

**IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Md. Shabbar Rashidi

CO 1980 of 2022

***Smt. Nihar Kana Maity in place of Pulin Behari Maity
(since deceased) And Others***

Vs.

Badal Maity and Another

For the petitioners : Mr. Rabindra Nath Mahato, Adv.

For the opposite parties : Mr. Krishna Das Poddar, Adv.
Mr. Sujit Bhunia, Adv.

Heard on : 17.09.2026

Judgment on : 07.10.2026

Md. Shabbar Rashidi, J.:-

1. The instant revisional application is filed in assailment of the Order No. 43 dated May 2, 2022 passed by the learned Civil Judge, Senior Division, 2nd Court, Paschim Medinipur in Title Suit No. 88 of 2017.

2. By the impugned order the learned 2nd Civil Judge, Senior Division, directed the plaintiffs to pay the requisite ad valorem Court fees

as per the valuation of the 'Kha' schedule deed by the next hearing date following the date of the impugned order and further directed the plaint to be rejected under Order VII rule 11(c) of the Code of Civil Procedure in default of payment of ad valorem Court fees.

3. Learned advocate for the petitioner submitted that by filing the suit, the petitioner/plaintiff had sought for a decree in the form of declaration of his title over the suit properties with ancillary reliefs. The plaintiff also sought for a decree of declaration that the alleged deed was an outcome of fraud and misrepresentation and was not binding upon the plaintiff. He did not seek for cancellation of the deed, as such, he was not obliged to pay ad valorem court fee based on the valuation of the property described in the impugned deed.

4. Learned advocate for the petitioner also submitted that by filing Title Suit No. 88 of 2017, the plaintiff sought a mere declaration that the deed in question was obtained by the defendant in the suit by misrepresentation that it was a power of attorney for the purpose of looking after the properties. The plaintiff never intended to execute a deed transferring his right in the suit properties. As such, it was required to be declared that the deed was illegal and not binding upon the plaintiff. In support of his contentions, learned advocate relied upon

2005 SCC OnLine Cal 585 (Paresh Chandra Nath v. Naresh Chandra

Nath & Ors.) and 2016 SCC OnLine Cal 331 (Umapada Jati & Ors. v. Manas Jati & Ors.).

5. On the other hand, it was the contention of the learned advocate for the opposite parties that the plaintiff himself executed the deed in favour of the opposite parties. By filing the suit, although, a declaration has been sought that such deed is null and void, illegal, ineffective and not binding upon the plaintiff but in effect, the prayer so made will operate as cancellation of the deed. In such circumstances, the plaintiff was obliged to pay ad valorem court fees required for cancellation of a deed which ought to have been based on the valuation of the property as shown in the deed. To such proposition, learned advocate for the opposite parties relied upon ***(2020) 19 Supreme Court Cases 183 (Agra Diocesan Trust Association v. Anil David and Others)*** and ***(2010) 12 Supreme Court Cases 112 (Suhrid Singh alias Sardool Singh v. Randhir Singh and Others)***.

6. The predecessor in interest of the petitioners, Pulin Behari Maity had instituted Title Suit No. 2 of 2014 against opposite party No. 1 /defendant before the Court of the learned Civil Judge, Senior Division, 1st Court, Paschim Medinipur, praying for declaration of his right, title, interest and possession in the suit property, declaration that registered deed dated March 22, 2013 is illegal, inactive, fraudulent, created by

misrepresentation and not binding upon him, injunction restraining the defendants from disturbing his peaceful possession and enjoyment in the 'Kha' schedule suit property and other consequential reliefs. The opposite party No. 2 in the suit is the proforma defendant.

7. The opposite party No. 1 /defendant filed written statement denying all material averments made in the plaint of Title Suit No. 2 of 2014.

8. Pulin Behari Maity died intestate on December 13, 2016 during pendency of the suit, thereafter the petitioners have been substituted in the suit and the Title Suit No. 2 of 2014 was transferred to the Court of the learned 2nd Civil Judge, Senior Division, Paschim Medinipur and renumbered as Title Suit No. 88 of 2017.

9. The opposite party No. 1 /defendant filed an application of February 18, 2020, praying for direction upon the petitioners/plaintiffs to pay ad valorem Court fees over the value assessed by the plaintiffs.

10. The plaintiffs filed written objection to the application on March 14, 2022.

11. The learned 2nd Civil Judge, Senior Division, Paschim Medinipur, by an Order No. 43 dated May 2, 2022, allowed the application filed by the opposite party No. 1 /defendant and directed the

plaintiffs to pay the requisite ad valorem Court fees as per the valuation of the 'Kha' schedule deed.

12. Being aggrieved and dissatisfied with Order No. 43 dated May 2, 2022, the petitioners/ plaintiffs filed the instant revisional application being C.O. 1980 of 2022 praying for issuing a Rule calling upon the opposite party No. 1 /defendant to show cause as to why the Order No. 43 dated May 2, 2022 should not be set aside and for an ad-interim order of stay of the operation of the said impugned order till the disposal of the said Rule.

