificate itself. See : **Gurcharan Prasad vs. Secretary of State, AIR 1936 All 309 (D.B.)**

**(C) Relevant date for calculating amount of court-fee** : The court-fee is not to be paid on the application for the issue of succession certificate but on the certificate itself. The relevant date for calculating the amount of Court-fees therefore is not the date when the application for the issue of the certificate is made, but the date when the certificate is drawn up or perhaps the date when the Court passes an order that such certificate should be drawn up. See : **Gurcharan Prasad vs. Secretary of State, AIR 1936 All 309 (D.B.)**

**56. Suit for damages & court-fee** : (A) If the plaintiff has asked for a decree for damages, he is required to pay requisite court-fees on the amount claimed. Damages cannot be granted without payment of court-fee as per Sec. 7 of the Court-fees Act, 1870. See :

**(B) Balance court-fee when can be paid on final decree?** : In a case where damages are required to be calculated, a fixed court-fee is to be paid but on the quantum determined by the court and the balance court-fee is to be paid when a final decree is to be prepared. In such a situation having regard to order 20, rule 12 CPC, a preliminary decree is required to be passed. A proceeding for determination of the actual damages (compensation) is required to be gone into. See : **Shiv Kumar Sharma vs. Santosh Kumari, (2007) 8 SCC 600**

**57. Stage of raising objections regarding pecuniary jurisdiction** : (A) Explaining Sec. 21(2) CPC and Sec. 11 of the Suits Valuation Act, 1887, it has been held that if the objection regarding pecuniary jurisdiction of the court was not raised at the first instance or before first appellate court, the same cannot be raised subsequently at appellate or revisional stage. See : **Shivpujan Yadav vs. Bishnudeo Prasad, AIR 2009 (NOC) 1166 (Jharkhand)**

**(B) Raising objection as to valuation & court-fee at the stage of injunction application** : Where a suit for permanent injunction against defendant purchasing tenanted property was

filed with the further relief for declaration that the sale deed executed in his favour was illegal, ineffective and inoperative and two preliminary issues (i) whether suit was beyond the jurisdiction of the court and (ii) whether suit was undervalued and court-fee paid was insufficient, were framed and the question was raised whether without deciding the twin preliminary issues noted above, the trial court was justified in granting temporary injunction, it has been held by the division bench of the Allahabad High Court that the trial court was bound to first decide the preliminary objections regarding valuation and court-fee and only thereafter it could have decided the application for temporary injunction. See : **Arun Kumar Tiwari vs. Smt. Deepa Sharma, 2006 (3) AWC 2142 (D.B.)**

(C) **Plea of pecuniary jurisdiction at the stage of hearing of interim injunction application** : If the plea of pecuniary jurisdiction is raised by the defendant at the time of hearing of the application for interim (even ex-parte) injunction application u/o. 39, rule 3 CPC without filing W.S., it has been held that it is not a proper stage to question pecuniary jurisdiction of the court by the defendant and the court has jurisdiction to grant temporary injunction deferring the question of pecuniary jurisdiction of the court to be decided later on after the W.S. is filed by the defendant. See : **U.P. Pasi Jagriti Mandal, Lucknow vs. Devi Dayal, Chairman, 1997 (1) JCLR 5 (All)**

**Note:** JCLR = Judicial Civil Law Reports

(D) **Question of court-fees to be decided as preliminary point** : According to Sec. 6(4) of the Court-fees Act, 1870, as amended in U.P., the question of court-fee is a preliminary point which ought to be decided by the court before proceeding to decide the merits of the case. Sec. 6(4) directs the court to decide the question of court-fee before any other issue. It cannot be postponed till the decision of the entire suit. See : **Jagdish Rai vs. Smt. Sant Kaur, AIR 1976 Delhi 147**

(E) **Question of court-fees not to be deferred to be decided with the merit or judgment in the suit** : According to Sec. 6(4) of the Court-fees Act, 1870, as amended in U.P., the question of court-fee is a preliminary point which ought to be decided by the court before proceeding to decide the merits of the case. Sec. 6(4) directs the court to decide the question of court-fee before any other issue. It cannot be postponed till the decision of the entire suit. See : **Jagdish Rai vs. Smt. Sant Kaur, AIR 1976 Delhi 147**

(F) **Distinction between Sec. 6(3) & 6(4) of the CF Act, 1870 & when court is bound to decide the question of court-fee first** : The restriction under sub-section (3) of section 6 is

much greater than sub-section (4) of section 6. In the former the court below is prohibited absolutely from proceeding further with the suit until it has recorded a finding whether the court fee paid is sufficient. That is, the court is barred from proceeding altogether from taking any steps until it has decided the matter of sufficiency of court fees. On the contrary under sub-section (4) the only prohibition is that the court shall not proceed with any other issue until it decides the question of proper amount of court. The prohibition under sub-section (4) is only with regard to proceeding with other issues. See : **Samuel H. Joseph vs. Dr. John C. Taylor, 1990 AWC 1018 (All)**

