

Chief Justice's Court

Case :- MATTERS UNDER ARTICLE 227 No. - 5685 of 2024

Petitioner :- Surendra Kumar
Respondent :- Shanti Devi
Counsel for Petitioner :- Diwakar Pratap Pandey,Uday Kumar
Counsel for Respondent :- Anand Kumar Singh,C.S.C.

Hon'ble Arun Bhansali,Chief Justice
Hon'ble Jaspreet Singh,J.
(Per:- Jaspreet Singh, J.)

This judgment has been divided into segments to facilitate analysis.

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A. Introduction and Issues:-

1. A question of seminal importance as to whether an agreement to sell can be construed as an instrument securing money or other property so as to attract the provisions of Section 7(iv-A) of the Court Fees Act, 1870 (for short, 'the Court Fees Act') as amended and applicable in the State of U.P., is in for consideration before this Court. If it is held that an agreement to sell is not an instrument securing money or other property then as a corollary whether in a suit for seeking cancellation of such an agreement to sell, the court fee payable would be in terms of Article 17(iii) of the Second

Schedule of the Court Fees Act or as per or Section 7(iv-A) of the Court Fees Act.

2. This issue arose before a learned Single Judge of this Court in **Surendra Kumar v. Shanti Devi**, a petition under Article 227 of the Constitution of India bearing No.5685 of 2024, wherein, the learned Single Judge doubted the view of another Single Judge of this Court in **Altaf Husain v. VIth Additional District Judge, Saharanpur and others, 2013 SCC OnLine All 13493** and also in **Suman Lata Agrawal v. Uttar Pradesh State Industrial Development Corporation and others, 2020 SCC OnLine All 2785**, wherein it was held that an agreement to sell does not secure money nor any other property and that the court fee payable in a suit seeking cancellation of such an instrument would be governed by Article 17(iii) of the Court Fees Act and not as per Section 7(iv-A) of the Court Fees Act.

3. The learned Single Judge in **Surendra Kumar** (supra) noticed that the decision in **Altaf Husain** (supra) was based on a Full Bench decision of this Court in **Smt. Bibbi and another v. Sughan Chand and others, AIR 1968 All 216 [FB]**, but in **Smt. Bibbi** (supra) the issue was as to whether a sale-deed would be an instrument securing property or not, however, the Full Bench had no occasion to consider the effect of the words 'instrument securing money or other property' in context with an agreement to sell. Thus, finding a dichotomy in the aforesaid decisions, the learned Single Judge referred two questions to be answered by a Larger Bench.

4. It is in this backdrop that this Larger Bench was constituted to consider and answer the following questions which read as under:-

"(I) Whether, an agreement to sale, which is duly registered, would amount to an instrument securing the money or other property as used in Section 7 (iv-a) of the Court Fees Act as applicable in the State of Uttar Pradesh?

(II) Whether, the court fees paid on the suit for cancellation of an agreement to sale would be governed by Section 7 (v) of the Court Fees Act or under Article 17 (iii) of the Second Schedule of the Court Fees Act?"

5. Considering the gravity of the questions so referred to this Larger Bench, this Court apart from hearing the learned counsel appearing for the parties in the petition also invited Members of the Bar to advance their submissions on the questions referred to this Larger Bench.

6. Learned counsel for the petitioner canvassed the proposition that an agreement to sell does not secure any property or money, hence, a suit seeking cancellation of an agreement to sell would not fall within the clutches of Section 7(iv-A) of the Court Fees Act rather it would be covered by Section 17(iii) of the Second Schedule appended to the Court Fees Act as applicable to the State of U.P.

7. The said proposition was also supported by Shri Prithish Kumar, Shri S.M.S. Royekwar, Shri Ayush Tandon and Shri Reshu Sharma, Advocates and learned counsel, who advanced their submissions on behalf of the Bar.

8. On the other hand, Shri Anand Singh, learned standing counsel for the State and learned counsel appearing for the private-respondent submitted that an agreement to sell is definitely an instrument and it secures the property and/or money, hence, it will squarely fall within the ambit of Section 7(iv-A) of the Court Fees Act and further the court fee payable on a suit seeking cancellation of such an agreement to sell would be on *ad valorem* basis.

B. Submissions on Behalf of the Petitioner:-

9. Learned counsel for the petitioner submits that the word 'instrument' has not been defined in the Court Fees Act but if it is seen in context with the definition contained in certain other Acts then it will reveal that an agreement to sell is definitely an instrument as defined in terms of Transfer of Property Act, 1882 (for short, 'T.P. Act'). It has also been urged that the word 'instrument' has also been defined in the Indian Stamp Act, 1899 (for short, 'the Stamp Act'). Upon a bare perusal of the definition of the word 'instrument', as mentioned in the T.P. Act as well as in the Stamp Act it would reveal that it is very widely worded and so an agreement to sell would fall within the same and it cannot be said that an agreement to sell is not an instrument.

10. It is further urged that the transaction which is made through an agreement to sell creates obligations in between the contracting parties and it also brings certainty to the said transaction. The reciprocal obligations of contracting party are squarely relatable to the subject matter which could be the property and money, hence, an agreement to sell secures both the property and the money (as the case may be). Once, it is found that an agreement to sell is an instrument and it secures the property/money then as per the Scheme of the Court Fees Act, the suit filed seeking cancellation of such an agreement to sell would be squarely covered by Section 7(iv-A) of the Court Fees Act. It is, thus, submitted a suit seeking cancellation of agreement to sell falls under Section 7(iv-A) of the Court Fees Act and in terms of the aforesaid, the court fee payable is ad valorem considering the explanation appended to Section 7(iv-A) of the Court Fees Act, at the

market value, and not as per Article 17(iii) of the Second Schedule of the Court Fees Act.

C. Submissions on Behalf of the Respondents and State of U.P.:-

11. Shri Anand Singh, learned standing counsel has forcefully submitted that in order to unravel the controversy, the provisions of Section 7(iv-A) of the Court Fees Act be noticed. It is urged that the said Section applies whenever a suit is filed for seeking a relief of cancellation. In terms of the said Section, cancellation can either be of (i) a decree for money or other property having a market value or (ii) an instrument securing money or other property.

12. It is urged that the agreement to sell would fall within the meaning of word 'instrument' and whenever a suit is filed for seeking cancellation of an instrument then in terms of the Scheme of the Court Fees Act, such a suit would fall in terms of Section 7(iv-A) of the Court Fees Act, hence, the plaintiff of a suit seeking of cancellation would have to pay *ad valorem* court fee as per the explanation appended to the aforesaid section and not as per Article 17 of the Second Schedule of the Court Fees Act.

13. It is further urged that Article 17 of the Second Schedule of the Court Fees Act is a residuary article and only when a suit containing a relief which may not fall in any of the categories as provided under Section 7 of the Court Fees Act, only then it comes into play. However, in the present case, the agreement to sell being an instrument and falling squarely in terms of Section 7(iv-A) of the Court Fees Act, hence, the residuary Article cannot be invoked, accordingly, the court fees is to be paid in terms of the

aforesaid Section 7(iv-A) of the Court Fees Act.

14. Learned counsel for the private-respondent has also by and large adopted the submissions of Shri Anand Singh, learned standing counsel for the State.

D. Submissions on Behalf of the Members of the Bar:-

15. The submissions have been advanced by Shri Pritish Kumar, Shri S.M.S. Royekwar, Shri Ayush Tandon and Shri Reshu Sharma, learned counsel and Members of the Bar.

16. Shri Pritish Kumar, learned counsel leading the submissions has vehemently urged that the Court Fees Act is a fiscal statute and it is to be strictly construed. The Scheme of the Court Fees Act is such that Section 7 itself has various sub-sections and they relate to different types of suits which can be filed before the Civil Court.

17. It is further submitted that it is only the plaint averments which are to be seen while determining the issue of court fees and in order to do so, the plaint averments have to be read as it is and nothing can be added or subtracted.

