FULL BENCH

Before S. S. Sandhawalia, C.J., Rajendra Nath Mittal and Gokal Chand Mital, JJ.

RAJ KUMAR ALIAS PRITHVI SINGH and another,—*Appellants.*

versus

AMAR SINGH and others,—*Respondents.*

Regular Second Appeal No. 1572 *of* 1979.

April 22, 1980.

Code of Civil Procedure (V *of* 1908)—*Section* 107(2) *and Order* 7 *Rule* 11(c)—*Memorandum of appeal insufficiently stamped—Appellate Court—Whether bound to call upon the appellant to make good the deficiency before rejecting the same—Order* 7 *Rule* 11(c)—*Whether applicable—Divergence of views amongst High Courts—This High Court and its predecessor Courts consistently following one view for several decades—Principle of* Stare decisis—*Whether to be applied.*

Held, that a view long held in the jurisdiction is not to be upset except on the patent grounds that the same is either palpably wrong or is of a kind that following it would be perpetuating an error and resulting in public mischief. That is indeed far from being the case here and, therefore, on well settled principle the court is inclined to conform to the long standing opinion within this Court itself as also in the predecessor court of Lahore and hold that sub-rule (c) of Rule 11 of Order 7 of the Code of Civil Procedure 1908 is not attracted in the case of the memoranda of appeal and, therefore, the appellate court is not bound to call upon the appellant to make up the deficiency in Court-fee and could straightaway reject an appeal if the memorandum thereof did not bear the Court-fee prescribed by law. (Paras 11 and 15).

Case referred by the Hon'ble Mr. Justice Gokal Chand Mital, on 9th August, 1979, *to the Full Bench for an opinion of the important question of law involved in the case. The Full Bench consisting of Hon'ble the Chief Justice Mr. S. S. Sandhawalia. Hon'ble Mr. Justice Rajindra Nath Mital and Hon'ble Mr. Justice Gokal Chand Mittal, has referred the case to a Single Judge, on 22nd April,* 1980. *The Single Bench consisting of Single Hon'ble Mr. Justice Gokal Chand Mittal, has finally decided the case on merit on 7th August,* 1980.

Regular Second Appeal from the decree of the Court of Shri S. K. Jain, Additional District Judge, Hissar, dated 29th December,

1978 *affirming that of Shri H. R. Goel, Sub-Judge 1st Class, Hissar, dated 26th January, 1978, dismissing the suit of the plaintiffs with costs.*

P. C. Mehta, Advocate with Hari Khanna, H. N. Mehtani, Advocates as intervenor.

V. M. Jain, Advocate, *for the respondent.*

JUDGMENT

S. S. Sandhawalia, C.J.

1. Whether sub-rule (c) of rule 11 of Order 7 of the Code of Civil Procedure 1908 applies *mutatis mutandis* to the memoranda of appeals by virtue of the provisions of sub-section (2) of section 107 of the Code, is the meaningful question which in essence has necessitated this reference to a Full Bench.

2. It is manifest that the issue aforesaid is pristinely legal and any detailed reference to the facts, therefore, would be hardly relevant— the more so in view of the fact that we are inclined only to decide the question of law leaving the determination on merits to the learned Single Judge. It, therefore, suffices to notice that the suit preferred by the plaintiff-appellants was a usual declaratory one claiming that the sale of agricultural land specified therein by a registered deed was without necessity and consideration and, therefore, not binding upon the plaintiffs and consequently not affecting their proprietary rights. The trial Court dismissed the suit on January 28, 1978. The appeal against the same was instituted on April 18, 1978, and relying on certain amendments made by the State of Haryana in the Court-fees Act, the respondents took up the objection before the appellate Court that the memorandum of appeal should have been stamped with Rs. 30 whereas in fact only a court-fee of Rs. 25 had been affixed. This position being not in any serious dispute the plaintiff-appellants prayed for being allowed to make up the deficiency in the court-fee but were opposed with the objection that the limitation for filing the appeal having expired they could not now be allowed to do so. Reliance on behalf of the respondents was placed on *Smt. Amar Kaur* v. *Iqbal Singh and others* (1) and *Jabar Singh* v. *Shadi* (2).

(1) 1971 P.L.J. 49.
(2) 1978 P.L.R. 681.

3. The appellate Court held on facts that no ground for the exercise of discretion under section 149 of the Civil Procedure Code to allow the appellants to make up the deficiency in the court-fee had been made out. However, a further finding was arrived at (which now lies at the root of the controversy) that Order 7, rule 11(c) of the Civil Procedure Code had no application to appeals and, therefore, the appellate Court was not bound to call upon the plaintiff-appellants to make up the deficiency in the court-fee and could straightaway reject an appeal if the memorandum thereof did not bear the court-fee prescribed by law. It is this view on which there appears to be a wide ranging divergence of judicial opinion and, therefore, it calls for careful consideration.