**(G) Plaint to be rejected u/o. 7, Rule 11(c) CPC if the court-fee is not paid within the time allowed by court** : If the additional court fee is not paid within the time given by the court, the plaint may be rejected u/o. 7, Rule 11(c) CPC. See : **Jagdish Rai vs. Smt. Sant Kaur, AIR 1976 Delhi 147**

**(H) Plaint to be returned u/o. 7, Rule 10 CPC for presentation to proper court if valuation on amendment exceeds court's pecuniary jurisdiction** : If on amendment of the valuation clause of the plaint, it is found that the suit does not fall within the pecuniary jurisdiction of the court in which it has been filed, the plaint should be returned for presentation to the proper court u/o. 7, rule 10 CPC. The court has no power in such a case to demand additional court-fee and reject the plaint u/o. 7, rule 11 CPC for non payment of the requisite court-fee. See : **Jagdish Rai vs. Smt. Sant Kaur, AIR 1976 Delhi 147**

**(I) Court not to demand additional court-fee if valuation on amendment of plaint exceeds its pecuniary jurisdiction** : If on amendment of the valuation clause of the plaint, it is found that the suit does not fall within the pecuniary jurisdiction of the court in which it has been filed, the plaint should be returned for presentation to the proper court u/o. 7, rule 10 CPC. The court has no power in such a case to demand additional court-fee and reject the plaint u/o. 7, rule 11 CPC for non payment of the requisite court-fee. See : **Jagdish Rai vs. Smt. Sant Kaur, AIR 1976 Delhi 147**

**(J) Court cannot demand court-fee after disposal of the case** : Once the case has been disposed of, the court becomes *functus officio* and has no longer any jurisdiction to require the payment of any court fee to record findings on all issues and after dismissing the suit on merits, to require payment of additional court-fee is illegal and contrary to correct legal procedure. See : **Jagdish Rai vs. Smt. Sant Kaur, AIR 1976 Delhi 147**

**58(A). Relief of possession by amendment & court-fee** : Where the plaintiff had initially filed suit for declaration of certain transaction in the name of defendant as benami and relief of seeking physical possession of land in dispute was sought to amendment in pleadings, explaining Sec. 7(iv)(c) of the Court-fees Act, 1870 it has been held that the consequential relief (possession) sought for cannot be said to be mere incidental but the same was substantive relief and the direction by the trial court for payment of ad valorem court-fees was proper. See : **Sabir Mohammed Yusuf vs. Sabir Abdul Rahman, AIR 2009 (NOC) 390 (All—D.B.)**

**(B) Suit for possession of land and house & court-fee** : Where in a suit for recovery of possession of land and house, the suit was valued at Rs. four lacs, interpreting Sec. 7 (v) (i) of the Court-fees Act, 1870, it has been held that the court-fee was payable on that amount i.e. on four lacs. See : **Azizur Rahman vs. Salamat Khan, 1995 AllCJ 270 (All—D.B.)**

**(CC) Declaration, injunction, cancellation of decree regarding mortgaged property of HUF & the court-fee thereon** : A suit by a Hindu son against his father and the mortgagee decree-holder for a declaration that the mortgage executed by the father in respect of the joint family property was null and void for want of legal necessity and consideration, though couched in a declaratory form, is in substance a suit either for setting aside the decree or for a declaration with a consequential relief of injunction restraining the decree holder from executing the decree against the mortgaged property and the plaintiff is liable to pay ad valorem court-fee u/s. 7(iv)9c). A mortgage decree against the son would remain executable unless the decree is set aside, and it was essential for the son to ask for setting aside the decree. See : **Shamsher Singh vs. Rajinder Prasad, AIR 1973 SC 2384**

**(D) Injunction & possession on termination of licence & court-fee** : The possession of the licensee for all practical purposes being of owner himself, once the licence is terminated the licensee is bound to restore the possession to the owner and in the event of default, the owner is entitled to mandatory injunction to direct delivery of possession. Since a suit for mandatory injunction for delivery of possession against a licensee if brought without undue delay is maintainable, the court-fee payable would be u/s. 7(iv-B)(b) of the Court-fees Act, as amended in U.P., and not u/s. 7(v) of that Act. See : **Ajab Singh vs. Shital Puri, AIR 1993 All 138**