18. It is also urged that the terminology used in Section 7(iv-A) of the Court Fees Act reveals that it is attracted when a person approaches a Court for seeking cancellation or getting a decree or instrument adjudged void or voidable which secures money or property, having a market value. As far as a decree is concerned, there does not appear to be much of a problem because the decree being a formal adjudication of the rights of the parties it can explicitly be seen from the judgment from which the decree arises as to

whether the said decree secures a property or money or not. In such circumstances, whenever, a suit for cancellation or getting such a decree adjudged as void or voidable is brought then Section 7(iv-A) of the Court Fees Act would clearly be attracted.

19. It is further urged that insofar as the latter part of said Section is concerned, the same is only applicable when a suit is filed seeking cancellation or getting an instrument adjudged void or voidable, however, the instrument itself should be capable of securing either the property or money, or both.

20. It is submitted that since an agreement to sell may not secure the property in light of Section 54 of the T.P. Act which states that a contract for sale of an immovable property does not by itself create any interest in or charge on such property, hence, an agreement to sell does not secure the property nor money coupled with the fact that an agreement to sell is not even an instrument which secures money, hence, the said Section 7(iv-A) of the Court Fees Act is not attracted and as such a suit, which seeks to get an agreement to sell cancelled, would not fall under Section 7(iv-A) of the Court Fees Act rather it will fall within the residuary provision of Article 17(iii) of the Court Fees Act for the purposes of payment of Court Fee.

21. Shri Royekwar, learned counsel taking the submissions forward has urged that an instrument capable of securing money or property is one which by itself secures the said money or property. Instruments of such nature are *interalia* a promissory note, mortgage deed, bill of lading, cheques, negotiable instruments, a deed of hypothecation, a deed of charge, a deed of pledge. In contradistinction an agreement to sell only reflects the

intention of the vendor to sell and acceptance of the vendee to purchase the property, on the terms and conditions as may be mentioned in the said agreement to sell. However, in no way, the property which may be the subject matter of the said agreement to sell is secured in any manner nor the money which may have been paid as earnest money or the remaining part consideration which may be paid at a future date is secured. Hence, neither the property nor the money is secured. Accordingly, an agreement to sell cannot be said to be an instrument securing either property or money. Hence, it would not attract Section 7(iv-A) of the Court Fees Act rather in a suit seeking cancellation of an agreement to sell it would be governed by Article 17(iii) of the Court Fees Act and to that extent the decision rendered by this Court in **Altaf Husain** (supra) reflects the correct position of law.

22. Shri Ayush Tandon and Shri Reshu Sharma, learned counsel also advanced their submissions and by and large supported the view as expressed by Shri Prithish Kumar and Shri Royekwar.

E. Discussions and Analysis:-

23. Having considered the wide spectrum of the arguments advanced and before proceeding further, it will be appropriate to reproduce the first question referred to this Larger Bench for consideration:-

"(I) Whether, an agreement to sale, which is duly registered, would amount to an instrument securing the money or other property as used in Section 7 (iv-a) of the Court Fees Act as applicable in the State of Uttar Pradesh?"

24. At the outset, it may be seen that the Court Fees Act, 1870 is a Pre-Independence Act. The said Act came to be amended in the year 1938. Section 7 of the Court Fees Act, which is under the scanner of this Court,

has a nomenclature and it is further sub-divided in eleven sub-parts.

25. For the sake of convenience, the entire Section 7 as applicable to the State of U.P., along with its eleven sub-parts is reproduced here in order to get a complete overview of the said section, at one given place:-

"7. Computation of fees payable in certain suits for money.—The amount of fee payable under this Act in the suits 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, or 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.*—(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 movable property other than money, where the subject-matter has a market value-according to such value at the date of presenting the plaint;

***For a 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 the 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 (v), (v-A) or (v-B) of this section as the case may be :

Provided further that in all suits falling under clause (a), such amount shall in on 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.

(iv-A) *For cancellation or adjudging void instruments and decree.*—

(iv-A) In suits 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 party 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-sections (v), (v-A) or (v-B), as the case may be.

(iv-B) For easement.—In suits—

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

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

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

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

(e) To set aside an award other than awards mentioned in Section 8.—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 one-fifth of the market value of the property involved in or effected by the relief sought or Rs.200 whichever is greater :

Provided further that in the case of suits falling under clauses (a) and (b), the amount of court-fee leviable shall in no case exceed Rs.500.

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 (c) 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.

(iv-C) For restitution of conjugal rights.—In suits-

(a) For the restitution of conjugal rights;

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

(c) For guardianship.—for establishing 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 marriage; but in no case shall such amount be less than Rs.200.

(v) For possession of lands, buildings or gardens.—In suits for 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 three years immediately preceding the date of presenting the plaint—

twenty times the annual average of such net profits; but when no such net profits have arisen therefrom, 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—

according to the market-value of the building or garden, as the case may be.

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.

(v-A) For possession of superior proprietary and under-proprietary land. 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 proprietary;

(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 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.

(v-B) Possessory suits between tenants.—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 tenancy affected is governed by clause (a), (b) or (c) of this sub-section.

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

(vi-A) for partition.—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 sub-sections (v), (v-A) or (v-B), as the case may be.

(vii) For interest of assignee of land revenue.—In suit 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.

(viii) To set aside or to restore an attachment.—In suits to set aside or to restore an attachment including suits to set aside an order passed under Order XXI, Rules 60, 61 or 62 of the Code of Civil Procedure according to half of the amount for which attachment was made, or 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-sections (v), (v-A) or (v-B), as the case may be.

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

(ix-A) To foreclose.—In suits by mortgagee to foreclose the mortgage, or where the mortgage is made by conditional sale, to have the sale declared solute-according to the total amount claimed by way of principal and interest.

(x) To specific performance.—In suits for specific performance—

(a) of a contract of sale—according to the amount of the consideration;

(b) of 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 in dispute, and such value 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-sections (v), (v-A) or (v-B), as the case may be.

(xi) Between landlord and tenant.—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 a 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 plaintiff to be the annual rent."

26. From a perusal of the aforesaid Section, it would reveal that sub-part

(i) relates to suits for money; (ii) relates to maintenance of annuities; (iii) is relatable to movable properties having market value; (iv) relates to suits for declaratory decree with consequential reliefs; (iv-A) relates to suits seeking cancellation or adjudging void instruments and decrees; (iv-B) relates to

suits for easement and it further has five sub-divisions which inter alia refers even to suits for injunction; (iv-C) relates to suits for restitution of conjugal rights and inter alia also brings within its fold suits relating to marital rights and guardianship; (v) relates to suits for possession of land, buildings or gardens; (v-A) for possession of superior proprietary and under proprietary rights in the land; (v-B) possessory suits between tenants; (vi) to enforce a right of preemption; (vi-A) for partition; (vii) for interest of assignee of land revenue; (viii) to set aside or to restore to an attachment; (ix) to redeem against a mortgagee for recovery of mortgaged property; (ix-A) to foreclose a mortgage; (x) for specific performance and (xi) suits between landlord and tenants. This would primarily indicate the broad classification of Section 7 which encompasses almost all types and nature of suits, which may be filed. It also indicates the court fee which may be payable depending upon the nature of relief sought in a suit and which may fall in any of the aforesaid classifications.

27. For a better appreciation of the controversy, it will be appropriate to take a closer look at Section 7(iv-A) of the Court Fees Act, which reads as under:-

"For cancellation or adjudging void instruments and decree.—(iv-A) In suits 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 party 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-sections (v), (v-A) or (v-B), as the case may be."

28. On the perusal of the aforesaid section, it would indicate that any suit filed which involves cancellation or adjudging void or voidable, a decree for money or other property or an instrument securing money or other property, would fall in the aforesaid category. So far as a decree for money or other property is concerned that may not pose much of a problem since the decree in itself is a formal adjudication of rights of the litigating parties which emerges from the judgment of a Court, it can shed light as to whether it relates to money or other property or both. Hence, in respect of this part generally there may not be much difficulty to ascertain the correctness of the court fee payable.

29. However, the core question to be answered is whether an agreement to sell is an instrument or not. In case, if it is such then whether it secures money or other property. If the two conditions are met that is to say that an agreement to sell is an instrument and it secures either money or other property or both, then it would fall within the aforesaid provision of Section 7(iv-A) of the Court Fees Act.

30. The first condition to be ascertained is whether an agreement to sell is an 'instrument' or not. In order to discern the same, it will be relevant to find out the appropriate meaning of the word 'instrument' for the purposes of the Court Fees Act.