4. However, before adverting to the core of the aforesaid issue it is perhaps apt to dispose of a matter on which there appears to be virtual unanimity. Learned counsel for the parties were agreed that section 149 of the Code was undoubtedly attracted to the situation and the appellate Court, therefore, had the discretion at any stage to allow the appellants to make up the deficiency. If this discretion were to be exercised in favour of the appellants, the inevitable effect would be that the court-fee on the memorandum of appeal would be deemed to have been paid as if in the first instance in view of the provisions of section 149. So far there indeed appears to be no dispute and the counsel were agreed that it would be for the learned Single Judge to determine whether the first appellate Court had in fact exercised the discretion under section 149 correctly and if not he may himself do so in favour of the plaintiff-appellants. On this aspect under section 149 of the Code, therefore, nothing more need be said because neither on principle nor on precedent there is now any conflict meriting determination and the matter is now fully covered by the Division Bench judgment of this Court in *Gurdial Singh* v. *Massa Singh and others* (3). Therein it was held in the reference order (the reasoning whereof was adopted by the Division Bench) as follows:—

> "In the ultimate analysis, therefore, it must be held that sections 148 and 149 of the Code of Civil Procedure are equally attracted to the appeals presented in this Court or Courts below as also to suits in the original trials. Applying

(3) 1977 P.L.R. 130.

the ratio of the decisions cited above, it is evident that unless the Court comes to the finding that the litigant was acting *mala fide* or with contumacy, the appellant would be entitled to the benefit of section 149 and discretion should be exercised in his favour by allowing him to make up the deficiency in the court-fee".

5. One may now advert to the basic issue whether Order 7, rule 11(c) of the Code is equally applicable to the memoranda of appeals with the necessary result that the appellate Court also must require the appellants to make up the deficient stamp within a fixed time and only on his failure to do so it could proceed to reject the appeal on that score. To appreciate this controversy which evidently is a tangled one the relevant parts of the Code may first be set down:—

"S. 107. (1) Subject to such conditions and limitations as may be prescribed, an appellate Court shall have power—

(a) * * *

(b) * * *

(c) * * *

(d) * * *

(2) Subject as aforesaid, the appellate Court shall have the same powers and shall perform as nearly as may be the same duties as are conferred and imposed by this Code on Courts of original jurisdiction in respect of suits instituted therein".

ORDER 7, RULE 11.

Rejection of Plaint:—The plaint shall be rejected in the following cases:—

(a) where it does not disclose a cause of action;

(b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;

(c) where the relief claimed is properly valued but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;

(d) where the suit appears from the statement in the plaint to be barred by any law.

Provided * * * * *
* * * * *".

At the very outset it may now be highlighted that on the basic issue before us there appears to be such sharp and long standing divergence of judicial opinion since the very enforcement of the Code extending over well nigh seventy years that it appears to me patently wasteful to re-examine the issue on principle. It is indeed not my intention to add yet further to the large mass of conflicting judicial literature on the point. It would, therefore, suffice to notice broadly the two lines of divergent opinion which seem to be running parallel to each other without hope of a meeting point over the last three score years and ten. Though the seeds of the controversy appeared to go back much earlier to the provisions of the previous Code of Civil Procedure it appears to me adequate to notice the clash of judicial opinion after the enforcement of the present Code in 1908.

6. The earliest judgment which calls for notice is the Division Bench of the Bombay High Court in *Achut Ramchandra Pai and others* v. *Nayappa Bab Balgami and others* (4), categorically taking the view that the memorandum of appeal stands on the same footing as a plaint and the provision of Order 7 rule 11(c) of the Code would be equally applicable to it by virtue of section 107(2) thereof. However, hardly a year later the Division Bench of the Madras High Court in *Akkaraju Narayana Rao* v. *Akkaraju Seshamma and others* (5) seriously doubted the correctness of this judgment (however, without elaborating the point) and took a contrary view. Thereafter the stream of precedent in the Madras High Court remained consistent though it was only in a later Division Bench judgment in *Pamidimukhala Sitharamayya and others* v. *Ivaturi Ramayya and another* (6), that Varadachariar, J., speaking for the Bench spelt out the detailed grounds for taking a different view from the Bombay High Court in holding unreservedly that Order 7, rule 11(c), Civil Procedure Code, has no application to the memoranda of appeals.

(4) A.I.R. 1914 Bombay 249.
(5) A.I.R. 1915 Madras 426.
(6) A.I.R. 1938 Madras 316.

7. In line with the conflict above noticed, judicial opinion in other High Courts has thereafter ranged itself in two distinct and different channels (agreeing either with the Bombay or the Madras view)—one holding that Order 7, rule 11(c) was equally attracted to the appellate forum whilst the other holding diametrically to the contrary. This controversy seems to have continued without any hope of resolution and it was stated before us at the bar jointly by the learned counsel for the parties that as yet no judgment of the final Court setting the same at rest has been rendered. In this situation it appears to me a plain exercise in futility to now begin examining the matter on first principle as if it was *res-integra* or to start distinguishing the reasoning of the myriad of authorities rendered by different High Courts. Sufficient it is to notice that the High Court of Bombay in *Achut Ramchandra Pai and others* v. *Nayappa Bab Balgaya and others* (supra), *Phaltan Bank* v. *Baburao Appajirao and another* (7), the High Court of Patna in *Bahuria Ramsawari Kuer and another* v. *Dulhin Motiraj Kuer and others* (8), *Sarjug Prasad Sahu and others* v. *Surendrapat Tewari and others* (9), *Ramgita Singh* vs. *Shitab Singh and another* (10), *Gajadhar Bhagat and others* v. *Moti Chand Bhagat*, (11), *Mahabir Ram and another* v. *Kapildeo Pathak and others* (12), Chief Court of Oudh in *Deoraj* v. *Kunj Behari and others* (13), *Har Prasad* v. *Kapurtuhala Estate and others* (14), *Husain Ali Khan and others* v. *Ambika Prasad* (15), and the Court of Judicial Commissioner in *Shri Hem Chandra Sarkar* v. *Smt. Jyoti Bala Chakraborty* (16), all of the view that order 7, rule 11(c) applies in terms to the memoranda of appeals by virtue of section 107(2) of the Code.