**59. PIL under Article 226 when exempt from court-fee** : Explaining Sec. 35 of the Court-fees Act, 1870, a Full Bench of the M.P. High Court has held that court-fees are payable

on a PIL filed as a writ petition under Art. 226 of the Constitution, except where the Chief Justice or a Judge designate directs on the basis of information received in a letter or any other document and considers that it is a fit case for registering a case under Art. 226 of the Constitution even though no court-fee is paid on such letter or document. See : **S.P. Anand vs. Registrar General, Jabalpur, AIR 2009 MP 1 (F.B.)**

**60. Property belonging to Deity & valuation & court-fee :** (A) Where the suit property in the past belonged to HUF but subsequently it was endowed to the deity and a suit for partition was filed, it has been held that simply because the property belonging to the deity belonged in the past to the Hindu Undivided Family, the suit for partition cannot be valued u/s. 4 of the Suits Valuation Act, 1887 but the valuation can be done according to Sec. 8 of the Suits Valuation Act, 1887. See : **Bhaiya Hardeo Singh vs. Dr. Shambhu Nath Singh, 1987 ALJ 1212 (All)**

**(B) Suit by trustees against Mahant regarding property of idol/deity of temple & valuation & court-fee :** The plaintiffs, trustees of a temple, sued the mahant who looked after and managed the affairs of the idol, for a mandatory injunction removing the defendant from the Tattisthan on which the temple was situated, for a prohibitory injunction restraining the defendant from frequenting the Tattisthan, and from interfering with the management of the same and other properties connected therewith, and, if necessary, for possession of the Office held by the defendant, **held that the suit involved or affected the title to the immovable properties claimed** by the plaintiffs-trustees as belonging to the idol and that the market value of the property determined the valuation of the suit for purposes of jurisdiction. See : **Radha Charan Das vs. Th. Mohini Behariji Maharaj, AIR 1975 All 368**

**(C) Suit for partition & court-fee :** Explaining Sec. 7 (iv-A) of the Court-fees Act, 1870 with regard to the partition suit, it has been held that the payment of court fee on 1/4<sup>th</sup> of the value of the plaintiffs' share in the property in a suit for partition is the normal rule. This is, however, subject to the exception that where on the date of presenting the plaint, the plaintiff is out of possession of the property and his claims to be co-owner in such property on the date of presentation of suit is denied, then the court fee payable shall be on the full value of the share. See : **Mohd. Yamin vs. Mulla Abdul Sattar, 2000 (3) AWC 2219 (All)**

**(D) Partition of HUF property & court-fee :** Whenever in a suit for partition, an alienation standing in the name of a stranger in the joint family is questioned on the ground

that the same is a joint family property, the same would require independent declaration of title not necessarily connected with the relief of partition and ad valorem Court-fee be paid on the market value of the property in the suit. See : **Rameshwar Mistry vs. Bebulal Mistry, AIR 1991 Patna 53**

(E) **Claim of independent title in HUF property & court-fee** : Where the plaintiff has claimed independent title in respect of the house as member of joint Hindu family, and in respect of the partnership business on the basis of the partnership agreement, it has been held that the case is not covered by clause (1) of Sec. 7 (iv-A) but under clause (2) of Sec. 7 (iv-A) of the Court-fees Act, 1870. The fiscal statute should be construed by golden rule of interpretation of statutes. See : **Kailash Chandra Agarwal vs. Subhash Chandra Agarwal, 1990 AWC 1035 (All)**

(F) **Plaintiff when required to pay court-fee on full value of share in partition suit** : Explaining Sec. 7 (iv-A) of the Court-fees Act, 1870 with regard to the partition suit, it has been held that the payment of court fee on 1/4<sup>th</sup> of the value of the plaintiffs' share in the property in a suit for partition is the normal rule. This is, however, subject to the exception that where on the date of presenting the plaint, the plaintiff is out of possession of the property and his claims to be co-owner in such property on the date of presentation of suit is denied, then the court fee payable shall be on the full value of the share. See : **Mohd. Yamin vs. Mulla Abdul Sattar, 2000 (3) AWC 2219 (All)**

61. **Appeal under Hindu Marriage Act, 1955 & Family Court Act, 1984 & court-fee** : The words 'application, petition or memorandum of appeal' under the Hindu Marriage Act, 1955 must relate to a substantive right of appeal under its Section 28 but when the matter is decided by the Family Court exercising power u/s. 7 of 1984 Act, the forum of appeal will be determined u/s. 19 of 1984 Act. Under Article 21-A of Schedule II of Court-fees Act as amended by U.P. Act No. 44 of 1958 a fixed Court –fee of Rs. 37.50 is payable on a memorandum of appeal. The appellant shall not be liable to pay ad valorem Court-fee on the basis of valuation contained in Section 7(1) (iv) of the Court-fees Act, 1870. A court-fee stamp of Rs. 38/- affixed by the appellant on the memo of appeal was found sufficient. See : **Dinesh Chandra Saxena vs. Smt. Nootan Saxena, 2000 (91) R.D. 42 (All)**