31. The word 'instrument' is a generic word and unless it is read in context to a particular subject matter or perspective, it may give rise to

different meanings which may not be helpful to understand the subject and context in which it is used.

32. Since, the word 'instrument' is not defined in the Court Fees Act, accordingly, it will be prudent to notice the meaning of the word 'instrument' with the aid of legal dictionary and contemporaneous Acts and then put it a context with reference to the subject.

33. In Stroud's Judicial Dictionary 'Words and Phrases', Eighth Edition, the word 'instrument' as applicable in different contexts has been mentioned as:-

"INSTRUMENT. An "instrument" is a writing, and generally imports a document of a formal legal kind. Semble, the word may include an Act of Parliament (see DEED OF SETTLEMENT) and in s.68 of the Trustee Act 1925 (c. 18), it was specifically defined as including an Act of Parliament. But in Canada a statute was held not to be an "instrument" within r.607 (Ont.) (Re Mann Const. 51 D.L.R. (2d) 580), and it is doubtful whether a by-law is an "instrument" within r.611 (Ont.) (Re Mosport Park and Clarke [1970] 3 O.R.94).

"The words 'instrument of foundation or statutes', Endowed Schools Act 1869 (c.56), s.19, and Endowed Schools Act 1873 (c.87), s.7, point with great distinctness to written instruments" (per Selborne C., St. Leonards Trustees Charity Commissioners, 10 App. Cas. 304); and "entitled under any instrument", Malins' Act (c.57) s.1, did not include an intestacy (Allcard v Walker [1896] 2 Ch. 369; see Re Elcom [1894] 1 Ch. 303).

A power by "deed, instrument, or will" is well executed by a mere writing which is neither a deed nor a will, provided the document refers to the power, or can only have effect by operating on a fund which is subject to the power, e.g. an order, a letter, or a cheque on the fund; and this is not altered by the power providing that the "deed, instrument, or will" shall not be "executed" until after a stated event (*Brodrick v Brown*, 1 K. & J. 328). See WRITING; INSTRUMENT IN WRITING; TESTAMENTARY INSTRUMENT.

Orders of Court were not "instruments" within Apportionment Act 1834 (c.22) 5.2 (*Jodrell v Jodrell*, L.R. 7 Eq. 461).

A post office telegram accepting a wager was an "instrument" within Forgery Act 1861 (c.98) s.38 (*R. v Riley* [1896] 1 Q.B. 309), and where an envelope was sent through the post and postmarked and a betting slip was subsequently placed in the envelope after the time when a race had been run (though the postmark on the envelope was anterior to the running of the race) held that the envelope and betting slip were a "forged instrument" within the section (*R. v Howse*, 107 L.T. 239). Under Forgery Act 1913 (c.27) s.7. a letter might be an instrument, that expression not being confined to a document having legal effect (*R. v Cade* [1914] 2 K.B. 209).

A deed relating to a partnership business, executed by one partner who forged his partner's signature thereto and kept the document from his partner's knowledge, was an "instrument", within Partnership Act 1890 (c.39) s.6 (*Re Briggs* [1906] 2 K.B. 209).

Instrument whereby any property is transferred to, or vested in, any person" (Stamp Act 1891 (c.39) s.62): see *Kemp v Inland Revenue Commissioners* [1905] 1 K.B. 581, cited ASSENT.

"Instrument", in the phrase "bond, covenant, or instrument" (Stamp Act 1870 (c.97) Sch.) meant an instrument of the same nature as "bond" or "covenant" with which it was associated. i.e. one which was a security for money (*Thames Conservators v Inland Revenue Commissioners*, 18 Q.B.D. 279, cp. *Limmer Asphalte Co v Inland Revenue Commissioners* L.R. 7 Ex. 211; and *Sweetmeat Co v Inland Revenue Commissioners* [1895] 1 Q.B. 484; See PERLODICAL). A document whereby money was made payable for a telephone service was an "instrument" for the "security" of money within the phrase, and required the bond ad valorem duty on the aggregate amount necessarily payable thereunder, i.e. the whole of the payments for the period for which the service must necessarily continue (*National Telephone Co v Inland Revenue* [1900] A.C. 1). See further *Durham Electrical Power Co v Inland Revenue Commissioners* [1909] 1 K.B. 787; [1909] 2 K.B. 604.

"Instrument executed" (Stamp Act 1891 (c.39) s.14(4)). The judge's order by which the court sanctioned a scheme of arrangement for taking over outstanding minority shares, was a written document and therefore an "instrument" within this section (*Sun Alliance Insurance v IRC* [1971] 2 W.L.R. 432).

"Instrument" in Exemption 11 to receipt, Stamp Act 1891 (above) Sch.: see *London & Westminster Bank v Inland Revenue Commissioners* [1900] 1 Q.B. 166.

"Instrument", under r.30 of the Public Trustee Rules 1912; see *Re Cherry's Trusts* [1914] 1 Ch. 83.

Any document which, if it is to be a valid document, must have a seal on it at the time of execution (e.g. under s.52 of the Law of Property Act 1925 (c.20)), is an "instrument" within the meaning of s.47(4) of the Solicitors Act 1932 (c.37), now s. 22 of the Solicitors Act 1974 (c.47) (*Kushner v Law Society* [1952] 1 K.B. 264).

"Instrument" (Landlord and Tenant Act 1954 (c.56) s.38(4), as amended by Law of Property Act 1969 (c.59) s.5)). An order of the county court made by consent of the parties, in the precise terms of a compromise agreement between the landlord and tenant can constitute an "instrument" for the purposes of this section; even though no formal lease is executed (*Tottenham Hotspur Football Co v Princegrove Publishers* [1974] 1 W.L.R. 113).

34. In Wharton's Law Lexicon, the word 'instrument' has been shown to

mean as under:-

"Instrument [instrumentum, Lat., fr. instruo, to prepare or provide], a formal legal writing-e.g., a record, charter, deed or transfer, or agreement. By s.205(1)(viii) of the (English) Law of Property Act, 1925, 'Instrument' (for the purposes of the Act) 'does not include a Statute, unless the Statute creates a Settlement.' See also Settled Land Act, 1925, S.117; see also TRUST INSTRUMENT; VESTING INSTRUMENT. A

telegram and an envelope with a falsified postmark have been held to be 'instruments' within the meaning of the Forgery Act, 1861, s. 38, now replaced by s.7, (English) Forgery Act, 1913 [*R. v. Riley*, (1896) 1 QB 309; *R. v. House*, 28 TLR 186]; also an engine.

Includes every document by which any right or liability is, or purports to be, created, transferred, modified, limited, extended, suspended, extinguished or recorded. [Notaries Act, 1952 (53 of 1952), s. 2(b)]."

35. It will be apposite to notice the meaning of the word 'instrument', as defined in certain contemporaneous Acts to get a clearer perspective as to what meaning should be ascribed to and be adopted for the Court Fees Act.

36. In the T.P. Act, the word 'instrument' has been defined in Section 3 as under:-

"3. Interpretation clause.- x x x

"Instrument".-"Instrument" means a non-testamentary instrument."

Apparently, if the word 'instrument' is seen in context of the T.P. Act, then an agreement to sell which is nothing but a contract wherein one party agrees to sell and the other party agrees to buy and it gives rise to obligations which are enforceable in law and it apparently is a non-testamentary document too, hence, can certainly qualify to be an instrument.

37. Similarly, the word 'instrument' has been defined in Section 2(14) of the Indian Stamp Act, 1899 [which needless to say is also a fiscal statute as similar to the Court Fees Act] as under:-

"Instrument".-"Instrument" includes every document and record created or maintained in or by an electronic storage and retrieval device or media by which any right or liability is, or purports to be, created, transferred, limited, extended, extinguished or recorded."

This would indicate that the word 'instrument' has been defined in very wide terms and if an agreement to sell is tested on the aforesaid anvil, it definitely would fall within the aforesaid four corners of the word

'instrument'.