8. Sharply ranged on the other side are the High Court of Madras in *Akharaju Narayana Rao* v. *Akkaraju Seshamma and others* (17), *Pamidimkukkala Sitharamayya and others* v. *Iyaturi*

(7) A.I.R. 1954 Bombay 43.
(8) A.I.R. 1939 Patna 83.
(9) A.I.R. 1939 Patna 137.
(10) A.I.R. 1939 Patna 432.
(11) A.I.R. 1941 Patna 108.
(12) A.I.R. 1957 Patna 111.
(13) A.I.R. 1930 Oudh 104.
(14) A.I.R. 1935 Oudh 119.
(15) A.I.R. 1937 Oudh 414.
(16) A.I.R. 1970 Tripura 26.
(17) A.I.R. 1915 Madras 426.

Ramayya and another (18), High Court of Allahabad in *S. Wajid Ali* v. *Isar Bano* (19), High Court of Pepsu in *Ram Murti and others* v. *Bank of Patiala* (20), High Court of Rajasthan in *Amar Singh* v. *Chaturbhuj and others* (21), High Court of Jammu and Kashmir in *Collector, Land Acquisition and another* v. *Dina Nath Mahajan and others* (22), and the Courts of the Judicial Commissioners in *Kazi Mukarram Khan, Kazi Abdul Wabab Khan and another* v. *S. Hardit Singh, etc.* (23), Judicial Commissioner's Court in *Union of India* v. *Sansar Chand* (24), Judicial Commissioner's Court in *Atmaram and others* v. *Singhai Kasturchand and others* (25) and Judicial Commissioner's Court in *Pushkar Narain and another* v. *Chand Beharilal Ghisulal and another* (26), all taking the view that Order 7, rule 11(c) of the Civil Procedure Code is confined to plaints in a suit and is not applicable to the appellate forum.

9. However, so far as this jurisdiction is concerned it appears that there has been a clear and unbroken line of precedent both in the predecessor High Court of Labore and this High Court consistently taking the view that Order 7, rule 11(c) of the Code is not applicable to the memoranda of appeals. As was noticed earlier, the controversy travels even far beyond the enforcement of the present Code of Civil Procedure, but it would be unnecessary to notice the authorities with regard to the corresponding sections of the earlier Code in the Chief Court of Lahore. It would be apt to confine oneself to the provisions of the present Code. Herein a learned Single Judge way back in *Gursaran Das* v. *District Board, Jullundur* (27), dissented from the Bombay view in *Achut Ramchandra Pai's case* (supra) and clearly expressed his preference for the view taken by the Madras High Court and other High Courts following the same. However, the more elaborate expression of opinion on this point in that of the Division Bench in *Balwant Singh* v. *Jagjit Singh* (28). Within this High Court also the view has

(18) A.I.R. 1938 Madras 316.
(19) A.I.R. 1951 All. 64 (F.B.).
(20) A.I.R. 1951 Pepsu 54.
(21) A.I.R. 1967 Rajasthan 367.
(22) A.I.R. 1977 J. & K. 11.
(23) A.I.R. 1941 Peshawar 69.
(24) A.I.R. 1960 H.P. 1.
(25) A.I.R. 1980 Nagpur 224.
(26) A.I.R. 1954 Ajmer 15.
(27) A.I.R. 1927 Lahore 824.
(28) A.I.R. 1947 Lahore 210.

been consistent and the Division Bench in *M/s. Ajey Textile* and others v. *The British India Corporation and others* (29), after some discussion of the earlier judgments and principle concluded as follows :—

"The latest judgment of the Madras High Court taking the same view is of Varadachariar and Pandrang Row, JJ., in *Pamidimukhala Sitharamayya and others* v. *I-Vaturi Ramayya and another*, A.I.R. 1938, Madras 316. The learned Judges of the Madras High Court also after considering a large number of previous cases came to the conclusion that the provisions of Order 7, Rule 11(c) of the Code of Civil Procedure do not apply to appeals and that the appellate Court is entitled to reject an appeal if the full court-fee has not been paid without calling upon the appellant to pay the deficient court-fee, because in so far as the memorandum of appeal was concerned, express provision has been made in Order 41, Rule 3, for its rejection on the grounds stated in that rule. After hearing the learned counsel for the parties at length and after careful consideration of the matter we are inclined to agree with the view taken by the Division Bench of the Madras High Court in *Pamidmukhala Sitharamayya's case* (supra). The provisions of section 107(2) have been expressly made subject to such conditions and limitations 'as may be prescribed'. In section 2(16) 'prescribed' is stated to mean 'prescribed by rules'. Whereas specific provision has been made in rule 11 of Order 7, relating to plaints, no corresponding provision has been made to that effect in Order 41 of the Code, which contains the entire relevant procedure relating to appeals. Agreeing with the reasoning on which the judgment of the Division Bench of the Lahore High Court was based, we do not appear to be bound to allow the appellants an opportunity to make up the deficiency in court-fee after the expiry of the period of limitation for preferring the appeal particularly in a case where there is no dispute about the quantum of the court-fee payable, but the appellants have knowingly and deliberately paid deficient court-fee on the solitary ground that they were not possessed of sufficient funds to pay the requisite court-fee within the period of limitation. Since the petition of appeal did not bear the requisite court-fee, no proper appeal has in fact been filed in this case".