62. **Shortage of court-fees stamps & payment of court-fee in cash (Sec. 25-A of the Court-fees Act, 1870)** : Sometimes due to shortage of court-fees stamps, the payment of

court-fees in the form of court-fees stamps becomes quite difficult for the litigants. Keeping in view this difficulty, the U.P. Assembly in the year 1975 has passed “The Uttar Pradesh Court Fees (Payment in Cash) Act, 1975” and in new Section 25-A has been inserted in the Court-fees Act, 1870 to mete out the eventuality of shortage of court-fees stamps in the State of U.P. By virtue of insertion of this new Section 25-A in U.P. in the Court-fees Act, 1870, court-fees can be deposited in cash also in case there is shortage of court-fees stamps in the State of U.P. Newly added Section 25-A of the Court-fees Act, 1870 reads as under :

Section 25-A of the Court-fees Act, 1870 : - (1) Notwithstanding anything contained in Section 25, in case of temporary shortage of court fees stamps of required denominations, the court fee due on a document not exceeding fifty rupees, may be paid in cash to such subordinate officer or clerk of the High Court or of the subordinate court or of the authority or officer receiving the document, as may be specified by such court, authority, or officer, and such subordinate officer or clerk shall grant a receipt for the same which shall be affixed on the document concerned and such affixation shall have the same effect, as if the court fee of that amount has been duly paid in accordance with this Act.

(2) The clerk or the officer receiving the cash in lieu of the Court fee shall deposit it as revenue from judicial stamps under the head “O.—30. Stamps and Registration Fee” in the treasury or the bank, as the case may be.

(3) The State Government may by general order make rules regarding the maintenance of accounts of the amount so paid in cash.

(4) The rules and orders relating to punching and cancellation of court fee stamps shall *mutatis mutandis* apply in relation to the receipt referred to in sub-section (1).

(5) In the case of court fee due on a document exceeding fifty rupees, it may, in like circumstances, be paid in cash into the treasury (including a sub-treasury), and on such payment, the officer-in-charge of the treasury shall certify by endorsement on the document, the amount of court fee so paid in cash, and such endorsement shall have the same effect as if the court fee has been duly paid in accordance with this Act.

**63. Remission in court-fees :** U/s. 2 of the Uttar Pradesh Court Fees (Remission) Act, 1950, the State Government is empowered to remit court-fee payable on any documents. Sec. 2 of the aforesaid 1950 Act reads as under :

“**Sec. 2 of the Uttar Pradesh Court Fees (Remission) Act, 1950** : The State Government may, by notification in the Gazette, remit in whole or in part the court-fee payable on any class of documents, any provision in any law notwithstanding.”

**64. Construction of building on agricultural land & land appurtenant thereto & court-fee** : Whether the term “building” as used in Sub-sec. (v) of Sec. 7 of the Court-fees Act includes land shall depend upon the facts and circumstances of the case. Where the land is an agricultural one, but some constructions had been made thereupon, the whole of the agricultural land cannot be deemed to appertain to or from the building and valuation for purposes of court fee shall be determined separately for the land, though the market value of the building may include the value of land appurtenant to the building. In such circumstances, the valuation of the whole of the land may be determined separately from the building. But where the land is not an agricultural land and appertains to or forms part of the building, the land must be deemed to be a part of the building and both the building and the land shall, for purposes of Sec. 7(v) of the Court-fees Act, 1870 be building and court fee shall be payable on the subject-matter i.e. the rights which the plaintiffs have in such building including land. See : **Sri Krishna Sharma vs. Ram Bharosey, 1965 ALJ 959 (All)**

**65. Munsarim’s duty regarding court-fee on plaints (Rule 35, G.R. Civil)** : Rule 35 of the General Rules (Civil) casts a duty upon the Munsarim of the Court to report on the back of the plaint regarding the court fee paid by the plaintiff and if it is deficient, then record a note regarding the deficient court-fee.