13. As noted above, the predecessor of the plaintiffs filed Title Suit No. 2 of 2014 which was subsequently renumbered as Title Suit No. 88 of 2017 wherein the impugned order was passed. The plaint in such suit has been annexed to the revisional application. It was averred in such plaint that the original plaintiff was the owner of the suit properties. At the relevant point of time, he was suffering from various diseases and was dependent upon his second son i.e. the defendant, who used to reside with him, for his physical wellbeing as well as for maintaining his properties. The eldest son of the plaintiff used to reside at Medinipur owing to his job.

14. A further case was made out in the plaint that the plaintiff was suffering from heart disease. His eldest son instructed the defendant to

take the plaintiff to Medinipur for consultation with a doctor. The defendant asked the plaintiff to execute a Power of Attorney in his favour in order to enable him to look after the properties. While on his way to Medinipur, the plaintiff was brought by the defendant to the Registry Office at Kharagpur and got a deed of gift executed by him in the name of execution of a Power of Attorney authorizing the defendant to look after the properties belonging to the plaintiff. At the request of the plaintiff to read out the contents of the deed, the defendant in collusion with the deed writer, in a preplanned manner, read out the contents of a Power of Attorney. The plaintiff put his signature on the said document knowing it to be a Power of Attorney, which was converted into a deed of gift in favour of defendant. It was contended that the original plaintiff had three sons including the defendant and seven daughters.

15. In the backdrop of such case made out, the plaintiff filed the Title Suit seeking the following reliefs, that's to say:

- i. *“Decree for declaration that the plaintiff had right, title and possession of the ‘Ka’ schedule properties;*
- ii. *Decree for declaration that ‘Kha’ schedule deed was illegal, inoperative, fraudulent created by misrepresentation and was not binding upon the plaintiff;*
- iii. *Decree for permanent injunction so that the defendant may not interfere with right, title and peaceful possession of the plaintiff over ‘Ka’ schedule properties;*
- iv. *Decree for costs of the suit;*

v. Decree for reliefs that the plaintiff was entitled in law and equity.

In the plaint, the plaintiff described the suit valuation on the basis of reliefs claimed and valued the suit at ₹7,83,497/-, on account of declaration of title and injunction.”

16. According to the case made out by the defendant in the impugned application, the plaintiff valued the suit at ₹7,83,497/- in terms of Section 7 (vi) (b) of West Bengal Court Fees Act, however, they failed to pay ad valorem court fee on such assessed value. For which, it was prayed that the plaintiff may be directed to pay ad valorem court fee on such assessed valuation of the suit.

17. As evident from the plaint, the plaintiff at the time of filing the suit valued the reliefs at ₹7,83,497/-. Such statement does not specify that such valuation has been assessed in terms of Section 7 (vi) (b) of West Bengal Court Fees Act, 1970 as stated in the impugned application filed on behalf of the defendant. There is no such averment in the plaint that valuation of the suit or relief was assessed in accordance with Section 7 (vi) (b) of West Bengal Court Fees Act, 1970. Such provision of the Act of 1970 is in respect of suit for recovery of possession of immovable property from a licensee on revocation of license. The case made out in the plaint or the application filed by defendant, apparently, does not fall within such category.

18. Chapter III, Section 7 of the West Bengal Court Fees Act, 1970 deals with the computation of court fees, which is as follows:

“7. The amount of fee payable under this Act in the suits next hereinafter mentioned shall be computed as follows:-

(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;

'Provided that no Fee shall be payable in suit for damages for defamation;

(ii) 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 suit by widows for maintenance such value shall be deemed to be the amount claimed to be payable for one year;

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

(iv) In suits-

(a) for movable property where the subject-matter has no market value, as for instance, in the case of documents relating to title,

(b) to obtain a declaratory decree or order, where consequential relief is prayed,

(c) to obtain an injunction,

(d) for a right to some benefit (not herein otherwise provided for) to arise out of land, and

(e) for accounts- according to the amount at which the relief sought is valued in the plaint or memorandum of appeal subject to the provisions of section 1.

In all such suits the plaintiff shall state the amount at which he values the relief sought.