(29) 1970 (2) I.L.R. Pb. & Haryana 127.

The aforesaid view has then been followed in a Single Bench judgment in ***Jabar Singh*** **v.** *Shadi* (30), which has been upheld by the Letters Patent Bench in *Jabar Singh* v. *Shadi* (31).

10. It calls for pointed notice that the learned counsel for the appellants frankly conceded that he could cite no judgment whatsoever either of the Chief Court of Punjab or of Lahore High Court or of this High Court taking a contrary view in their favour.

11. It would be evident from the above that in the predecessor High Court of Lahore as also within the jurisdiction of this High Court, judicial opinion has so far been unanimous without a hint of dissent on the point that Order 7, rule 11, Civil Procedure Code, is not applicable to the memoranda of appeals. The line of reasoning has held unbroken sway eversince the enforcement of the Civil Procedure Code for well nigh 72 years. Now apart from other things on the principle of *stare decisis* we see no reason whatsoever to induct any note of dissent in the law which fortunately within this jurisdiction has remained settled. As has already been noticed it is not as if there is any unanimity of view in the other High Courts on the point and indeed as at present advised the weight of authority seems to be tilted on the side of the view we are inclined to take. It is well-settled that a view long held in the jurisdiction is not to be upset except on the patent grounds that the same is either palpably wrong or is of a kind that following it would be perpetuating an error and resulting in public mischief. That is indeed far from being the case here and, therefore, on well-settled principle we are inclined to conform to the long standing opinion within this Court itself as also in the predecessor Court of Lahore.

12. Now, the doctrine of *stare decisis* is too well known to either call for any great elaboration on principle or to seek support of any multiplicity of authority. It would suffice to recall that even with regard to a line of precedent only 20 years old, Mookerjee, J., speaking for the Division Bench in *Kedar Nath Hazra,* v. *Maharajah Manindra* ***Chandra Nandi*** (32), observed as follows:—

> "If the matter had been *res integra,* we might perhaps have accepted the view urged on behalf of the appellant. But

(30) 1975 P.L.R. 186.
(31) 1978 P.L.R. 681.
(32) 5 Indian Cases 309 (310).

when we remember that the first of these cases to which we have referred was decided in 1891 and has since then been uniformally followed in this Court in numerous cases, we feel that we ought not to dissent from it at the distance of time. The Courts must always hesitate to overrule decisions which are not manifestly erroneous and mischievous which have stood for many years unchallenged and which from their nature may reasonably be supposed to have affected the conduct of a large portion of the community in matters relating to rights of property".

The aforesaid observations were quoted with approval by the Full Bench in *Tribani Prasad Singh and others* v. *Ramasray Prasad Chaudhari and others* (33).

13. A Division Bench of the Madras High Court highlighted another fact of this rule in *C. Varadarajulu Naidu* v. *Baby Ammal and another* (34), with the following conclusion:

"The evil of unsettling consistent judicial opinion would be much greater than the evil of laying down what is alleged to be bad law. The Full Bench decisions should, as far as possible, be held to be binding on unless they be so glaringly bad as not being in conformity with any statute or with any decision of a superior court like the Supreme Court".

14. Lastly in this context the lament of Khanna, J., about easily overruling earlier precedent may be quoted from *Maganlal Chhagganlal (P) Ltd.* v. *Municipal Corpn. of Greater Bombay and others* (35).

"So far as the question is concerned about the reversal of the previous view of this Court, such reversal should be resorted to only in specified contingencies. It may perhaps be laid down as a broad proposition that a view which has been accepted for a long period of time should not be disturbed unless the Court can say positively that it was wrong or unreasonable or that it is productive of public hardship or inconvenience".

(33) A.I.R. 1921 Patna 241.
(34) A.I.R. 1964 Madras 448.
(35) A.I.R. 1974 S.C. 2009.

15. I am, therefore, of the view that not even one out of the many considerations which can possibly impel one to take a view contrary to a long line of unbroken precedent is satisfied in this context. Therefore, following the settled law within this jurisdiction we would answer the question posed at the very outset of this judgment in the negative and hold that sub-rule (c) of rule 11 of order 7 Civil Procedure Code, is not attracted in the case of the memoranda of appeal.

