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construction. The words "which has been called for by the said Court" are general in their application and refer both to the case in which the High Court has *suo motu* called for records and the case where the records have been called for on the application of one of the parties. Therefore, even if the old Letters Patent applied to this case, no appeal against the order lies and if the distinction created by those words in the old Letters Patent is left out of consideration, then the old Letters Patent must be construed in exactly the same way as the Calcutta High Court construed the amended Calcutta Letters Patent and the reasoning of the Calcutta High Court applies.

I would, therefore, dismiss this appeal on the preliminary point with costs to the respondents: hearing fee five gold mohurs.

KHAJA MOHAMAD NOOR, J.—I agree.

Appeal dismissed.

APPELLATE CIVIL.

Before Kulwant Sahay and Khaja Mohamad Noor, JJ.

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Nov. 20, 21. Dec. 3.

KAMLA PRASAD

v.

JAGARNATH PRASAD.*

Court-fees Act, 1870, (*Act VII of* 1870), *section* 7(IV) (*c*) *and Article* 17—*reversionary heir, suit by, for declaration that deed of gift executed by last male holder was null and void—prayer in substance for cancellation of deed—suit, whether one for declaration and consequential relief—ad valorem court-fee payable.*

The plaintiffs as the reversionary heirs of *M* brought a suit for a declaration that a deed of gift executed by *M* was illegal, null and void and ultra vires for reasons given in

* Appeal from Original Decree no. 20 of 1930, from a decision of Babu Saudagar Singh, Subordinate Judge, Shahabad, dated the 6th September, 1929.

paragraph (5) of the plaint, those being that the gift was executed under fraud, coercion, undue influence and illegal pressure and without the free consent of *M*. In paragraph (6) of the plaint the plaintiffs alleged that if the said deed of gift be allowed to stand, it will cause serious loss to the plaintiffs and their reversionary interest in the properties will be affected; that on the 18th June, 1928, *M* during his "lucid interval" executed a deed cancelling the deed of gift, but it could not be registered; that

"as the gift is a registered one and in the opinion of the lawyers it could be cancelled by a registered deed and the deed of cancelment is an unregistered one, hence the suit".

The reliefs sought for in the plaint were as follows:—

"(1) For the reasons set forth above it may be declared by the Court that the deed of gift, dated the 1st of April, 1927, in favour of the defendant is illegal, null and void, nullity and ultra vires and that the same neither is nor can be binding upon the plaintiffs.

(2) If in the opinion of the Court the said deed of gift stands cancelled in the eye of law in view of the "cancel deed", dated the 18th June, 1928, the Court may be pleased to decide and declare that the said deed has become ineffectual and will not prejudice the plaintiffs' reversionary interest.

(3) Costs in Court with interest may be awarded against the defendant.

(4) Such other and further reliefs as to which the plaintiffs be deemed entitled may be awarded to them."

Held, (*i*) that the plaintiffs in substance asked for the cancellation of the deed of gift and a declaration;

(*ii*) that the prayer for the cancellation of the deed was a prayer for consequential relief;

(*iii*) that, therefore, the suit fell wiithin section 7(*iv*) (*c*), Court-fees Act, 1870, and ad valorem fee was payable on the value of the relief.

Tacoordeen Tewary v. *Nawab Syed Ali Hossein Khan*(1), *Samiya Mavali* v. *Minammal*(2), *Arunachalam Chetty* v. *Rangasawmy Pillai*(3), *Parvatibai* v. *Vishvanath Ganesh*(4) and *Musammat Noowooagar Ojain* v. *Shidhar Jha*(5), followed.

(1) (1874) 21 W. R. 340, P. C.
(2) (1899) I. L. R. 23 Mad. 490.
(3) (1914) I. L. R. 38 Mad. 922, F. B.
(4) (1904) I. L. R. 29 Bom. 207.
(5) (1918) 3 Pat. L. J. 194.

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Khiri Chand Mahton v. *Musammat Meghni*(1), distinguished.