**66. Inspector of stamps empowered to inspect the records of cases of courts regarding sufficiency of court-fees** : Vide G.L. No. 26 dated 9.6.1933, G.L. No. 39, dated 8.9.1933, C.L. No. 49, dated 26.8.1950, C.L. No. 51, dated 26.8.1950, G.O. No. A-585/X-224, dated 17.8.1933, G.L. No. 40, dated 1.6.1937, G.L. No. 36, dated 21.7.1938, C.L. No. 32, dated 7.7.1939, C.L. No. 96, dated 1.10.1958, C.L. No. 59, dated 2.5.1952, C.L. No. 110, dated 11.11.1953, C.L. No. 65, dated 27.4.1974, the Inspector of Stamps & offices have been authorized to make inspections of the records of the cases of courts for recording their report as to sufficiency of court-fees paid and genuineness of stamps etc. The inspection reports prepared by the Inspector of Stamps if received by the Presiding Officers through the District Judge or the Hon’ble High Court for making any compliance towards the deficiency in court-fees, the same shall be invariably complied with by the Presiding Officers concerned.

**67. Issue of certificate by court for payment of court-fees in the suits relating to Government etc. (Rule 24, G.R. Civil)** : According to Rule 24 of the General Rules (Civil), in suits by or against Government, Indian Railways, District or Municipal Boards, trustees of a trust, if any such party desires a certificate of Court fee and stamps filed in Court by it and furnishes particulars of the same, the Court shall direct the Munsarim, Reader or any other official to give such certificate free of charge upon the particulars furnished after verification from the record.

**68. Valuation to be noted on petitions (Rule 31, G.R. Civil)** : According to Rule 31 of the General Rules (Civil), in every petition on which an appealable order may be passed by the Court, the petitioner shall give the value of the subject-matter affected by the petition.

**69. Counter claim or set off by defendant & court-fee** : On a plea of set off or counter claim by the defendant in his W.S., the defendant will be required u/s. 6-A of the Court-fees Act, 1870 to pay ad-valorem court-fee on the total amount claimed by way of set off or counter claim and not only with reference to the difference between such amount and the amount claimed in the plaint. See :

1. **M/s. Shree Hari Wires vs. Central Bank of India, 1988 AWC 1143 (All—D.B.)**
2. **Ratan Lal vs. Madari, AIR 1950 All 237 (D.B.)**
3. **Durga Prasad vs. Swami Avidya Nand, AIR 1958 All 574**

**72. Rules and Remissions under the Court Fees Act (Rule 383, G.R. Civil)** : The rules framed by the State Government with respect to the kind of stamps to be used for different purposes, for denoting any fee chargeable under the Court Fees Act, 1870 as amended in Uttar Pradesh and the remissions and reductions granted by the State and Central Governments (see section 26 of the Court-Fees Act, 1870 and appendices C-III and C-V of the U.P. Stamp Manual 1945) shall be complied with by all the Courts.

**73. Punching and cancellation of stamps (Rule 384, G.R. Civil)** : (1) Each judicial officer, should, under section 30 of the Court-fees Act, 1870, formally appoint an officer for the purpose of canceling stamps. That officer, who should ordinarily be the reader for documents filed in Court and the munsarim for documents presented before him, shall personally attend to, and be personally responsible for, the strict fulfillment of the duty of receiving documents to be filed, examining the correctness and adequacy of the stamps attached thereto and immediately cancelling such stamps as are required by section 30 of the

Court-fees Act. There is no objection to the ministerial officer appointed employing trustworthy subordinates to do the mere manual work of cancelling the stamps, subject to the approval of the Court, but it will be on the distinct understanding that that officer will be personally responsible for the due execution of the duty and for any defalcation or fraud that may occur in connection with it.

**NOTE-** (1) *The presiding Judge should see that punching is done immediately on presentation of the petitions and other documents in Court.*

(2) *A rubber stamp in the following form shall also be used:*



It should be applied across the adhesive stamps and upon the paper on either side but not in such a way as to obliterate the entries thereon or to render the detection of forgeries more difficult.

(2) Too strict a compliance with the provisions of section 30 of the Court-fees Act cannot be enjoined. In all cases it should be carefully seen that the top of 'Ashoka Pillar' of the Court-fees stamps are punched out, that the pieces are destroyed, and the stamps registered before the documents to which the stamps are attached are filed or acted upon.

(3) Every judicial officer should inspect and test the work of his officers from time to time so as to ensure attention to their duty and to limit opportunities for fraud. A very efficient check could be kept on any attempt to defraud Government if each presiding judge examines daily some of the records he handles and if he also examines periodically bundles of records of cases dealt with by him, taken out at random from the shelves in which they are placed.

**74. Aggregate value and number of stamps to be noted (Rule 385, G.R. Civil) :** The official entrusted with the work of cancellation and first punching of Court-fee labels and impressed stamps shall legibly record on the document, below the stamps, the aggregate value and number of the stamps used to denote each separate fee.

When two or more impressed stamps are used the official concerned shall record the aggregate value and number of stamps on the first sheet and on the other sheets he shall make a note that it forms part of that particular document.