16. Before parting with this judgment it seems necessary to dispel the doubt that there is any conflict of view in the Division Bench judgments of this Court in *Gurdial Singh* v. *Massa Singh and others* (supra) and *Jobar Singh* v. *Shadi* (supra). In *Gurdial Singh's* case (supra) the Division Bench had virtually adopted the exhaustive referring order and made it an integral part of the judgment with regard to the question posed before it. The question therein was primarily and squarely with regard to the scope and applicability of sections 148 and 149 of the Civil Procedure Code. An analysis of the judgment would show that in the reference order virtually the whole discussion was centred around the provisions of the said sections and the judgments with regard thereto. However, it was noticed that the matter could also be examined from another angle and it was observed that a number of High Courts (as is evident from the earlier discussion here) were of the view that Order 7, rule 11(c) of the Civil Procedure Code was also applicable to the memoranda of appeals. In the referring order it was noticed in categoric terms that the view of the Lahore High Court as also of the Allahabad and Madras High Courts was to the contrary. Because the point was not directly in issue counsel did not cite at that stage the Division Bench judgment of this Court in *M/s. Ajey Textile and others' case* (supra) and it was, therefore, observed that no decision of our own Court had been brought to notice. Since this issue was totally an ancillary one in *Gurdial Singh's case,* all the authorities were not cited and, therefore, the passing observation therein that the weight of authority was in favour of applying Order 7, Rule 11(c) to the appellate forum does not appear to represent the true position now. It was in that situation that it was observed in the reference order that if the Bombay and Patna views were to hold the field then the preliminary objection of allowing the deficiency of court-fee on the memoranda of appeals to be made up would be wholly devoid of merit. It is obvious that sitting singly a view contrary to the Division Bench of the Lahore High Court could not be taken and since

the observations were made in the order of reference the same were only done to present the case from all its angles for consideration by a larger Bench. Now a reference to the Division Bench judgment in *Gurdial Singh's case* would show that it did not at all advert to the question of the applicability or otherwise of Order 7, rule 11(c) to the memoranda of appeals. There is indeed not a word of reference to it either expressly or implicity. The Bench confined itself exclusively to section 149 of the Civil Procedure Code and overruled the earlier Single Bench judgments of the Lahore High Court and of our own Court on this point. That being so, it would be more than manifest that there is no conflict or divergence of opinion in the observations made in the Division Bench judgment of *Gurdial Singh's* case and that of the Division Bench judgment in *Jabar Singh's* case (supra).

17. In the light of the answer to the question of law rendered in paragraph 15 above, the case should now go back to the learned Single Judge for decision on merits. There will be no order as to costs.

Rajendra Nath Mittal, J.—I agree.

Gokal Chand Mital, J.—I agree.

N. K. S.

FULL BENCH

Before Prem Chand Jain, D. S. Tewatia and Harbans Lal, JJ.

J. S. CHOPRA and others,—*Petitioners*

versus

UNION OF INDIA ETC.,—*Respondents.*

Civil Writ Petition No. 3363 *of* 1979.

May 8, 1980.

Indian Administrative Service (Appointment by Promotion) Regulations 1955—*Regulations* 5, 6(*iii*) *and* 7—*Constitution of India* 1950—*Articles* 16, 318 *and* 320—*Clause* (*iii*) *of regulation* 6 *requiring forwarding of reasons by the Committee for superseding any member*

FULL BENCH

Before S. S. Sandhawalia, C.J., Rajendra Nath Mittal and Gokal Chand Mital, JJ.

RAJ KUMAR ALIAS PRITHVI SINGH and another,—*Appellants.*

versus

AMAR SINGH and others,—*Respondents.*

Regular Second Appeal No. 1572 *of* 1979.

April 22, 1980.

Code of Civil Procedure (V *of* 1908)—*Section* 107(2) *and Order* 7 *Rule* 11(c)—*Memorandum of appeal insufficiently stamped—Appellate Court—Whether bound to call upon the appellant to make good the deficiency before rejecting the same—Order* 7 *Rule* 11(c)—*Whether applicable—Divergence of views amongst High Courts—This High Court and its predecessor Courts consistently following one view for several decades—Principle of* Stare decisis—*Whether to be applied.*

Held, that a view long held in the jurisdiction is not to be upset except on the patent grounds that the same is either palpably wrong or is of a kind that following it would be perpetuating an error and resulting in public mischief. That is indeed far from being the case here and, therefore, on well settled principle the court is inclined to conform to the long standing opinion within this Court itself as also in the predecessor court of Lahore and hold that sub-rule (c) of Rule 11 of Order 7 of the Code of Civil Procedure 1908 is not attracted in the case of the memoranda of appeal and, therefore, the appellate court is not bound to call upon the appellant to make up the deficiency in Court-fee and could straightaway reject an appeal if the memorandum thereof did not bear the Court-fee prescribed by law. (Paras 11 and 15).

Case referred by the Hon'ble Mr. Justice Gokal Chand Mital, on 9th August, 1979, *to the Full Bench for an opinion of the important question of law involved in the case. The Full Bench consisting of Hon'ble the Chief Justice Mr. S. S. Sandhawalia. Hon'ble Mr. Justice Rajindra Nath Mital and Hon'ble Mr. Justice Gokal Chand Mittal, has referred the case to a Single Judge, on 22nd April,* 1980. *The Single Bench consisting of Single Hon'ble Mr. Justice Gokal Chand Mittal, has finally decided the case on merit on 7th August,* 1980.