Held, further, that the substance of a plaint and not merely the exact reliefs asked for ought to be looked into in order to determine the Court-fee payable on it.

Chingacham Vitil Sankaran Nair v. *Chingacham Vitil Gopala Menon*(2), followed.

Appeal by the plaintiffs.

The facts of the case material to this report are stated in the judgment of Kulwant Sahay, J.

Rai G. S. Prasad and *Chaudhury Mathura Prasad*, for the appellants.

A. K. Roy and *P. B. Ganguli*, for the respondent.

KULWANT SAHAY, J.—The question involved in the present appeal is, what is the amount of court-fee payable on the plaint? The learned Subordinate Judge has found that the suit was for a declaration with consequential relief and that the plaint was chargeable with ad-valorem court-fee on the value of the suit as given in the plaint. This would be so if the case fell under section 7(*iv*) (*c*) of the Court-fees Act. The plaintiffs, however, contended that they asked for a mere declaratory decree and no consequential relief was prayed for and, therefore, the court-fee chargeable was under Article 17 of the second Schedule to the Court-fees Act, and the Court-fee paid was Rs. 15 only.

It appears that the sarishtadar of the Subordinate Judge's Court, who was directed to check and report upon the plaint, had reported that the suit fell under section 7(*iv*) (*c*) of the Court-fees Act and that ad-valorem court-fee was payable on the plaint. The additional sarishtadar, however, made a report differing from the sarishtadar's report. He was of

(1) (1926) I. L. R. 5 Pat. 496.
(2) (1906) I. L. R. 30 Mad. 18.

opinion that the plaint asked for a mere declaration without any consequential relief, that the case was governed by the decision of this Court in *Khiri Chand Mahton* v. *Musammat Meghni*(1) and that, therefore, the court-fee paid was sufficient. The learned Subordinate Judge accepted the view of the sarishtadar and not of the additional sarishtadar and directed that ad valorem court fee be paid on the plaint. The court-fee was not paid within the time allowed by the Subordinate Judge, and accordingly he rejected the plaint by his order of the 6th of September, 1929. The plaintiffs have come up to this Court, and the only question is, what is the amount of court-fee payable on the plaint?

The plaintiffs' case in the plaint was that they were the reversionary heirs of one Motilal who died on the 1st of January, 1929, leaving a widow, Musammat Muna Kuer, who is still alive, that Motilal died at a very old age and had been ill for five years before his death; that on account of his illness and old age and the loss of his son, his brain was

" in a deranged and weak condition ",

that, after the death of a brother of his in March, 1927, he had for sometime become insane, that the defendant was the son of the brother of the wife of the said Motilal, and that he got a deed of gift, dated the 1st April, 1927, executed by Motilal, which gift was illegal, null and void and ultra vires for reasons given in paragraph 5 of the plaint, the reasons being that the gift was executed under fraud, coercion, undue influence and illegal pressure, and without the free consent of Motilal. In paragraph 6 of the plaint the plaintiffs alleged that if the said deed of gift be allowed to stand, it will cause serious loss to the plaintiffs and their reversionary interest in the properties will be affected, that on the 18th of June, 1928, Motilal during his " lucid interval " executed

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a deed cancelling the deed of gift, but it could not be registered, that

" as the gift is a registered one and in the opinion of the lawyers it could be cancelled by a registered deed and the deed of cancelment is an unregistered one, hence the suit ".

In paragraph 8 the plaintiffs stated that Musammat Muna Kuer, the wife of Motilal, was in collusion and concert with the defendants and that, therefore, she did not agree to join the plaintiffs in instituting the present suit. In paragraph 9 the cause of action was stated to have arisen on the 1st of January, 1929, the date of death of Motilal; and in paragraph 10 the plaintiffs stated that the value of the properties covered by the gift was Rs. 9,999 and that, therefore, the suit was within the cognizance of the Subordinate Judge's Court; and a court-fee of Rs. 15 was paid for a declaratory decree. The reliefs asked for in the plaint are:

" (1) For the reasons set forth above it may be declared by the Court that the deed of gift, dated the 1st of April, 1927, in favour of the defendant is illegal, null and void, nullity and ultra vires and that the same neither is nor can be binding upon the plaintiffs.

