adjudication in this case will be by the civil Courts and not by the Panchayat.

(15) I am further inclined to agree with the contention of the learned counsel for the respondent to the effect that the other enactments under which the recovery has to be made under the Punjab Land Revenue Act are mentioned in section 98 of the Punjab Land Revenue Act and because of the provisions of section 99 of the Act, the provisions of Chapter VI of the said Act will apply and if the provisions of this Chapter are made applicable, the only remedy available is to deposit the amount under protest and then approach the civil Court of competent jurisdiction under section 78 of the said Act.

(16) For the reasons recorded above, there is no merit in this regular second appeal and the same is hereby dismissed with costs throughout.

N. K. S.

REVISIONAL CIVIL

Before H. R. Sodhi, J.

KULBIR INDER SINGH, AND ANOTHER,—*Petitioners*

versus

VIRAM SINGH AND OTHERS,—*Respondents*

Civil Revision No. 336 of 1969

March 5, 1970

Court Fees Act (VII of 1970)—Sections 7(iv)(c) and 7(v)—Hindu Minority and Guardianship Act (XXXII of 1956)—Section 8—Specific Relief Act (1 of 1877)—Section 42—Property of a minor sold by the natural guardian without the permission of the Court—Sale voidable at the instance of the minor—Such minor—Whether must sue for cancellation of the sale-deed—Suit only for possession of the property sold—Whether maintainable—Plaintiff framing a suit in a particular form—Court fee—Whether to be paid on the plaint as framed—Question of Court fee and correct form of suit—Whether to be mixed.

Held, that where a natural guardian of a minor sells minor's property without permission of the Court, such a disposal of the property has been declared by section 8 of the Hindu Minority and Guardianship Act, 1956, to be voidable at the instance of the minor or minors concerned or any person

claiming through them. It is true that a plaintiff who wants to establish title in himself and cannot do so without removing some obstacles in his way such as a decree or a deed to which he has been a party or by which he is otherwise bound, must sue for declaration and also the necessary consequential relief by way of cancellation of the instrument. But when a minor is the owner and his property has been transferred by a guardian without the permission of the Court as enjoined by section 8 of the said Act thereby rendering the transaction voidable at his option, he will be deemed to have exercised his option as soon as he affirms that the alienation is a nullity and treating the same as such, asks for possession of his property from the transferee. The expression "voidable" does not connote that the option must be exercised only through the intervention of the Court. A minor who desires to have a transaction of alienation of his property by his guardian set aside because of the option given to him by law can simply ignore the transaction and straightaway sue for possession without asking for any relief of cancellation of the instrument. (Paras 6 and 7)

Held, that Court is not concerned with what ought to be the frame of a suit and the only duty cast on it by law is to read the plaint, without reference to pleadings of the defendants, to find out what relief in substance has been prayed for. To hold that court-fee must be paid because a suit ought to be filed in a particular form is contrary to the basic rule that a plaintiff has to stamp his plaint on what he asks for and not what he ought to have asked for. The error lies in mixing the question of court-fee with what is the correct form of a suit. If the suit as framed is for possession though under the law it should have been for declaration and consequential relief, the court-fee has to be paid on the relief sought in the plaint, no matter the suit may ultimately fail for not having been framed in the proper form. It is not necessary to connect the matter of court-fee with that of the proper and strictly legal form of the suit. If the plaintiff does not frame a suit properly as he ought to have done, he runs the risk of getting the same dismissed, but he cannot be directed to pay court-fee different from what is required according to the substance of the allegations made in the plaint and the relief sought. (Para 4)

Petition under Section 44 of the Punjab Courts Act, 1918, for revision of the order of Shri R. C. Paul, Sub-Judge, 1st Class, Fazilka, dated 7th April, 1969, directing the plaintiffs to reconstitute the suits in correct form valuing them under the provisions of section 7(iv-c) of the Court Fees Act, 1870, or otherwise according to law as the case may be.

K. C. Puri and S. K. Goyal, Advocates, for the petitioner.

Roop Chand Chaudhry, Advocate, for the respondents.

JUDGMENT

H. R. Sodhi, J.— Judgment in this revision petition will dispose of seven connected petitions (Civil Revision Nos. 336, 337, 338, 339, 340, 341 and 342 of 1969), raising common questions of law.