(v) In suits for the possession of land, buildings or gardens, not being suits referred to in clause (vi)-

(a) according to the value of the subject-matter, and such value shall be deemed to be fifteen times the net profits which have arisen from the land, building or garden during the year next before the date of presenting the plaint, or if the Court sees reason to think that such profits have been wrongly estimated, fifteen times such amount as the Court may assess as such profits or according to the market-value of the land, building or garden, whichever is lower;

(b) if, in the opinion of the Court, such profits are not readily ascertainable or assessable, or where there are no such profits, according to the market-value of the land, building or garden;

Explanation. - In this paragraph 'building' includes a house, outhouse, stable, privy, urinal, shed, hut, wall and any other such structure, whether of masonry, bricks, wood, mud, metal or any other material whatsoever;

(vi) In a suit for recovery of possession of immovable property from-

a) trespasser, where no declaration of title to property is either prayed for or necessary for disposal of the suit- according to the amount at which the relief sought is valued in the plaint subject to the provisions of section 11;

b) licensee upon revocation or termination of his license,-

(i) where a license fee is payable by the licensee in respect of the immovable property to which the suit refers-according to the amount of the license fee of the immovable property payable for the year next before the date of presenting the plaint, or

(ii) where no such license fee is payable by the licensee-according to the amount at which the relief sought is valued on the plaint subject to the provisions of section 11;

.....
.....”

19. In **Sri Umapada Jati** (supra), a Coordinate Bench of this Hon’ble Court observed that,

“33. In the instant case, the plaintiffs have asserted that the plaintiffs are in possession of the suit property. The plaintiffs have not claimed recovery of possession. The plaintiffs are not the executant of the said documents. The plaintiffs have clearly averred that the said documents were executed by some of the defendants fraudulently and by misrepresentation that the said defendants were authorized to execute such deed on behalf of the plaintiffs. The plaintiffs further averred that the defendants have fraudulently executed such document and the transactions are sham transactions. In my view, in such a situation the plaintiffs would not be required to pay ad valorem court-fees on the basis of the consideration amount mentioned in deeds under challenge. The decision of the Hon’ble Supreme Court in Suhrid Singh @ Sardool Singh (supra) is clearly distinguishable on facts. Under the West Bengal Court-fees Act, 1870 there is no proviso in Section 7(iv) (c) of the Court-fee similar to the proviso to Section 7(iv)(c) in the State of Punjab. The view taken by the lower Court would mean that the suit is liable to fail in absence of a prayer for cancellation of the

impugned deeds and hence valuation is to be determined on the basis of the value mentioned in the deed of sale. This approach was incorrect. In the instant case, on the basis of the averments in the plaint, declaration can be granted without cancellation of the deeds.”

20. Similarly in a situation similar to the instant case, another Coordinate Bench of this Court in the case of ***Paresh Chandra Nath*** (supra) was of the view that,

“9. The plaintiff claims that the defendant No. 1, who is his brother, has allegedly obtained a deed of gift from him fraudulently giving the plaintiff an impression that the plaintiff was executing a power-of-attorney in favour of the defendant No. 1 for protecting the boundary of the land of the plaintiff. This is a suit for declaration simpliciter and the relief of setting aside of the deed is consequential. From the careful reading of the plaint, it is clear that the prayer for declaration that the defendant No. 1 obtained the deed of gift by practising fraud on the plaintiff is the substance of the claim.

10. Whether proper Court-fees are paid on a plaint is primarily a question between the plaintiff and the State. The learned Judge in the Lower Appellate Court rightly held that the suit has been properly valued and proper Court-fees have been paid. The defendant, who may believe and even honestly, that proper Court-fees have not been paid by the plaintiff, has still no right to move the Superior Court against the order adjudging payment of Court-fees payable on the plaint.”

21. The case of ***Suhrid Sing alias Sardool Singh*** (supra) was distinguished in the case of ***Sri Umapada Jati*** (supra) on the ground that under the West Bengal Court-fees Act, there is no proviso in Section 7(iv) (c) of the Court-fee similar to the proviso to Section 7(iv) (c) in the State of Punjab. The case of ***Anil David*** (supra) is also distinguishable on similar grounds. The aforesaid case involved the Court Fee Act of the State of Uttar Pradesh which is not *pari materia* to Section 7 of the West Bengal Court Fee Act.

22. In the present proceeding the title suit was for declaration of title coupled with permanent injunction in respect of immoveable properties. The plaintiff has had his dwelling house over the suit property and in any case, the plaintiff never stated that he was dispossessed from such properties asking for a decree of recovery of possession. He simply asked for an injunction restraining the defendant from interfering with his possession over the suit properties, upon declaration of his title thereon. In such view of the facts, the plaintiff was liable to pay court fee in terms of Section 7 (iv) (b) of West Bengal Court Fees Act, 1970. There is no relief claimed in the suit justifying computation of court fee in terms of Sub-section (v) or (vi) of the said Act.

23. Consequently, on the basis of discussions made hereinabove, the impugned order cannot be sustained in the facts and circumstances of the present case. The same is hereby set aside.

24. With the aforesaid observations and directions, the instant Civil Order application being **C.O. 1980 of 2022** is accordingly disposed of without any order as to costs.

25. Learned trial court shall proceed with the suit in accordance with law.

26. Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties on priority basis upon compliance of all formalities.

[MD. SHABBAR RASHIDI, J.]