Regular Second Appeal from the decree of the Court of Shri S. K. Jain, Additional District Judge, Hissar, dated 29th December,

1978 *affirming that of Shri H. R. Goel, Sub-Judge 1st Class, Hissar, dated 26th January, 1978, dismissing the suit of the plaintiffs with costs.*

P. C. Mehta, Advocate with Hari Khanna, H. N. Mehtani, Advocates as intervenor.

V. M. Jain, Advocate, *for the respondent.*

JUDGMENT

S. S. Sandhawalia, C.J.

1. Whether sub-rule (c) of rule 11 of Order 7 of the Code of Civil Procedure 1908 applies *mutatis mutandis* to the memoranda of appeals by virtue of the provisions of sub-section (2) of section 107 of the Code, is the meaningful question which in essence has necessitated this reference to a Full Bench.

2. It is manifest that the issue aforesaid is pristinely legal and any detailed reference to the facts, therefore, would be hardly relevant— the more so in view of the fact that we are inclined only to decide the question of law leaving the determination on merits to the learned Single Judge. It, therefore, suffices to notice that the suit preferred by the plaintiff-appellants was a usual declaratory one claiming that the sale of agricultural land specified therein by a registered deed was without necessity and consideration and, therefore, not binding upon the plaintiffs and consequently not affecting their proprietary rights. The trial Court dismissed the suit on January 28, 1978. The appeal against the same was instituted on April 18, 1978, and relying on certain amendments made by the State of Haryana in the Court-fees Act, the respondents took up the objection before the appellate Court that the memorandum of appeal should have been stamped with Rs. 30 whereas in fact only a court-fee of Rs. 25 had been affixed. This position being not in any serious dispute the plaintiff-appellants prayed for being allowed to make up the deficiency in the court-fee but were opposed with the objection that the limitation for filing the appeal having expired they could not now be allowed to do so. Reliance on behalf of the respondents was placed on *Smt. Amar Kaur* v. *Iqbal Singh and others* (1) and *Jabar Singh* v. *Shadi* (2).

(1) 1971 P.L.J. 49.
(2) 1978 P.L.R. 681.

3. The appellate Court held on facts that no ground for the exercise of discretion under section 149 of the Civil Procedure Code to allow the appellants to make up the deficiency in the court-fee had been made out. However, a further finding was arrived at (which now lies at the root of the controversy) that Order 7, rule 11(c) of the Civil Procedure Code had no application to appeals and, therefore, the appellate Court was not bound to call upon the plaintiff-appellants to make up the deficiency in the court-fee and could straightaway reject an appeal if the memorandum thereof did not bear the court-fee prescribed by law. It is this view on which there appears to be a wide ranging divergence of judicial opinion and, therefore, it calls for careful consideration.

4. However, before adverting to the core of the aforesaid issue it is perhaps apt to dispose of a matter on which there appears to be virtual unanimity. Learned counsel for the parties were agreed that section 149 of the Code was undoubtedly attracted to the situation and the appellate Court, therefore, had the discretion at any stage to allow the appellants to make up the deficiency. If this discretion were to be exercised in favour of the appellants, the inevitable effect would be that the court-fee on the memorandum of appeal would be deemed to have been paid as if in the first instance in view of the provisions of section 149. So far there indeed appears to be no dispute and the counsel were agreed that it would be for the learned Single Judge to determine whether the first appellate Court had in fact exercised the discretion under section 149 correctly and if not he may himself do so in favour of the plaintiff-appellants. On this aspect under section 149 of the Code, therefore, nothing more need be said because neither on principle nor on precedent there is now any conflict meriting determination and the matter is now fully covered by the Division Bench judgment of this Court in *Gurdial Singh* v. *Massa Singh and others* (3). Therein it was held in the reference order (the reasoning whereof was adopted by the Division Bench) as follows:—

> "In the ultimate analysis, therefore, it must be held that sections 148 and 149 of the Code of Civil Procedure are equally attracted to the appeals presented in this Court or Courts below as also to suits in the original trials. Applying

(3) 1977 P.L.R. 130.

the ratio of the decisions cited above, it is evident that unless the Court comes to the finding that the litigant was acting *mala fide* or with contumacy, the appellant would be entitled to the benefit of section 149 and discretion should be exercised in his favour by allowing him to make up the deficiency in the court-fee".

5. One may now advert to the basic issue whether Order 7, rule 11(c) of the Code is equally applicable to the memoranda of appeals with the necessary result that the appellate Court also must require the appellants to make up the deficient stamp within a fixed time and only on his failure to do so it could proceed to reject the appeal on that score. To appreciate this controversy which evidently is a tangled one the relevant parts of the Code may first be set down:—

"S. 107. (1) Subject to such conditions and limitations as may be prescribed, an appellate Court shall have power—

(a) * * *

(b) * * *

(c) * * *

(d) * * *

(2) Subject as aforesaid, the appellate Court shall have the same powers and shall perform as nearly as may be the same duties as are conferred and imposed by this Code on Courts of original jurisdiction in respect of suits instituted therein".

ORDER 7, RULE 11.

Rejection of Plaint:—The plaint shall be rejected in the following cases:—

(a) where it does not disclose a cause of action;

(b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;

(c) where the relief claimed is properly valued but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;

(d) where the suit appears from the statement in the plaint to be barred by any law.

Provided * * * * *
* * * * *".