(2) Viram Singh, defendant respondent, who is the father of the two petitioners, Kulbir Inder Singh and Kuldip Inder Singh, effected sale of 91 kanals—17 marlas of agricultural land situate in village Dharangwala, tehsil Fazilka, in favour of defendants respondents 2 to 4, Pirthi Singh and others, by a registered sale-deed registered on 4th June, 1958, for a total consideration of Rs. 7,797-8 annas. Half of this land was sold by Viram Singh, respondent on behalf of the petitioners as their guardian. In regard to the other half, he described the same as owned by him on account of being the heir of his deceased father Kishan Singh. The petitioners, on attaining majority, filed seven suits challenging the various sales by their father. In the plaint, the ground of attack was two-fold and two reliefs were sought. As regards the land owned by their father, the plaintiffs (petitioners) asked only for a declaration to the effect that the sale was of ancestral land without consideration and legal necessity and that the petitioners were, therefore, not bound by those sales. The sale of land belonging to the petitioners was challenged as being illegal and without the authority of law the allegation being that it was made during their minority to injure their interest. It was stated in the plaint that the sale, in such a situation, was void and ineffective. A prayer for possession of this land was consequently made. In the matter of relief for possession, value of the subject matter was worked at 10 times the land revenue under section 7(v) (a) of the Court Fees Act, 1870 (hereinafter called the Act), and in respect of relief for declaration, fixed court-fee was paid.

(3) The trial Court, on the pleadings of the parties, framed a number of issues, out of which the following three were treated as preliminary :—

(1) Whether the suit is properly valued for purposes of court-fee and jurisdiction ?

(2) Whether the suit lies in the present form for a declaration and it is not necessary for the plaintiffs to sue for setting aside the sale deed ?

(3) Whether the suit lies in the present form in view of provisions of Order 2, Rule 4, Code of Civil Procedure.

(4) Issues Nos. 1 and 2 were disposed of together though issue No. 1 was only with regard to value of the suit for the purposes of court-fee and jurisdiction while the other raised a dispute about the form of

the suit. It held that the case fell under section 7 (iv) (c) of the Act and the plaint should have been valued *ad valorem* accordingly and not under section 7(v) of the said Act. This finding was arrived at because the trial Court was of the view that the sale by the guardian of the plaintiffs-petitioners was voidable at their instance and not void, with the result that the proper suit was for declaration and consequential relief and not a suit for possession. Section 7 of the Act was amended by the Court Fees (Punjab Amendment) Act, 1953 and the following provisio was added to clause (iv) of section 7 of the Act :—

> "Provided further that in suits coming under sub-clause (c), in cases where the relief sought is with reference to any property such valuation shall not be less than the value of the property calculated in the manner provided for by clause (v) of this section."

The relief sought in the instant case was with reference to agricultural land and even if the case fell under section 7 (iv) (c), the value in light of the aforesaid amendment had to be calculated in the manner provided for by clause (v). The land is assessed to land revenue which is not permanently settled and the value of the subject-matter of the suit, according to the Punjab Amendment, had therefore to be ten times the revenue payable in respect of that land. The trial Court for the purposes of court-fee held the case to be covered by section 7 (iv)(c) since it was of the view that no relief for possession simpliciter could be legally granted and that the plaintiffs were bound under the law to ask for declaration and consequential relief to get rid of the document of sale executed by their guardian instead of suing for possession alone. It was, to my mind, a wholly erroneous approach by the Court below. It was not concerned with what ought to have been the frame of the suit but the only duty cast on it by law was to read the plaint without reference to pleadings of the defendants and find out if it in substance asked for declaration and consequential relief or for possession only. To hold that court-fee must be paid because a suit ought to be filed in a particular form is contrary to the basic rule that a plaintiff has to stamp his plaint on what he asks for and not what he ought to have asked for. The error lies in mixing the question of court-fee with what is the correct form of the suit. If the suit as framed is for possession though under the law it should have been for declaration and consequential relief, the court-fee has to be paid on the relief sought in the plaint, no matter

the suit may ultimately fail for not having been framed in the proper form. It is not necessary to connect the matter of court-fee with that of the proper and strictly legal form of the suit. If the plaintiff does not frame a suit properly as he ought to have done, he runs the risk of getting the same dismissed, but he cannot be directed to pay court-fee different from what is required according to the substance of the allegations made in the plaint and the relief sought. A plain reading of the plaint in the present case makes it clear beyond doubt that no prayer for any declaration with a consequential relief had been made by the plaintiffs.