**75. First punching of labels on copies etc. (Rule 386, G.R. Civil)** : The Court or office issuing copies, certificates or other similar documents liable to the payment of Court-fees shall, before issue, cancel the labels affixed to them by punching out the top of 'Ashoka Pillar' label in such a manner as not to remove that part of the label upon which its value is expressed.

A portion of the stamp on the left side of the top of 'Ashoka Pillar' shall be punched out by the Munsarim on the issue of the copy, translation, certificate, probate or letters of administration. On the filing of the document a second hole shall be punched in the stamp in the manner prescribed by these rules. (Rule 258 of the U.P. Stamp Rules, 1942).

**76. Destruction of pieces punched out (Rule 387, G.R. Civil)** : The portion of the stamp removed by the punching prescribed in rules 384 and 386 shall be burnt or otherwise destroyed by the officer charged with the duty of punching it out.

**77. Report by District Judge to Board when probate is found to have been granted on insufficient duty (Rule 388, G.R. Civil)** : Every District Judge shall, report directly to the Board of Revenue, Uttar Pradesh, every instance in which it appears from accounts filed in probate and administration cases under sections 289 and 290 of the Indian Succession Act (XXXIX of 1925), that the proper Court-fee was not realized at the time the probates or letters of administration were granted to executors or administrators.

**78. Forgery of stamps to be reported to Government (Rule 389, G.R. Civil)** : The presiding Judge of every Civil Court shall report immediately to the State Government, through the Chief Inspector of Stamps, Uttar Pradesh, any instance of forgery or fraudulent use of any description of stamps, whether general, Judicial, postal or telegraph coming to his notice. Such reports shall be accompanied by full particulars as to the nature of the forgery or fraud perpetrated, and, if possible, by specimens, and shall, in the case of Judges of Courts of Small Causes, Civil Judges and Munsifs, be made through their District Judge.

**79. Use of adhesive and impressed stamps (Rule 390, G.R. Civil)** : The following directions shall be followed in the use of adhesive and impressed stamps:

(1) Where fee chargeable under the Court-fees Act, 1870 as amended in Uttar Pradesh, is less than Rs. 25 , such fee shall be denoted by adhesive stamps only.

(2) Where the fee chargeable under the said Act is Rs. 25 or above, such fee shall be denoted by impressed stamps bearing the words 'Court Fees' adhesive stamps being used only to make up fractions of Rs. 25 or less.

(3) Where the amount of the fee chargeable under the said Act involves a fraction of one paisa such fraction shall be remitted.

**80. Manner of denoting additional Court-fee payable under Section 19 of Act VII of 1870 (Rule 391, G.R. Civil)** : The additional Court fee payable under section 19-E of the Court-fee Act, 1870, as amended in Uttar Pradesh, on probate and Letters of administration shall be denoted either:-

(1) In accordance with rule 38(1) of the Uttar Pradesh Stamp Rules, 1942 by impressed and adhesive stamps in the manner prescribed in rule 34 of the aforesaid rules,

or

(2) Wholly by adhesive stamps in accordance with rule 38(2) of the Uttar Pradesh Stamp Rules, 1942 of the kind prescribed in rule 32(b) of the aforesaid rules.

Refund

**81. Refund certificate (Rule 392, G.R. Civil)** : Refund of Court fees shall be obtained by means of a refund certificate which may be granted in one of the three following ways:

- (a) on an application for refund to a Court; or
- (b) on an application for refund to the Collector supported by a certificate from the Court concerned that the refund ought to be granted (vide, Government of India, Finance Department, Notification No. 4650 of 1889); or
- (c) on an application for refund made directly to the Collector without the intervention of a Court vide -
  - (3) G.O. No 132 of 11.1.1888 as amended by G.O. No. 19/XIII-565A of 25.1.1899.
  - (4) G.O. No. 654/XIII-129 of 18.9.1916
  - (3) G.O. No. 361/XIII-68 of 10.6.1913
  - (4) G.O. No. 363/XIII-61 of 16.8.1909 Separate Revenue (Stamps) Department
  - (5) G.O. No. 1267/XIII-61 of 18.12.1919-Separate Revenue (Stamps) Department.

**82. Refund of Court-fees on order of remand (Rule 393, G.R. Civil)** : When a suit is remanded on appeal by an order under R.23,O. XLI the refund certificate shall not be granted

by the appellate Court authorizing the appellant to receive back the whole or any part of the fee paid on the memorandum of appeal until the order of remand has become final, either by being affirmed in appeal or by the expiration of the time for filing of a second appeal.