(2) If in the opinion of the Court the said deed of gift stands cancelled in the eye of law in view of the " cancel deed ", dated the 18th June, 1928, the Court may be pleased to decide and declare that the said deed has become ineffectual and will not prejudice the plaintiffs' reversionary interest.

(3) Costs in Court with interest may be awarded against the defendant.

(4) Such other and further reliefs as to which the plaintiffs be deemed entitled may be awarded to them."

It has been held in numerous cases that the substance of the plaint and not merely the exact reliefs asked for has to be looked into in order to determine the court-fee payable on the plaint. It is contended that the plaintiffs are mere reversioners and that the present possession of the estate of Motilal is with his widow, and that all that the plaintiffs require is a mere declaration that the deed of gift is illegal, null and void and that no consequential relief is or can under the circumstances of the case be asked

for by the plaintiffs. The fact that the widow is still living and that the plaintiffs have no right to immediate possession does not, to my mined, affect the question under consideration. In substance the plaintiffs ask for a cancellation of the deed of gift. They may not be in a position to derive any immediate benefit by the cancellation; but the question whether the plaintiffs derive any immediate benefit or not is not a question which can affect the court-fee payable on the plaint. If in substance the plaintiffs ask for a cancellation of the deed of gift they ask for a declaration with consequential relief, and the case clearly falls under section 7(*iv*) (*c*) of the Court-fees Act.

That a prayer for cancellation of a deed is a prayer for consequential relief cannot be denied. It has been so held in numerous cases. It was so held by the Privy Council in *Taccordeen Tewarry* v. *Nawab Syed Ali Hossein Khan*(1). That was a suit brought by the plaintiffs for confirmation of their possession of certain mauzas, and the plaint prayed that possession might be confirmed after a reversal of a summary proceeding and after setting aside a fraudulent and fabricated deed of sale set up by the defendant. The Principal Sadar Ameen gave a decree to the plaintiffs in terms of their prayer. The High Court on appeal reversed so much of the decree of the Principal Sadar Ameen as confirmed the plaintiffs' possession, holding that the plaintiffs had no possession which could be the subject of confirmation. The High Court then went into a consideration of the question whether the deed of sale was genuine or not. In dealing with this question the High Court held that they could only deal with it by way of a declaration, and they came to the conclusion that they had power to declare the plaintiffs' title to the estate but could not give any substantive relief. In dealing with the question their Lordships of the

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Privy Council observed as follows: "Their Lordships think that they (the High Court) erred in coming to that conclusion; the plaint prayed that the deeds might be set aside, which is a prayer for substantive relief, and the Principal Sadar Ameen was quite right when he came to the conclusion on the facts that the deeds ought to be set aside in making a decree to that effect."

In *Samiya Mavali* v. *Minammal*(1) the suit was to set aside a deed of sale executed by the plaintiff himself on the ground of fraud, collusion, undue influence and want of consideration. It was held that section 7(*iv*) (*c*) of the Court-fees Act applied and that the valuation given by the plaintiff was the valuation which ought to be accepted.

The question was considered by a Full Bench of the Madras High Court in *Arunachalam Chetty* v. *Rangasawmy Pillai*(2). This was a suit for a declaration that a debt under a mortgage deed executed by the father of the plaintiffs was not binding on the plaintiffs and that a decree obtained on the basis of the mortgage bond was a nullity, and for an injunction to restrain the execution of the decree. One of the questions referred to the Full Bench was, whether a suit for a declaration that an instrument of mortgage or sale executed by the plaintiff or a decree that has been passed against the plaintiff for a debt is not binding on him, is a declaratory suit only; and the answer given by the Full Bench was that suits to declare mortgage or sale deeds not binding on the party executing it cannot be brought within clause (*viii*) or any other part of the section except clause (*iv*)(*c*) of section 7. The learned Judges then proceeded to consider cases where a declaratory decree was asked for without any consequential relief, and particularly the decision in the case of *Chingacham Vitil Sankaran Nair* v. *Chingacham Vitil Gopala Menon*(3) where the point was expressly considered and it was