At the very outset it may now be highlighted that on the basic issue before us there appears to be such sharp and long standing divergence of judicial opinion since the very enforcement of the Code extending over well nigh seventy years that it appears to me patently wasteful to re-examine the issue on principle. It is indeed not my intention to add yet further to the large mass of conflicting judicial literature on the point. It would, therefore, suffice to notice broadly the two lines of divergent opinion which seem to be running parallel to each other without hope of a meeting point over the last three score years and ten. Though the seeds of the controversy appeared to go back much earlier to the provisions of the previous Code of Civil Procedure it appears to me adequate to notice the clash of judicial opinion after the enforcement of the present Code in 1908.

6. The earliest judgment which calls for notice is the Division Bench of the Bombay High Court in *Achut Ramchandra Pai and others* v. *Nayappa Bab Balgami and others* (4), categorically taking the view that the memorandum of appeal stands on the same footing as a plaint and the provision of Order 7 rule 11(c) of the Code would be equally applicable to it by virtue of section 107(2) thereof. However, hardly a year later the Division Bench of the Madras High Court in *Akkaraju Narayana Rao* v. *Akkaraju Seshamma and others* (5) seriously doubted the correctness of this judgment (however, without elaborating the point) and took a contrary view. Thereafter the stream of precedent in the Madras High Court remained consistent though it was only in a later Division Bench judgment in *Pamidimukhala Sitharamayya and others* v. *Ivaturi Ramayya and another* (6), that Varadachariar, J., speaking for the Bench spelt out the detailed grounds for taking a different view from the Bombay High Court in holding unreservedly that Order 7, rule 11(c), Civil Procedure Code, has no application to the memoranda of appeals.

(4) A.I.R. 1914 Bombay 249.
(5) A.I.R. 1915 Madras 426.
(6) A.I.R. 1938 Madras 316.

7. In line with the conflict above noticed, judicial opinion in other High Courts has thereafter ranged itself in two distinct and different channels (agreeing either with the Bombay or the Madras view)—one holding that Order 7, rule 11(c) was equally attracted to the appellate forum whilst the other holding diametrically to the contrary. This controversy seems to have continued without any hope of resolution and it was stated before us at the bar jointly by the learned counsel for the parties that as yet no judgment of the final Court setting the same at rest has been rendered. In this situation it appears to me a plain exercise in futility to now begin examining the matter on first principle as if it was *res-integra* or to start distinguishing the reasoning of the myriad of authorities rendered by different High Courts. Sufficient it is to notice that the High Court of Bombay in *Achut Ramchandra Pai and others* v. *Nayappa Bab Balgaya and others* (supra), *Phaltan Bank* v. *Baburao Appajirao and another* (7), the High Court of Patna in *Bahuria Ramsawari Kuer and another* v. *Dulhin Motiraj Kuer and others* (8), *Sarjug Prasad Sahu and others* v. *Surendrapat Tewari and others* (9), *Ramgita Singh* vs. *Shitab Singh and another* (10), *Gajadhar Bhagat and others* v. *Moti Chand Bhagat*, (11), *Mahabir Ram and another* v. *Kapildeo Pathak and others* (12), Chief Court of Oudh in *Deoraj* v. *Kunj Behari and others* (13), *Har Prasad* v. *Kapurtuhala Estate and others* (14), *Husain Ali Khan and others* v. *Ambika Prasad* (15), and the Court of Judicial Commissioner in *Shri Hem Chandra Sarkar* v. *Smt. Jyoti Bala Chakraborty* (16), all of the view that order 7, rule 11(c) applies in terms to the memoranda of appeals by virtue of section 107(2) of the Code.

8. Sharply ranged on the other side are the High Court of Madras in *Akharaju Narayana Rao* v. *Akkaraju Seshamma and others* (17), *Pamidimkukkala Sitharamayya and others* v. *Iyaturi*

(7) A.I.R. 1954 Bombay 43.
(8) A.I.R. 1939 Patna 83.
(9) A.I.R. 1939 Patna 137.
(10) A.I.R. 1939 Patna 432.
(11) A.I.R. 1941 Patna 108.
(12) A.I.R. 1957 Patna 111.
(13) A.I.R. 1930 Oudh 104.
(14) A.I.R. 1935 Oudh 119.
(15) A.I.R. 1937 Oudh 414.
(16) A.I.R. 1970 Tripura 26.
(17) A.I.R. 1915 Madras 426.

Ramayya and another (18), High Court of Allahabad in *S. Wajid Ali* v. *Isar Bano* (19), High Court of Pepsu in *Ram Murti and others* v. *Bank of Patiala* (20), High Court of Rajasthan in *Amar Singh* v. *Chaturbhuj and others* (21), High Court of Jammu and Kashmir in *Collector, Land Acquisition and another* v. *Dina Nath Mahajan and others* (22), and the Courts of the Judicial Commissioners in *Kazi Mukarram Khan, Kazi Abdul Wabab Khan and another* v. *S. Hardit Singh, etc.* (23), Judicial Commissioner's Court in *Union of India* v. *Sansar Chand* (24), Judicial Commissioner's Court in *Atmaram and others* v. *Singhai Kasturchand and others* (25) and Judicial Commissioner's Court in *Pushkar Narain and another* v. *Chand Beharilal Ghisulal and another* (26), all taking the view that Order 7, rule 11(c) of the Civil Procedure Code is confined to plaints in a suit and is not applicable to the appellate forum.