**83. Order for refund (Rule 394, G.R. Civil) :** An order for refund of Court-fees or process fees shall be made on an application bearing an office report or on an office report. The presiding Judge shall with his own hand note in figures the amount to be refunded; and the Judge shall refer to such order before signing the certificate for refund.

**84. Fee on delayed applications in outlying Courts (Rule 395, G.R. Civil)**--When an application for refund of Court-fees is made and it is found necessary in an outlying Court to call for the record of the case from the record room, the applicant will be required to pay a fee of Re. 1 if the application for refund is made beyond three weeks of the decision of the case.

**85. Certificate of refund (Rule 396, G.R. Civil) :** The refund shall be made by a certificate for refund in Form No 104 granted by the Court to the person entitled to such refund, authorizing him to receive from the Collector the amount therein specified. The sum to be paid shall be written both in words and figures by the Presiding Officer in his own hand English numerals being used for the figures.

**86. Note of refund certificate (Rule 397, G.R. Civil) :** When a refund certificate has been signed by the Judge, the clerk concerned shall record in red ink on the document bearing the stamps in respect of which the refund has been ordered, a certificate indicating that refund certificate number has been issued on (give date) for rupees (give figures) in respect of the stamps pasted above.

He shall also record, at the same time, in the remarks column of Form No. 103 against the original entry of the fee, a certificate indicating that refund certificate No..... for a sum of Rs..... has been issued on.....

**87. Parts of refund certificate and their disposal (Rule 398, G.R. Civil) :**

Part I of Form No. 104 shall be retained in the Courts and parts II and III shall be made over to the person to whom the refund or repayment is to be made for presentation to the Collector or at the treasury or sub-treasury.

Such presentation shall be made within 15 days from the date of the certificate and the certificate shall not remain in force for more than 15 days.

On the refund or repayment being made at the treasury or sub-treasury, the officer in charge shall fill up part III and return it to the Court which granted the certificate, retaining part II as his voucher for the refund or payment.

Provided that in the case of refunds where the amount to be refunded does not exceed Rs. 100, the person entitled to the refund may-

- (a) apply that the amount due, minus postal commission, be forwarded to his address by postal money-order;
- (b) obtain on the application the counter signature of a Judge, Munsif or Magistrate as to his identity, and
- (c) forward his application, countersigned, as aforesaid, to the Judge, and if the identity seems sufficiently established, parts II and III shall be sent to the Treasury Officer who shall issue a postal money-order in favour of the applicant for the sum due less postal commission.

On the issue of the money-order from the treasury the officer in charge shall fill up Part III and return it to the Court which granted the certificate, retaining part II as his voucher for the refund.

**88. Part of refund certificate and their disposal (Rule 399, G.R. Civil) :**

On receipt of part III, such officer, as the presiding Judge may appoint in this behalf shall-

- (1) paste part III to part I, noting on the former the date of its receipt from the treasury or sub-treasury;
- (2) certify below the order of the presiding Judge directing the refund or payment that the refund or repayment has been made;
- (3) file the document, on which the refund or payment was ordered, with the record, unless it has already been so filed;
- (4) record in red ink a certificate in the following form on the document bearing the stamp or stamps in respect of which the refund or payment has been made and obtain the signature of the presiding Judge thereto;

“Certified that the sum of .....has been refunded (or paid as the case may be) under certificate No..... dated ..... .” and

- (5) Make entries in columns 27 to 29 of Form No. 103 against the original entry of the fee, and record on part III of Form No. 104, the fact of such note having been made.

**89. Grove & garden on agricultural land & court-fee :** (A) The expression “garden” in Sec. 7(v)(ii) of the Court-fees Act, 1870 does not include “grove”. All groves standing on a plot in agricultural area have to be valued as ‘land’ u/s. 7(v)(i) of the Court-fees Act. Word ‘grove’ has been defined u/s. 3(6) of the U.P. Tenancy Act, 1939. A grove may consist of fruit bearing trees or of timber trees or of some other type of trees like Neem trees. It cannot be argued that a timber grove or a Neem grove is a garden. Therefore a suit for injunction in respect of a timber grove or a Neem grove will have to be valued as land. See : **Damodar Dass vs. Shanti Swaroop, 1969 ALJ 593 (All—D.B.)**