38. It will be relevant to notice Article 5 of Schedule-I B of the Stamp Act as applicable to the State of U.P., which indicates the nature of the Instrument and the stamp duty payable thereon and the said Article relating to an agreement (as a type of an instrument) is being reproduced here for ease of reference:-

"5 Agreement or memorandum of an agreement

- (a) If relating to the sale of a bill of exchange; [Ten rupees]
- (b) If relating to the sale of a Government security or share in an incorporated company or other body corporate; Subject to a maximum of [one thousand rupees; ten rupees for every Rs.20,000] or part thereof of the value of the security or share.
- [b-1] If relating to the sale of an immovable property where possession is not admitted to have been delivered without executing the conveyance:- The same duty as on Conveyance [No.23 clause (a)] on one half of the amount of consideration as set forth in the agreement.

Provided that when conveyance in pursuance of such agreement is executed, the duty paid under this clause in excess of the duty payable under clause (c) shall be adjusted towards the total duty payable on the conveyance.]

- [(b-2)] if relating to the construction of a building on a land by a person other than the owner or lessee of such land and having a stipulation that after construction, such building shall be held jointly or severally by that other person and the owner or lessee, as the case may be, of such land, or that it shall be sold jointly or severally by them or that a part of it shall be held jointly or severally by them and the remaining part thereof shall be sold jointly or severally by them. The same duty as a Conveyance [No.23 clause (a)] for a consideration equal to the amount or value of the land.

Explanation

For the purposes of this clause-

- (1) the expression "land" shall include things attached to the earth, or permanently fastened to anything attached to the earth.
- (2) the expression "lessee" shall mean a holder of a lease in perpetuity or for a period of thirty years or more.
- (3) the expression "building" shall mean a building having more than one flat or office accommodation or both and the expression "flat" shall have the meaning assigned to it in the Uttar Pradesh Ownership of Flats Act, 1975.]

- (c) if not otherwise provided for [One hundred rupees]
Exemption
 Agreement or memorandum of agreement-
 (a) [***]
 (b) made in the form of tenders to the Central
 Government for, or relating to, any loan.]"

Article 5[b-1] clearly refers to an agreement to sell and thus the Stamp Act engulfs an agreement to sell within its domain.

39. At this stage, it will be relevant to notice certain decisions of the Apex Court wherein the word 'instrument' has been interpreted. (i) In **Purshottam H. Jaye v. V.B. Pottdar, AIR 1966 SC 856**, it was held that the word instrument would refer to a document executed by the parties and it also included an award. (ii) While in **Som Prakash Rekhi v. Union of India, AIR 1981 SC 212**, the Apex Court categorically held that the expression instrument certainly covers a trust deed. (iii) In **Gopi Krishna Trivedi v. Sudama Prasad Ojha, (2008) 9 SCC 401**, the Apex Court held that the document containing the terms and conditions of agreement and receipts whereby the liability and rights have been created or purported to have been transferred and extended or created, would come within the meaning of the word 'instrument' in context with Section 2(14) of the Indian Stamp Act.

40. In light of the aforesaid decisions and considering Article 5(b-1) and 5(b-2) of the Stamp Act, there can be no doubt that an agreement to sell is definitely an instrument and it can so be held even for the purposes of the Court Fees Act.

41. Having come to a conclusion that an agreement to sell is an instrument for the purposes of the Court Fees Act, now, it will be apposite

to ascertain whether an 'agreement to sell' secures money or property or both or nothing at all.

42. Now, insofar as an agreement to sell, if noticed, it would reveal that primarily it is an agreement between two parties wherein one agrees to sell and other agrees to buy at a future date on the terms and conditions as agreed, for a consideration mentioned therein. Thus, it is a contract between the parties which results in creating a jural relationship between the contracting parties and in case of breach, the aggrieved party has a legal right to have it enforced against the other party.

43. In this regard, it will be relevant to notice Section 2 of the Indian Contract Act, 1872 (for short, 'the Contract Act'), which is the interpretation clause and it gives a clear indication as to what is an agreement. For ready reference, Section 2 of the Contract Act is being reproduced hereinafter:-

"2. Interpretation clause.—In this Act the following words and expressions are used in the following senses, unless a contrary intention appears from the context:—

(a) When one person signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of that other to such act or abstinence, he is said to make a "proposal":

(b) When the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. A proposal, when accepted, becomes a "promise":

(c) The person making the proposal is called the "promisor", and the person accepting the proposal is called the "promisee":

(d) When, at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or to abstain from doing, something, such act or abstinence or promise is called a consideration for the promise;

(e) Every promise and every set of promises, forming the consideration for each other, is an agreement;

(f) Promises which form the consideration or part of the consideration for each other, are called reciprocal promises;

(g) An agreement not enforceable by law is said to be void;

(h) **An agreement enforceable by law is a contract;**

(i) An agreement which is enforceable by law at the option of one or more of the parties thereto, but not at the option of the other or others, is

a voidable contract;

(j) A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable."

44. From a perusal of the above Section 2(a) to (h), it would indicate that every promise and every set of promises, forming the consideration for each other, is an agreement and an agreement enforceable by law is a contract.

45. In the Sale of Goods Act, 1930 (for short, 'the Act of 1930') formation of a contract has been provided in Chapter II and Section 4 of the Act of 1930 provides for sale and agreement to sell for ease of reference the said provision is reproduced as under:-

**"CHAPTER II
FORMATION OF THE CONTRACT**

Contract of sale

4. Sale and agreement to sell.—(1) A contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price. There may be a contract of sale between one part-owner and another.

(2) A contract of sale may be absolute or conditional.

(3) Where under a contract of sale the property in the goods is transferred from the seller to the buyer, the contract is called a sale, but where the transfer of the property in the goods is to take place at a future time or subject to some condition thereafter to be fulfilled, the contract is called an agreement to sell.

(4) An agreement to sell becomes a sale when the time elapses or the conditions are fulfilled subject to which the property in the goods is to be transferred."

From a perusal of the aforesaid Section 4(4), it would indicate that so far as the Act of 1930 is concerned, the term contract of sale includes an agreement to sell.

46. An agreement to sell, if examined, has attributes of a contract and it gives rise to jural relationship between the contracting parties and it also gives rise to obligations and liability on the contracting parties and needless

to say that such rights can relate to a property or money and it can also even relate to tangible or intangible property and rights which are recognized in law and in case of breach or infringement of the rights and obligations created it can be enforced in law.

47. The word 'sale' relating to an immovable property, is defined in Section 54 of the T.P. Act and it reads as under:-

"CHAPTER III
OF SALES OF IMMOVABLE PROPERTY

54. **"Sale" defined.**—"Sale" is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised.

Sale how made.—Such transfer, in the case of tangible immovable property of the value of one hundred rupees and upwards, or in the case of a reversion or other intangible thing, can be made only by a registered instrument.

In the case of tangible immovable property of a value less than one hundred rupees, such transfer may be made either by a registered instrument or by delivery of the property.

Delivery of tangible immovable property takes place when the seller places the buyer, or such person as he directs, in possession of the property.

Contract for sale.—A contract for the sale of immovable property is a contract that a sale of such property shall take place on terms settled between the parties.

It does not, of itself, create any interest in or charge on such property."

From the above, it would be clear that so far as Section 54 of the T.P. Act is concerned, it relates only to immovable property and it states that it is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised. In the aforesaid Section, it also provides that a contract for sale of an immovable property is a contract that a sale of such property shall take place on terms settled between the parties. It does not, of itself, create any interest in or charge on such property.

48. Though an agreement to sell relating to an immovable property in terms of Section 54 of the T.P. Act may not amount to a transfer of

ownership, immediately which is only possible upon execution of the sale-deed in terms of Section 54 of the T.P. Act, however, conspicuously an agreement to sell acts as vital preliminary document that secures and makes certain, the obligations and the transactions relating to the property and the money or consideration involved, which is the basis for any future legal recourse for the contracting parties, in case of a breach.

49. From the point of view of the T.P. Act, in essence, it may not directly secure the property as in context of a mortgage (where the property is collateral for a loan) but nevertheless an agreement to sell definitely provides a robust contractual framework that protects the interest of both the contracting parties. Moreover, such an agreement lays down the terms agreed between the contracting parties including the details of the subject matter of the agreement, which may be a movable or an immovable, tangible or intangible property including the terms of payment, which makes certain and safe the rights and obligations of the contracting parties.