(1) (1899) I. L. R. 23 Mad. 490.
(2) (1914) I. L. R. 38 Mad. 922, F. B.
(3) (1906) I. L. R. 30 Mad. 18.

held that the substance and not the language of the plaint must be looked to; and though the suit in question was held to be a merely declaratory suit not involving consequential relief, the Court at the same time expressed the opinion that where it was incumbent on the plaintiff to get the document set aside before he could question it, it must be treated as involving a prayer for consequential relief and the provisions of clause (*iv*) (*c*) would be applicable. The reply given by the Full Bench was that a suit of the nature indicated which merely asked for a declaration is none the less a suit for a declaratory decree with consequential relief within the meaning of clause (*iv*) (*c*).

The decision in *Parvatibai* v. *Vishvanath Ganesh*(1) is also to the same effect. There the plaintiffs sued for cancellation of a sale deed, and the prayer in the plaint was for a declaration that the sale deed was fraudulent and for an order to have it cancelled and a copy sent to the sub-registrar as provided by section 39 of the Specific Relief Act. It was held by Sir Lawrence Jenkins, C. J., and Batchelor J. that the suit was one for a declaration with a prayer for consequential relief and the case fell under section 7(*iv*) (*c*) of the Court-fees Act.

The same view was taken by this Court in *Musammat Noowooagar Ojain* v. *Shidhar Jha*(2). There the suit was to avoid a registered deed of gift executed by the plaintiff herself on the ground of misrepresentation. It was held that the suit was one under Chapter V of the Specific Relief Act; and the decisions in *Parvatibai* v. *Vishvanath Ganesh*(1) and other cases were followed, and it was held that ad valorem court-fee was payable. In the present case the plaintiffs distinctly allege facts which bring the case under section 39 of the Specific Relief Act.

(1) (1904) I. L. R. 29 Bom. 207.
(2) (1918) 3 Pat. L. J. 194.

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The learned Advocate for the appellants has relied upon *Khiri Chand Mahton* v. *Musammat Meghni*(1). That case is no authority for the proposition contended for in the present case. The question involved there was whether court-fee had to be paid separately in respect of two reliefs claimed in a suit, where the decision with regard to one of them would render a decision with regard to the other unnecessary, or one relief would be obtainable merely upon the strength of a decision with regard to the other; and it was held that the court-fee was payable only in respect of the principal relief, but where the reliefs claimed are separate and necessary the court-fee must be paid in respect of both of them.

On a consideration of the decided cases as well as of the provisions of sub-section (*iv*), clause (*c*), and other sub-sections of section 7 of the Court-fees Act, I am of opinion that the present case falls under section 7 (*iv*) (*c*) and that the court-fee payable on the plaint is ad valorem upon the value to be stated by the plaintiffs. In the plaint the plaintiffs stated the value of the properties covered by the gift to be Rs. 9,999. It may be that this valuation was fixed by them on the understanding that they would have to pay a fixed court-fee of Rs. 15 only. The learned Subordinate Judge should have called upon the plaintiffs to value the relief sought by them under section 7(*iv*) (*c*) of the Court-fees Act instead of ordering them to pay court-fee on Rs. 9,999. I am of opinion that opportunity should now be given to them to value their relief. The order of the Subordinate Judge rejecting the plaint is set aside. He will call upon the plaintiffs to value the relief and to pay the ad valorem court-fee within a time to be fixed by him. The respondent is entitled to his costs of this appeal; hearing fee ten gold mohurs.

KHAJA MOHAMAD NOOR, J.—I agree.

Order set aside.

(1) (1926) I. L. R. 5 Pat. 496.