(B) **Garden or building standing upon land & its valuation & court-fee** : Where the plaintiff had brought a suit in the Court of the Munsif whose pecuniary jurisdiction extended to Rs. 5000/- for possession of the land only mentioned in A schedule to the plaint and a house mentioned in B schedule, the valuation for purposes of jurisdiction put by the plaintiff was below Rs. 5000/-, the plaintiff had not included in the valuation the value of the buildings and a garden existing on the land as he did not claim any interest or relief in respect of them, the defendant contended that he had constructed the buildings and the garden at a cost of Rs. 10000 and their value should be included in the value for purposes of jurisdiction and if so valued the suit was beyond the pecuniary jurisdiction of the Munsif, the contention was accepted by the Munsif and the plaint was returned for presentation to the proper Court then it has been held that (i) though the plaintiff had not claimed any relief in respect of the buildings and the garden if the suit of the plaintiff succeeds and he is found entitled to the relief he has claimed the defendants must either remove the buildings and do away with the garden in question or leave them as they are to be taken by the plaintiff along with the land. In the circumstances the buildings and garden must be held to be affected by the relief sought within the meaning of the term as used in section 4 of the Suits Valuation Act, 1887. (ii) Even if the suit, so far as it was a suit for possession over the land mentioned in list ‘A’ be deemed to be a suit for possession of land alone without involving or affecting the buildings or the garden standing upon it, in view of clause (e) of Rule 3 of the U.P. Suits Valuation Rules, 1942 the market value of the buildings and the garden standing on the land was bound to be added to the value of the land in order to determine the value of the land itself. There appears to be nothing in clause (e) of Rule 3 to limit its application to suits where possession over the land is

claimed along with the buildings or gardens standing upon it and to exclude from its application suits in which possession is claimed over land alone. The clause has been enacted to provide for the valuation of land and clearly lays down that in case buildings or garden stand on the land their value must be added to the value of the land determined according to the other clauses of the rule for the purpose of determining the value of the land itself. (iii) Consequently, while valuing his relief for possession over the land in list 'A' for purposes of jurisdiction the plaintiff should have added to the value of the land the market value of the buildings and garden that stood thereon. If the suit of the plaintiff had been properly valued, it would have fallen outside the pecuniary jurisdiction of the Munsif. The Munsif was, therefore, justified in ordering the plaint to be returned for presentation to proper court. See : **Shanti Prasad vs. Mahabir Singh, AIR 1957 All 402 (F.B.)**

**90. Options of court refusing leave to sue in forma pauperis** : Explaining Order 33, Rule 2, Rule 7(2), Rule 15 r/w. Sec. 149 of the CPC, it has been held that where a court has finally disposed of an application for leave to sue in *forma pauperis* so that it has ceased to have seizing of the case it cannot, by a subsequent order, grant time to pay the court-fees. This view follows from the fact that there is no proceeding pending before the court to which Sec. 149 can apply. But where the application for leave to sue in *forma pauperis* is still pending or at the time of refusing to grant leave, the court can grant time u/s. 149 CPC to pay the court-fees, and if the court-fees are paid within the time allowed by the court, the plaint would be deemed to have been filed on the date on which the application for leave to sue in *forma pauperis* was made. Order 39, Rule 15 can only apply to a case where an application for leave to sue in '*forma pauperis*' has been dismissed and an order for costs has already been passed. But where an application is still pending and at that stage the court grants time u/s. 149, rule 15 cannot be made application. An application u/o. 33, Rule 2 has to be treated as one single document, i.e., an application for permission to sue as a pauper and though it contains the particulars required to be set out in a plaint and is signed and verified in the manner prescribed for the signing and verification of pleadings, it cannot be treated as a composite document consisting of an application for permission to sue as a pauper as well as a plaint. See—**Devendar Kumar Bharti vs. Mahanta Raghuraj Bharti, AIR 1955 All 154 (Three-Judge Bench)**

**91. Transfer of pending cases of valuation between Rs. 10,001/- to 25,000/- from the Courts of Civil Judges (C.L. No. 9/IVg-24/Admn. (G), dated 21.1.1991)** : Court's

Notification No. 64/IVg-27, dated 8.2.1991 raising the pecuniary jurisdiction of Munsif to Rs. 25,000/- in view of Amendment of Section 19(2) of the Bengal, Agra and Assam Civil Courts Act, 1887 by U.P. Act No. 17 of 1991 and to say that it has come in the notice of the Court that some District Judges are not transferring the cases of the valuation upto Rs. 25,000/- from the Courts of Civil Judges to the Courts of Munsifs having the enhanced pecuniary jurisdiction of Rs. 25,000/-. The matter has been again examined by the court and the Court has decided that all pending cases up to the valuation of Rs. 25,000/- in the Court of Civil Judges to immediately transferred to Courts of Munsifs who are competent to try the cases of said value either at the Headquarters or at outlying courts as the case may be.

**92. Display of Court-fee rates (C.L. No.23/VIII-b-135, dated 1983.2.1976) :** For facility of litigants schedules of process fee, fee for copies and fee payable for verification of affidavits should be exhibited on notice boards at prominent places in various courts.

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