50. Now seen from the point of view of the buyer, the agreement to sell brings in security, commitment and certainty that the seller shall sell the property to the buyer on the given terms and subject to fulfillment of the obligation by the buyer. At the same time, it also amounts to protecting the advance money paid as not only the entire sale consideration is clearly set out but it also acknowledges the receipt of the advance money and that the remaining part of the consideration left, would be payable at what stage and time. Moreover, the buyer is assured that in case of breach, he has the right to get the agreement enforced through law.

51. Similarly, if seen from the point of view of the seller, it clearly

delineates the time span within which he is assured of receiving the entire consideration and till such time the said contract (agreement to sell) is in force as per the settled terms and time, the seller holds the property in trust for the buyer, whereafter the seller if may so choose can repudiate the contract and can even forfeit the consideration or may seek damages as the case may be.

52. At this stage itself, it will be apposite to notice the meaning and connotation of the word 'obligation'. In Blacks Law Dictionary, Eighth Edition - 'Obligation' is defined as under:-

"Obligation, n. 1. A legal or moral duty to do or not do something. The word has many wide and varied meanings. It may refer to anything that a person is bound to do or forbear from doing, whether the duty is imposed by law, contract, promise, social relations, courtesy, kindness, or morality. **2.** A formal, binding agreement or acknowledgment of a liability to pay a certain amount or to do a certain thing for a particular person or set of persons; esp., a duty arising by contract.-Also termed (in sense 2) *civil obligation*. See DUTY (1); LIABILITY (1). [Cases: Contracts 1. C.J.S. Contracts 2-3, 9, 12.] **3.** *Civil law.* A legal relationship in which one person, the obligor, is bound to render a performance in favor of another, the obligee. La. Civ. Code art. 1756."

"The primary meaning given to the word by the Oxford English Dictionary is - The action of binding oneself by oath, promise or contract to do or forbear something. The word 'obligation' is not limited to a contractual obligation or the payment or non-payment of money undertaking given to the Courts is an obligation. Re. *British Concrete Pipe Association*, (1983) 1 All ER 203, 205. [Iron and Steel Act, 1969, S. 8(1)]"

53. Thus from the above, it is clear that an agreement to sell does give rise to reciprocal obligations. Now, it will be pertinent to notice what does the word 'secure' connote. The word 'secure' is also a generic word and would have different meaning depending upon the context and object where the said word occurs and is used.

In Advance Law Lexicon, 5 Edition by P. Ramanatha Aiyar's, the word 'secure' is explained as under:-

"Secure". Webster defines "secure" to mean "to make certain; to put beyond hazard." To secure "is to make safe, to put beyond hazard of losing or of not receiving, as to secure a debt by a mortgage; it also means to get safely in possession, to obtain, to acquire certainly, as to secure an inheritance or a price."

"Secures" as used in a contract whereby a vendor agrees to execute a conveyance thereof as soon as the vendee secures the payment of purchase money, means not a payment in money but given by the vendee of something by means whereof payment at some future time can be procured or compelled. [Words and Phrases Permanent Edition, Vol. 38, page 45-8 **as cited** in *Kailash Chand v. Vth A.C. Judge, Meerut*, 1999 ALL LJ 940: AIR 1999 All 151]."

54. In Stroud's Judicial Dictionary of Words and Phrases Eighth Edition, the word 'secure' has been mentioned as under:-

"SECURE. The direction in Matrimonial Causes Act 1857 (c.85) s.32 to "secure" a gross or annual sum to a wife, did not authorise an order for payment direct to the wife, but meant that the sum was to be secured in such a way as to provide for her (*Medley v Medley*, 7 P.D. 122). " 'An order to secure seems to suggest a disposition or obligation of some sort, made or entered into pursuant to the order, as opposed to a mere direction to pay contained in the order itself" (per Jenkins L.J.. in *Yates v Starkey* [1951] Ch. 465). Se further *Twentyman v Twentyman* [1903] P.86, cited GROSS: *Barker v Barker* [1952] 1 All E.R. 1128.

"Securing" the payment of royalties (Copyright Act 1911 (c.46) s.19(6): see *Monckton v Pathé Frères Pathéphone, Ltd* [1914] 1 K.B. 395."

55. From the perusal of the above, it would indicate that the word 'secure' is also to be understood in context with the object of the enactment where it is used. Hence, the meaning of a word should not be taken in abstract and regard must be had to the settings in which the word occurs as well as keeping in mind the object and the subject matter.

56. Thus, considering the Court Fees Act, it would reveal that it has no interpretation or definition clause, hence, the Court Fees Act never intended to give any specific or special meaning to any word used in the Court Fees Act nor its usage was intended to be restricted. In such circumstances, the words used in the Court Fees Act, are to be interpreted widely as per its natural meaning.

57. In **Principles of Statutory Interpretation by Justice G.P. Singh, 15th Edition**, it has been provided that while interpreting any provision of an Act, the subject and the object must be kept in mind so that expressions used in the Act should ordinarily be understood in the sense in which they can best be harmonized with the object of the Act. The object and reason of a statute signifies the intention of Legislature behind the enactment and is useful in understanding the impact of the provision while interpreting the same. The principle is that object of the statute must be kept in mind and the word from the expression used in the Act must be understood in the sense that would be natural and proper.

58. Similarly, in another celebrated treatise **by Bennion, Bailey and Norbury on Statutory Interpretation, Eighth Edition**, it states that ordinary terms and phrases must be ascribed and understood according to its usage. The Courts should generally not supply their own definition and when there are several ordinary meaning to a word or phrase then as a starting point, the most common and well established meaning must be taken. Thus, any word, term or phrase should not be given a technical meaning which should be reserved only for technical words and where the common term is used in context with any expertise, only than a technical meaning can be given to a word having several meaning. In the aforesaid treatise, it has been stated that the principle being, that words are to be understood in their natural, ordinary or popular sense and it has been well expressed by **Justice Frankfurter, "After all legislative when not expressed in technical term is addressed to common run of men and is, therefore, to be understood according to the sense of the things, as the**

ordinary man has a right to rely on ordinary words addressed."

59. Now in the above discussed background, if Section 7(iv-A) of the Court Fees Act is seen, the words used therein 'instrument securing money or other property', must be given its general meaning and noticing the definition and meaning of the word 'instrument', 'securing money' or 'other property', would indicate that these words as used by the legislature while enacting the law, are all generic in nature and when these words are used in a context, it can divulge its true meaning.

60. Significantly, the Court Fees Act is a statute which was made to include all types of suits within its fold and put them under any one of the said categories as provided under Section 7(i) to 7(ix) of the Court Fees Act. In case if any specific technical meaning is ascribed to the words 'instrument' or 'securing money' or 'property', then it may give rise to a situation where any one particular suit may not fall in any of the categories as mentioned in the Court Fees Act considering the sea change which has occurred in the legal field and with emphasis on specialization and complex contracts relating to transfer of highly sophisticated technology, computers, softwares, accessories, other products and machines including technical knowhow, patents, designs, intellectual property rights, amongst others, which may result in defeating the purpose of the Court Fees Act. Such an interpretation which defeats the purpose cannot be accepted.

61. As a common person, who is interested in purchasing or selling a property (which could be of any type) and in furtherance thereof a contract is drawn. This is done primarily for the purposes of expressing in writing the unequivocal intention of the contracting parties, their terms on which

they propose to purchase or sell, the property. It also brings certainty to the terms and conditions agreed which reduces the scope of ambiguity and chances of resiling from the terms agreed to, which leads to securing money or property or both as the case may be and the parties are confident that if any of the contracting party defaults then the aggrieved party has remedy of enforcing the contract through the Court of law.

62. In this regard, the Specific Relief Act, 1963 (for short, 'the Act of 1963') was enacted to provide remedies to persons whose civil or contractual rights are violated and the Act of 1963 *inter alia* provides remedies for recovery of possession of property, specific performance of contracts, rectifications of instrument, rescission of contracts, cancellation of instruments, declaratory decrees, reliefs and injunctions.

63. If the Scheme of the Specific Relief Act, 1963 is seen, it would indicate that remedy for specific performance of contract has been provided in Chapter II which takes within its folds Sections 9 to 25. Chapter III has only one Section i.e. Section 26 which relates to rectification of instruments. Chapter V comprises of Sections 31 to 33 relating to cancellation of instruments.