(5) The rulings referred to by the trial court in its judgment are of no assistance and *Sunder Singh* v. *Hira Singh and others*, (1) mainly relied upon by it does not support its conclusions apart from the fact that it was decided before the Punjab Amendment Act of 1953 came into force. The learned Judge in that case considered, for the purposes of court-fee, several classes of cases in which an alienation was intended to be avoided and possession of the property sought. In the penultimate para of that judgment which forms the ratio and states the opinion of the learned Judge, it has been observed that "where the plaintiff makes an allegation that a certain deed is null and void and prays for a declaration to this effect he cannot sue for possession of the property involved by way of consequential relief. It is not necessary for him to get a declaration at all and he can bring a suit for possession simpliciter. He cannot, therefore, value his plaint under the provisions of section 7(iv)(c) and must pay court-fee on the value of the property involved." I am in respectful agreement with these observations. In the case before us as well, the plaintiffs have made an allegation that the deed of transfer executed by the guardian is null and void and they have prayed for possession of the property not by way of any consequential relief but as the main relief. The trial Court was, therefore, in error in holding that the plaintiffs must pay court-fee under section 7 (iv) (c) and not section 7 (v) of the Act, though in case of land it will not make any difference in view of the Punjab Amendment and the learned counsel for the parties have indeed so conceded that no practical difference in the amount of court-fee results because of the decision of the trial Court under issue No. 1. A suit may fall under section 7(iv)(c), still the value has to be worked up in the manner provided for in section 7(v) of the Act.

(1) A.I.R. 1950 E.P. 360.

(6) The most hotly contested issue before me was issue No. 2 about the form of the suit which was linked up by the trial Court with that of court-fee. As already noticed, Viram Singh father of the petitioners (Plaintiffs) had, as their natural guardian, alienated land belonging to them without the previous permission of the Court. It cannot be controverted that such disposal of the property has been declared by section 8 of the Hindu Minority and Guardianship Act, 1956, to be voidable at the instance of the minor or minors concerned or any person claiming through them. The question that is thus posed for consideration in such circumstances is as to how the option to avoid the transaction can be exercised. In other words, is it necessary for a minor to first seek cancellation of the instrument or is it enough that he declares that the instrument is not binding on him and moves an action for possession of the property unlawfully transferred by his guardian. It is true that a plaintiff who wants to establish title in himself and cannot do so without removing some obstacles in his way such as a decree or a deed to which he has been a party or by which he is otherwise bound, he must sue for declaration and also the necessary consequential relief by way of cancellation of the instrument. There is yet another class of cases, namely, when the minor is the owner and his property has been transferred by a guardian without the permission of the Court as enjoined by section 8 of the said Act thereby rendering the transaction voidable at his option. He, in my opinion, will be deemed to have exercised his option as soon as he affirms that the alienation is a nullity and treating the same as such asks for possession of his property from the transferee. The expression "voidable" does not connote that the option must be exercised only through the intervention of the Court. As observed by their Lordships of the Privy Council in *Bijoy Gopal Mukerji* v. *Krishna Mahishi Debi* (2), the very "institution of a suit for possession shows his election to treat the alienation as a nullity; and in such a suit it is, therefore, unnecessary for him to ask for a declaration that it is inoperative". To the same effect are the observations in *Kandaswami Udayan and another* v. *Annamalai Pillai and others* (3), where *Bijoy Gopal Mukerji's case* (2) (supra) was relied upon. The question for determination there was as to when an alienation had been made by a limited owner or a manager of a joint Hindu family which was voidable at the election of the reversionary heir or other members of the family, was it open to the reversioners to treat the alienation as

(2) I.L.R. 34 Cal. 329.

(3) A.I.R. 1949 Mad. 105.

a nullity without the intervention of the Court and commence an action for possession of the property instead of asking for a decree for declaration declaring the alienation to be void and for the consequential relief by way of possession of the alienated property. It was held that the plaintiffs need not ask for cancellation of the sale-deed which could be treated as a nullity. The suit as framed was for possession without the plaintiffs asking for cancellation of the sale-deed and the same was considered to be in proper form. The judgment of a Full Bench of five Judges of the same Court in *C. R. Ramaswami Ayyangar* v. *C. S. Rangachariar and others* (4) was followed. It has been specifically observed that the plaintiffs seeking to avoid the alienation are not bound under substantive law to sue for declaration or cancellation in respect of the said alienation. A Division Bench judgment of Patna High Court in *Gunduchi Sahu* v. *Balram Balabantra and others* (5) is also in point. The guardian of a minor had mortgaged certain property in favour of A who had assigned his rights to B. The guardian subsequently sold a certain portion of the mortgaged property to C. B later filed a suit to enforce his rights under the mortgage against the guardian and C, alienee of the mortgaged property. The suit was resisted by C who contended that the plaintiff could not enforce his mortgage against the property which had been sold to him free from encumbrances. The Courts below had found that the mortgage executed by the mother, as guardian of the minor, was not for the benefit of the minor. The sale by the guardian in favour of C was, however, held to be for the benefit of the minor. On second appeal it was held by Harries C.J. with whom the other learned Judge concurred, that the act of the minor's guardian in selling the property free from encumbrance amounted to repudiation on behalf of the minor of the earlier voidable transaction of mortgage. The argument that repudiation could be made only by the minor on attaining majority was repelled. Be that as it may, it is not necessary to express any opinion in this case with regard to the correctness of the last contention but from the Bench decision it necessarily follows that the view taken was that no intervention by Court was necessary to seek a declaration and cancellation of the instrument or deed and that repudiation of a voidable transaction was enough to exercise the option available to a minor under the law.