64. The aforesaid provisions have been noticed by this Court only to amplify that the contractual rights of a person has been made enforceable in terms of Sections 10, 13, 15 to 17, 19 to 21 of the Act of 1963 which upon perusal permits specific enforcement of a contract both relating to movable and immovable property. So much so, that a person, who promises to sell, if breaches the said term of contract, it gives a right to the buyer to compel the seller to perform his part of the contract specifically by compelling him

to sell the agreed property to the buyer off course subject to fulfilling his obligations under the contract.

65. Now, in this background, if any party who wishes to buy or sell a property, as the case may be, and the sale is to take place in future and yet any of the parties wishes to create a jural relationship relating to the subject matter of proposed sale and also get the terms certain, secured including the subject matter then in the given circumstances, apart from an agreement to sell, there does not exist any other mode to get the terms secured, certain and keep the property safe, till such time, the sale-deed is executed.

66. Now, let us consider the word 'property' and its meaning. The word 'property' as generally understood, can take and include within its fold, all that a person has control and dominance over it. 'Property' is a word of widest import and its meaning can be limited or expanded in the context of its usage. Generally, it may signify every possible interest which a person can clearly hold or enjoy.

67. At this stage, it will also be pertinent to notice that the word 'property' used in Section 7(iv-A) of the Court Fees Act does not in any manner exclude 'movable property' nor it is confined to an immovable property. If the word 'property' is considered, it would reveal that it is generic in nature and unless the said word is put in context, its various and multiple meanings can be incoherent.

68. The T.P. Act in Section 5 clearly provides that transfer of property can relate to both movable and immovable and Section 6 indicates what may be transferred. For ease of reference, Sections 5 and 6 of the T.P. Act is

being reproduced hereinafter:-

"5. **“Transfer of property” defined.**—In the following sections “transfer of property” means an act by which a living person conveys property, in present or in future, to one or more other living persons, or to himself, or to himself and one or more other living persons; and “to transfer property” is to perform such act.

In this section “living person” includes a company or association or body of individuals, whether incorporated or not, but nothing herein contained shall affect any law for the time being in force relating to transfer of property to or by companies, associations or bodies of individuals."

6. **What may be transferred.**—Property of any kind may be transferred, except as otherwise provided by this Act or by any other law for the time being in force,—

(a) The chance of an heir-apparent succeeding to an estate, the chance of a relation obtaining a legacy on the death of a kinsman, or any other mere possibility of a like nature, cannot be transferred;

(b) A mere right of re-entry for breach of a condition subsequent cannot be transferred to any one except the owner of the property affected thereby;

(c) An easement cannot be transferred apart from the dominant heritage;

(d) All interest in property restricted in its enjoyment to the owner personally cannot be transferred by him;

(dd) A right to future maintenance, in whatsoever manner arising, secured or determined, cannot be transferred;

(e) A mere right to sue cannot be transferred;

(f) A public office cannot be transferred, nor can the salary of a public officer, whether before or after it has become payable;

(g) Stipends allowed to military naval, air-force and civil pensioners of the Government and political pensions cannot be transferred;

(h) No transfer can be made (1) in so far as it is opposed to the nature of the interest affected thereby, or (2) for an unlawful object or consideration within the meaning of section 23 of the Indian Contract Act, 1872 (9 of 1872), or (3) to a person legally disqualified to be transferee;

(i) Nothing in this section shall be deemed to authorize a tenant having an untransferable right of occupancy, the farmer of an estate in respect of which default has been made in paying revenue, or the lessee of an estate, under the management of a Court of Wards, to assign his interest as such tenant, farmer or lessee."

69. In contradistinction, the word 'property' as defined in the Act of 1930 means a general property in goods and not merely a special property. The word 'goods' has also been defined in the Act of 1930. In Section 2(7) which primarily relates to movable property other than actionable claims and money, however, it includes stock and shares, growing crops, grass and

things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale.

70. In continuation, the word 'property' has also been defined in the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (for short, 'the Act of 2007'). Section 2(f), defines the word 'property' to mean property of any kind, whether movable or immovable, ancestral or self-acquired, tangible or intangible and includes rights or interests in such property.

71. Thus, from the above, it would be clear that depending upon the context and the purpose of the subject, the word 'property' can be construed differently, that is to say it can either be construed widely as seen in the Act of 2007 and somehow in a restricted manner as per the Act of 1930 while it would take within its fold, as per the T.P. Act, both movable and immovable property which is transferable in terms of Section 6 of the T.P. Act.

72. In light of detailed contemplation, it can clearly be ascertained that the word 'property' used in terms of Section 7(iv-A) of the Court Fees Act cannot be narrowly construed and it includes within its ambit both movable and immovable, tangible or intangible and all such rights and obligations including actionable claims which arise out of contracts and can be transferred or assigned and all would constitute 'property'.

73. In the aforesaid backdrop, now it will be appropriate to take note of certain decisions, relating to Section 7(iv-A) of the Court Fees Act.

(i) A Division Bench of this Court in **Udai Pratap Gir and another v. Shanta Devi and others, 1956 SCC OnLine All 318** taking note of

Section 7(iv-A) of the Court Fees Act as applicable in the State of U.P., found that a Will is an instrument which after the death of the testator secures property. It further held that the word 'to secure', as used in Section 7(iv-A) of the Court Fees Act has a wide meaning and the definition most appropriate would be in the context in which it is to be adopted. The relevant paragraphs 4, 5 and 6 are being reproduced hereinafter:-

"4. As has been pointed out in several cases this section is not aptly worded, the phrase "instrument securing money or other property" in particular being obscure: but it is that expression which has to be construed in this appeal.

5. The word 'instrument' in our opinion means a legal document. We can see, with respect, no I sufficient justification for the view expressed by a learned single Judge in a recent case, *Gulab Chand v. Jaswant Singh*, 1956 All 71 (A), that 'instrument' has the same meaning here as is assigned to it in the Indian Stamp Act. The real difficulty centres around the meaning of the word 'securing'. To lawyers and laymen alike an instrument securing money will at once suggest a mortgage or charge; but what is an instrument securing property?

6. The verb 'to secure' has a wide meaning, and we think that the definition most appropriate in the present context is to make secure or certain (Murray) or to make safe (Oxford). Such also was the view of Venkataramana Rao, J. in *C. Sodemma v. P. Krishnamurthy*, 1938 Mad 824 (AIR V25) (B) and of Sapru J. In *Kamla Devi v. Sunni Central Board of Waqfs, U.P.*, 1949 All 62 (AIR V36) (C)."

(ii) In **Smt. Bishnu Shri v. Smt. Suraj Mukhi and others, AIR 1966 All 563 (FB)**, the issue before the Full Bench of this Court was as to whether a 'Will' secures the property or money. Dealing with the aforesaid issue, the Full Bench of this Court referred to Section 7(iv-A) of the Court Fees Act and after taking note of the word 'instrument' and the word 'secure', and concluded that a Will after the death of the testator is an instrument which secures the property or money and it also noticed a proposition that the applicability of the provision is to be seen on the date of institution of the suit. The relevant portion reads as under:-

"(6) The word instrument in S.7 (iv-A) includes formal or legal documents in writing. It is sufficiently broad to include wills also (Words and Phrases (Permanent Edition), Vol. 214, p.521). The word "securing"

is the present participle from verb "to secure". It has got various meanings (Words and Phrases (Permanent Edition), Vol. 38. p. 458) "Secures", as used in a contract whereby a vendor agrees to execute a conveyance thereof as soon as the vendee secures the payment of purchase money. means not a payment in money, but the giving by the vendees of something by means whereof payment at some future time can be procured or compelled (Ibid. Webster defines "secures" to mean "to make certain", "to put beyond hazard" "To secure" is to make safe, to put, beyond hazard of losing or of not receiving, as to secure a debt by a mortgage; it also means to get safely in possession, to obtain to acquire certainly, as to secure an inheritance or a price (ibid. 459)

(7) The question is whether a will can be regarded as a legal document which makes any property secure or safe. Section 2 (h) of the Indian Succession Act defines a will as a "legal declaration of the intention of the testator with respect to his property which he desires to be carried into effect after his death. "It is well known that during the life-time of the executant, the will is ambulatory It could be revoked by him at his will. Accordingly a will does not secure any property during the lifetime of the executant. Section 7 (iv-A) does not require that an instrument should secure money or property having money value from the moment of its birth. It seems to us that whether an instrument secures money or property having money value within the meaning of S. 7 (iv-A) is to be decided with reference to the date of the institution of the suit. It is to be seen whether a particular instrument secures on the date of the institution of the suit money or property having money value. This reference necessarily follows from a collocational reading of this section with S. 39 of the Specific Relief Act. If this is so, as we think, then there is little doubt that on the date of the institution of the suit in this case the will did secure property. Ganga Prasad the testator had died, and after his death the will became irrevocable. Upon his death his estate would be disposed of in accordance with his directions in the will. Accordingly it can be said that on the death of the testator the will secures money or property having money value. We, therefore, hold that the court-fee paid on the plaint and the memorandum of appeal is insufficient. The amount of deficiency mentioned in the office report should now be paid by the plaintiff within three months."

(iii) In Chief Inspector of Stamps, Uttar Pradesh, Allahabad v. Vishnu Pratap Sugar Works, AIR 1967 All 242, considering the provision of Section 7(iv-A) of the Court Fees Act, a learned Single Judge of this Court in Paragraphs 14, 15 and 16 held as under:-

"14. The meaning of the term "securing money or other property having such value" has been the subject of consideration by this Court in numerous cases and I may say, this Court has consistently taken one view. It was in one single Judge decision alone that a contrary view was expressed. That is the case of *Chief Inspector of Stamps v. Jash Pal Singh* [A.I.R. 1956 All. 168.] . Further, in *Mohd. Habibur Rahman Khan v. Abdul Qadir Faruqi*, I.L.R. (1961) 1 All. 17, the above single Judge decision was held not to lay down the correct law. It will, therefore, be proper to make a reference to only a few Division Bench decisions of this Court.

15. The meaning of the term “securing property” was considered at length in *Udai Pratap Gir v. Shanti Devi*, AIR 1956 Alld. 492 and it has been made clear that where the instrument makes a property secure or safe, as far as the beneficiary is concerned, it is an instrument securing property it is not necessary that any mortgage or charge is created under the instrument. With regard to a deed of will it was observed that it was not an instrument securing property during the life time of the testator as he had the power to revoke the will or to make another will and, consequently, during the life time of the testator the will cannot be said to secure property for or in favour of anyone. The will comes into effect after the death of the testator, and the executor or the legatee immediately becomes entitled to the property which was the subject matter of the will. Consequently it was clearly laid down in para. 8 of the Report that, in their opinion, the death of the testator made secure to the executor the former's property and that a testamentary disposition was a form of gift and stood substantially on the same footing as a gift. It was further held that a will was an instrument securing property within the meaning of the Court Fees Act. Similarly, the word “secure” was not given a restricted meaning in *Mohammad Habibur Rahman Khan v. Abdul Qadir Furuqi* ILR (1961) 1 Alld. 17 (supra) and it was held that a sale deed, and also deed of waqf came within the category of instrument securing property.

16. However, what is necessary is that the instrument should secure some property and not that the property would be secured on the existence of some contingency, as in the case of a will on the death of testator. Consequently the enactment shall have to be construed in determining whether a property can be said to have been secured forthwith will cannot be deemed to secure property during the life time of the testator for the simple reason that he can revoke the will. Similarly in the case of an enactment levying a tax, though payable only after assessment, it cannot be said that the tax levied has been secured forthwith. When the tax is not immediately payable, it cannot be deemed to have been secured forthwith. The recovery can be made only after an assessment order under the enactment has been passed. Thus the money is secured by the assessment order though such order is passed under the enactment. In other words, in such circumstances, the enactment alone does not secure any money. Consequently the provisions of the enactment shall have to be looked into in determining whether there, under money has been secured. If not the enactment shall be an instrument but not one securing money"

(iv) In **Smt. Bibbi and another v. Sujan Chand and others**, AIR 1968

All 216 [FB], a Full Bench of this Court while considering the issue whether a 'Will' it was an instrument securing money or property or not relied upon the earlier decisions of this Court and clearly opined that a 'Will' after the death of the testator is an instrument securing money or property, within the meaning of Section 7(iv-A) of the Court Fees Act. The relevant Paragraphs 7 to 12 of the aforesaid report reads as under:-

"7. The Bench referred, in support of its view, to *Jonnnavaram Balireddi v. Khatipulal Sah* [A.I.R. 1935 Mad. 863.] and *Kolachala Kutumba*

Sastri v. Lnkkaraju Bala Tripura Sundaramma [A.I.R. 1939 Mad. 462 (F.B.)] in both of which the Madras High Court had to deal with a somewhat similar provision introduced into the Court Fees Act by a Madras Act. In the latter case the point whether a sale deed is an instrument securing property does not appear to have been disputed but the Full Bench which decided the case accepted the view taken in the former case where the point was specifically raised and considered. The learned Judge who decided the former case held that a mortgage deed is a 'document securing money' and a sale deed is a 'document securing other property', and referred to the observations made by him in an earlier decision, *Doria Swami v. Rangevelu* [A.I.R. 1929 Madras 668.]. These observations may well be quoted here:

"The words 'securing money' or other property are not happy but the question is; Is this or not a suit for cancellation of a document securing property having money value? I think it clearly is. I have no doubt that the release deed in question is a document securing property; in other words, 'that document, the property covered by it is made secure to the defendants. Can there be any doubt that a sale deed comes within the terms of this section? The present instrument does not materially differ from a mortgage deed. By that, the rights of the plaintiffs in the partnership and its property have been transferred for consideration to the defendants. The word, 'secure' may mean according to the Oxford Dictionary, 'to make the tenure of a property secure to a person.' I am, therefore, of the opinion that the proper section applicable is Sec. 7(iv-A)."

8. In *Smt. Kamala Devi v. Sunni Central Board of Waqfs, U.P., Lucknow, through its Secretary* [A.I.R. 1919 All. 63.] the question whether a waqfnama is an instrument securing property came up for decision before a Division Bench of this Court. The learned Judges constituting the Bench were not agreed in one particular which is not relevant for the purpose of the present case, but they agreed in holding that a waqfnama which operates as an extinguishment of the right of the executant in a property and conveys it to the donee is an instrument securing property within the meaning of Sec. 7(iv-A).

9. None of the abovementioned cases was, however, brought to the notice of the court in *Chief Inspector of Stamps v. Jashpal Singh* [A.I.R. 1956 All. 168.]. In a subsequently decided case also a Division Bench of this Court dealt with the meaning of the expression 'securing property'. The question in that case was whether a will is, after the death of the testator an instrument securing property within the meaning of Sec. 7(iv-A). The Bench held that it was such an instrument and observed:—

"The verb 'to secure' has a wide meaning and we think that the definition most appropriate in the present context is to make secure or certain (Murray) or to make safe (Oxford)." *Udai Pratap Gir v. Shanta Devi* [A.I.R. 1956 All. 492.].

10. Except for *Chief Inspector of Stamps v. Jashpal Singh* [A.I.R. 1956 All. 168.]. I do not find any case in which it has been held that a sale deed is not an instrument securing property and, as I have shown above, the view taken in that case is contrary to three Division Bench decisions of this Court. It is true that in only one of these three decisions the instrument involved was a sale deed, and out of the remaining two one dealt with a waqfnama and the other with a will. But that does not affect the value of the latter two decisions in the determination of the question whether a sale deed is an instrument securing property, because, to my mind, all that may be said for treating a waqfnama or a will as an instrument securing property may be said with equal, if not greater, force

for treating a sale deed as such.