(7) Mr. Roop Chand, learned counsel for the respondents, has strenuously urged that the plaintiff must, in such circumstances,

(4) A.I.R. 1940 Mad. 113

(5) A.I.R. 1940 Patna 661.

sue for declaration to have the transaction of sale made on his behalf declared void and ask for the consequential relief of cancellation of the instrument of sale. I am afraid that in view of what has been said above, the contention of the learned counsel cannot be accepted. A minor who desires to have a transaction of alienation of his property by his guardian set aside because of the option given to him by law can simply ignore the transaction and straightaway sue for possession without asking for any relief of cancellation of the instrument. The learned counsel has invited my attention to *Sankaranarayana Pillai and another* v. *Kandasamia Pillai* (6), *Beeyyathumma* v. *Moidin Haji* (7), *Sri Ram* v. *Khawaju and others* (8); *Commissioner for Agricultural Income-Tax, West Bengal* v. *Jagdish Chandra Sahoo* (9), *Sheel Kumar* v. *Aditya Narain and another* (10). No doubt there is a class of cases where the view taken is that when the minor is co-nominee a party to the transaction he should seek to cancel the document in which case court-fee has to be paid under section 7(iv)(c) of the Act. In *Sankaranarayana's case* (6), a reference is made to a decision of the Judicial Committee of the Privy Council wherein it was held that in the matter of applicability of section 53-A Transfer of Property Act, the minor should be deemed to be a party to the transaction eo-nominee. The word "transferor" was required to be interpreted and in that context, the guardian of the minor who entered into the contract of sale on behalf of the minor was considered to be a transferor. The Full Bench of the Madras High Court in referring to an earlier Full Bench decision in *C. R. Ramaswami Ayyangar's case* (4) (supra) distinguished the same in regard to the question whether section 7(iv)(c) or section 7(v) of the Court Fees Act applied though it was stated that observations in the earlier Full Bench judgment of five Judges were somewhat wide and likely to be misunderstood. The answer in the second Full Bench judgment of three Judges of the Madras High Court is that if the minor is co-nominee a party to a sale deed or other document of alienation by his guardian, he must sue for cancellation of the document under section 7(iv)(c) of the Act and it is not enough if he applies for possession under section 7(v) of the Act. It was again a matter of court-fee which, as already observed by me, was to be approached from a

(6) A.I.R. 1956 Mad. 670.
(7) A.I.R. 1959 Kerala 125.
(8) A.I.R. 1934 Lah. 235.
(9) A.I.R. 1960 Cal. 546.
(10) 1964 P.L.R. 916.

different stand point though the learned Judges discussed what should be the correct form of the suit. I am, however, in respectful agreement with the view of law taken by Subba Rao J. in *Kandaswami Udayan's case* (3), (supra), who interpreted Full Bench judgment of five Judges in *C. R. Ramaswami Ayyangar's case* (4), and relied on the same. The substantive law has been very succinctly enunciated by the Judicial Committee of the Privy Council in *Bijoy Gopal Mukerji's case* (2), (supra), which must be followed. Again *Beeyyathummma's case* (7), is of no assistance to the respondents as the question there was whether a sale by the legal guardian of the minor need be set aside within a period of three years as required under Article 44 of the Indian Limitation Act, 1908. The suit by a ward to set aside a transfer of property by his guardian has to be filed within three years of the ward attaining majority. It was in this context that a Division Bench of the Kerala High Court in the said case took the view that avoidance must be within three years. *Sankaranarayana's case* (6), was also referred to. In my opinion, the issue as to what is the correct form of the suit cannot be resolved by reference to the question of limitation. In *Sri Ram's case* (8) (supra), a decree had been passed in accordance with the award on a reference to which father of the minor was a party. Son then filed a suit for mere declaration that reference was null and void without seeking to get the award set aside. It was in these circumstances that it was held by the Lahore High Court that the plaintiff must ask for consequential relief (cancellation of the decree) and pay *ad valorem* court-fee according to the provisions of section 7(iv)(c) of the Act. There can be no manner of doubt that if a decree had been passed and was capable of execution, no declaration with regard to the pre-decree matters could be obtained under section 42 of the Specific Relief Act and that cancellation of the decree was a necessary consequential relief. *Agricultural Income-tax Commissioner's case* (9), (supra) only enunciates the rule of law that a transfer of the property of a minor by his mother in her capacity as natural guardian is not void *ab initio*, but a voidable transaction and that the minor can on attainment of majority avoid the gift. There is no quarrel with the proposition that sale by the guardian was voidable in the instant case and section 8 of the Hindu Minority and Guardianship Act clearly so declares. *Sheel Kumar's case* (10), (supra) relied upon by Mr. Roop Chand, rather goes against him. A Division Bench of this Court consisting of Dua and Mahajan JJ., held that a suit for a mere declaration that the partition between the son, the father and step

mother was merely a sham transaction and was entered into for ulterior purposes and, therefore, in fact there was no partition which affected the plaintiff's status as a member of the joint Hindu family, is competent, and that it was not necessary to ask for cancellation of the deed of partition which, in the opinion of the learned Judges, could be ignored as surplusage for the purposes of court-fee and jurisdiction. It must, therefore, be held that suit for possession was competent and that it was not necessary for the plaintiffs to have sued for setting aside the sale-deed. The sale must be deemed to have been avoided by them when they so stated in the plaint and suit for possession could be maintained. In this view of the matter as well the question of court-fee was not correctly decided.

(8) The only question that now survives is whether the trial Court was correct in law in holding that the suit was bad for joinder of different causes of action and barred under Order 2 rule 4 of the Code of Civil Procedure. The general rule is that for every cause of action there shall be a separate suit, but in the same suit more than one cause can also be joined with leave of the Court. The joinder of causes of action is not, therefore, barred except that leave of the Court is necessary. In the present case, by one sale-deed, two properties, one that was ancestral, and the other that belonged to the plaintiffs were sold by their father. The trial Court was of the view that two different causes of action had been joined and they could not be tried together. Mr. Puri, learned counsel for the petitioners, does not seriously contest this finding, but has drawn my attention to rule 8, Chapter 21, of the Rules and Orders of the Punjab High Court, Volume I, which is in the following terms :—

> "8. (1) Where an objection, duly taken, has been allowed by the Court, the plaintiff shall be permitted to select the cause of action with which he will proceed, and shall, within a time to be fixed by the Court, amend the plaint by striking out the remaining causes of action.
>
> (2) When the plaintiff has selected the cause of action with which he will proceed, the Court shall pass an order giving him time within which to submit amended plaints for the remaining causes of action and for making up the Court-fees that may be necessary. Should the plaintiff not comply with the Court's order, the Court shall proceed as provided

in rule 18 of Order VI and as required by the provisions of the Court-fees Act."

It appears that the aforesaid provision was not brought to the notice of the trial Court nor was it aware of the same. It was duty bound to call upon the plaintiffs giving them an opportunity to select the cause of action with which they wanted to proceed. The Court was to fix the time by which the plaintiffs could amend their plaint by striking out the remaining cause or causes of action. It is not open to a Court to throw out the entire suit because there has been a misjoinder of the cases of action. I, therefore, holding that the court-fee was not payable under section 7(iv)(c) of the Act and that the form of the suit was in order, direct that the trial Court should proceed with the suit by giving an option to the plaintiffs as required under rule 8 mentioned above.

(9) The revision petitions are accordingly allowed with no order as to costs, and the parties are directed to appear before the trial Court on 20th April, 1970.

K. S. K.

LETTERS PATENT APPEAL

Before D. K. Mahajan and S. S. Sandhawalia, JJ.

JANKI NATH KHANNA,—*Appellant.*

versus

THE STATE OF PUNJAB AND ANOTHER,—*Respondents.*

Letters Patent Appeal No. 349 of 1965

March 9, 1970.

Punjab Urban Immovable Property Tax Act (XVII of 1940)—Sections 7, 9 and 10(1) and (2)—Valuation list under section 7—Power of suo motu revision of—Whether to be exercised within reasonable time—Such time—Whether limited to the currency of the valuation list.

Held, that the revisional power under section 10(2) of the Punjab Urban Immovable Property Tax Act, 1940, must conform to the limitation of its being exercised within a reasonable time which may well be determined by the peculiar facts of the case including the nature of the order which falls for revision. Section 10(2) and section 7 of the Act may well be read together to determine the limitation and the reasonableness within which the revisional power may be exercised. Section 7 prescribes a period of five years for the currency of the valuation list made