11. It appears to be clear that the expression 'securing' in Sec. 7(iv-A) of the Court Fees Act connotes making safe or certain. Surely, the expression must have the same connotation in relation to all the things spoken of in the section, and if it is the above connotation that has to be ascribed to it in relation to 'money' it must bear a similar connotation in relation also to 'other property having such value'. Further, the words 'other property having such value' obviously cover immovable property as well, and the explanation appended to the section puts that beyond doubt. The only sense in which an instrument may be regarded as securing immovable property is that it makes the title thereto or its possession and enjoyment safe or certain. Even according to the learned Judge who decided the case of *Chief Inspector of Stamps v. Jashpal Singh* [A.I.R. 1956 All. 168.] 'an instrument securing money' obviously means a document intended to 'assure' payment of money and the expression 'an instrument securing other property' should have, unless the context does not permit it, a similar meaning. He, however, did not regard a sale deed as 'an instrument security property' because it, conveys property and transfers the title of the property to the transferee. I may, with great respect to the learned Judges, say that what has been regarded by him as taking away from a sale deed the character of an instrument securing property, seems to me as imparting to it that character in the highest degree. A sale deed 'assures' in the most effective manner the divesting of the title of the transferor in a property and the vesting of that title in the transferee; and where the sale of a property can take place only by means of a deed it is the sale deed alone that 'assures', the extinction of the transferor's interest and the acquisition of that interest by the transferee. In my opinion, therefore, a sale deed is 'an instrument securing property' within the meaning of Sec. 7(iv-A) of the Court Fees Act.

12. The next thing to be seen is whether the suits fall within any of the categories mentioned in the first portion of Sec. 7(iv-A). In what circumstances a suit has to be regarded as one for cancellation of an instrument and in what others as one for merely obtaining a declaratory decree has been a matter on which there has been considerable divergence of view in the decided cases. The divergence has, however, lost its significance in the State of U.P., in view of Sec. 7(iv-A) introduced into the Court Fees Act by U.P. Act XIX of 1938. The section has a very wide compass. It covers not merely suits for cancellation of instruments described therein but also for adjudging them void or voidable, and it goes further and embraces not only suits for cancellation of such instruments or adjudging them void or voidable but also suits involving such cancellation or adjudging. On the scope of the first portion of the section, therefore, it is not necessary to refer to authorities. I may, however, mention a Division Bench case of this Court, *Mst. Jileba v. Parmeshara* [A.I.R. 1949 All. 641.] , where it was held that Sec. 7(iv-A) has been so worded that even though the plaintiff has not claimed the relief of cancelling or adjudging void or voidable an instrument, if the suit involves such cancellation or adjudging void or voidable such instrument, court-fee under Sec. 7(iv-A) is payable."

74. Now, if the decision of the learned Single Judge of this Court in **Altaf Husain** (supra) is seen, it would reveal that the reasons why agreement to sell was not considered to be an instrument securing property

has been indicated in Paragraphs 14 and 15, which for ease of reference is being reproduced hereinafter:-

"14. Admittedly an agreement to sell cannot be said to be "Instrument securing property" or it does not assure vesting of that title in the transferee or extinction of transferor's interest. The transferee can also file proceeding for re-turning the earnest money given by him under the agreement against the transferor.

15. In view of the same, agreement to sell cannot be treated at par with sale-deed. The suit for cancellation of same would not fall within the meaning of "instrument securing property" as per section 7 (iv-A.), therefore, suit cannot be valued on the value of the immovable property as computed in accordance with sub-section (v) of section 7 of the Act."

75. The premise of the said judgment is the fact that an agreement to sell does not assure vesting of title or extinction of transferor's interest and a comparison was made between an agreement to sell and a sale-deed. However, what is significant to note that the sale-deed may be an instrument or a document of conveyance which vests title of the property from one to the other. At the same time, if an agreement to sell is examined, it has the impact of keeping safe and certain the terms and subject matter of the agreement till such time the agreement is in force. The seller in law, is deemed to hold the property in trust for the purchaser and the purchaser who has parted with part consideration is also assured that within the time frame as agreed and upon making the payment of the balance consideration as per the agreement, to the seller, he will be entitled to have the property. The sale-deed is a document executed which completes the entire process and culminates in transfer of title from the seller to the buyer.

76. As from a perusal of the word 'property' noticed in the preceding paragraphs, it is clear that sofar as the Section 7(iv-A) of the Court Fees Act is concerned, the word 'property' used therein is of a wide import and it is not confined only to movable or immovable property rather it can

encompass even such rights and obligations which can be a subject matter of a valid contract and can be transferred or assigned. Therefore, this aspect was not considered by this Court in **Altaf Husain** (supra). Moreover, if the reasoning in **Altaf Husain** (supra) is adopted then it would amount to ascribing a narrow meaning to the words used in the Court Fees Act. Moreover, a Division Bench of this Court as way back in 1956 in **Udai Pratap Gir** (supra), had already noticed that the word 'secure' must be given a wider interpretation.

77. Thus, it cannot be said that an agreement to sell does not secure either the money or property for the purposes of the Court Fees Act, hence, this Court is of the opinion that the decision of **Altaf Husain** (supra) does not lay down the correct proposition. For the aforesaid reasons, the decision of another Single Judge of this Court in **Suman Lata Agrawal** (supra) which has merely followed the decision of **Altaf Husain** (supra) also does not express the correct proposition of law.

78. An agreement to sell may not be an instrument by which a right in the property is created nor extinguishes it (as per T.P. Act), but at the same time, it is an instrument which does bring security and certainty and it does create obligations which are enforceable in law based upon which a party can seek an appropriate relief in a Court of law. The words used in Section 54 of the T.P. Act are in a different context, which cannot be imported for the purposes of interpreting the Court Fees Act, which needless to say covers all sorts of transactions and suits relating to both movable or immovable, tangible or intangible while Section 54 of the T.P. Act is only confined to an immovable property.

E-1 Answer to Question No.1:-

79. For the detailed discussions as noticed above, this Court is of the firm view that an 'agreement to sell' will fall within the meaning of the word 'instrument' 'securing money or other property' having such value for the purposes of Section 7(iv-A) of the Court Fees Act. Question No.1 is answered accordingly.

E-II Answer to Question No.2:-

80. Now, in light of the answer to Question No.1, it would be apposite to consider the Question No.2 referred to this Court which is reproduced as under:-

"(II) Whether, the court fees paid on the suit for cancellation of an agreement to sale would be governed by Section 7 (v) of the Court Fees Act or under Article 17 (iii) of the Second Schedule of the Court Fees Act?"

81. Considering the provisions of Section 7(iv-A) of the Court Fees Act and noticing the explanation appended thereto, it is no more in dispute that if a suit falls within Section 7(iv-A) of the Court Fees Act, consequently, the court fees payable would be on *ad valorem* basis taking note of the explanation appended to Section 7(iv-A) of the Court Fees Act. The moment a suit involves cancellation of either an instrument or a decree as the case may be and it is referable to Section 7(iv-A) of the Court Fees Act then the fee would necessarily be paid on *ad valorem* basis and that would *ipso facto* exclude the applicability of Article 17(iii) of the Court Fees Act.

82. In light of the aforesaid, it would be clear that a suit seeking cancellation of an agreement to sell would be governed by Section 7(iv-A)

of the Court Fees Act and the court fees payable would be in terms of Section 7(v) as provided in the explanation to Section 7(iv-A) of the Court Fees Act and not under Article 17(iii) of the Second Scheduled of the Court Fees Act. The question No.2 is answered accordingly.

F. Conclusion:-

83. This Court holds that an agreement to sell is an 'instrument securing money or other property' for the purposes of Section 7(iv-A) of the Court Fees Act. A fortiori in a suit seeking cancellation of an agreement to sell, the court fee payable would be in terms of Section 7(iv-A) and its explanation, referable to Section 7(v) of the Court Fees Act, 1870 and not in terms of Article 17(iii) of the Second Schedule of the Court Fees Act.

84. This Court also holds that the decisions of this Court in **Altaf Husain** (supra) and **Suman Lata Agrawal** (supra) do not lay down the correct law and accordingly, they are overruled.

85. The reference is answered in the aforesaid terms.

86. The matter may now be placed before the Court concerned for deciding the petition on its own merits.

87. Before parting, this Court records its appreciation for the learned counsel and members of the Bar namely Shri Pritish Kumar, Shri S.M.S. Royekwar, Shri Ayush Tandon and Shri Reshu Sharma, who gave their valuable assistance to the Court.

(Jaspreet Singh, J) (Arun Bhansali, CJ)

Order Date :- 21st July, 2025

Rakesh/-