9. However, so far as this jurisdiction is concerned it appears that there has been a clear and unbroken line of precedent both in the predecessor High Court of Labore and this High Court consistently taking the view that Order 7, rule 11(c) of the Code is not applicable to the memoranda of appeals. As was noticed earlier, the controversy travels even far beyond the enforcement of the present Code of Civil Procedure, but it would be unnecessary to notice the authorities with regard to the corresponding sections of the earlier Code in the Chief Court of Lahore. It would be apt to confine oneself to the provisions of the present Code. Herein a learned Single Judge way back in *Gursaran Das* v. *District Board, Jullundur* (27), dissented from the Bombay view in *Achut Ramchandra Pai's case* (supra) and clearly expressed his preference for the view taken by the Madras High Court and other High Courts following the same. However, the more elaborate expression of opinion on this point in that of the Division Bench in *Balwant Singh* v. *Jagjit Singh* (28). Within this High Court also the view has

(18) A.I.R. 1938 Madras 316.
(19) A.I.R. 1951 All. 64 (F.B.).
(20) A.I.R. 1951 Pepsu 54.
(21) A.I.R. 1967 Rajasthan 367.
(22) A.I.R. 1977 J. & K. 11.
(23) A.I.R. 1941 Peshawar 69.
(24) A.I.R. 1960 H.P. 1.
(25) A.I.R. 1980 Nagpur 224.
(26) A.I.R. 1954 Ajmer 15.
(27) A.I.R. 1927 Lahore 824.
(28) A.I.R. 1947 Lahore 210.

been consistent and the Division Bench in *M/s. Ajey Textile* and others v. *The British India Corporation and others* (29), after some discussion of the earlier judgments and principle concluded as follows :—

"The latest judgment of the Madras High Court taking the same view is of Varadachariar and Pandrang Row, JJ., in *Pamidimukhala Sitharamayya and others* v. *I-Vaturi Ramayya and another*, A.I.R. 1938, Madras 316. The learned Judges of the Madras High Court also after considering a large number of previous cases came to the conclusion that the provisions of Order 7, Rule 11(c) of the Code of Civil Procedure do not apply to appeals and that the appellate Court is entitled to reject an appeal if the full court-fee has not been paid without calling upon the appellant to pay the deficient court-fee, because in so far as the memorandum of appeal was concerned, express provision has been made in Order 41, Rule 3, for its rejection on the grounds stated in that rule. After hearing the learned counsel for the parties at length and after careful consideration of the matter we are inclined to agree with the view taken by the Division Bench of the Madras High Court in *Pamidmukhala Sitharamayya's case* (supra). The provisions of section 107(2) have been expressly made subject to such conditions and limitations 'as may be prescribed'. In section 2(16) 'prescribed' is stated to mean 'prescribed by rules'. Whereas specific provision has been made in rule 11 of Order 7, relating to plaints, no corresponding provision has been made to that effect in Order 41 of the Code, which contains the entire relevant procedure relating to appeals. Agreeing with the reasoning on which the judgment of the Division Bench of the Lahore High Court was based, we do not appear to be bound to allow the appellants an opportunity to make up the deficiency in court-fee after the expiry of the period of limitation for preferring the appeal particularly in a case where there is no dispute about the quantum of the court-fee payable, but the appellants have knowingly and deliberately paid deficient court-fee on the solitary ground that they were not possessed of sufficient funds to pay the requisite court-fee within the period of limitation. Since the petition of appeal did not bear the requisite court-fee, no proper appeal has in fact been filed in this case".

(29) 1970 (2) I.L.R. Pb. & Haryana 127.

The aforesaid view has then been followed in a Single Bench judgment in ***Jabar Singh*** **v.** *Shadi* (30), which has been upheld by the Letters Patent Bench in *Jabar Singh* v. *Shadi* (31).

10. It calls for pointed notice that the learned counsel for the appellants frankly conceded that he could cite no judgment whatsoever either of the Chief Court of Punjab or of Lahore High Court or of this High Court taking a contrary view in their favour.

11. It would be evident from the above that in the predecessor High Court of Lahore as also within the jurisdiction of this High Court, judicial opinion has so far been unanimous without a hint of dissent on the point that Order 7, rule 11, Civil Procedure Code, is not applicable to the memoranda of appeals. The line of reasoning has held unbroken sway eversince the enforcement of the Civil Procedure Code for well nigh 72 years. Now apart from other things on the principle of *stare decisis* we see no reason whatsoever to induct any note of dissent in the law which fortunately within this jurisdiction has remained settled. As has already been noticed it is not as if there is any unanimity of view in the other High Courts on the point and indeed as at present advised the weight of authority seems to be tilted on the side of the view we are inclined to take. It is well-settled that a view long held in the jurisdiction is not to be upset except on the patent grounds that the same is either palpably wrong or is of a kind that following it would be perpetuating an error and resulting in public mischief. That is indeed far from being the case here and, therefore, on well-settled principle we are inclined to conform to the long standing opinion within this Court itself as also in the predecessor Court of Lahore.

12. Now, the doctrine of *stare decisis* is too well known to either call for any great elaboration on principle or to seek support of any multiplicity of authority. It would suffice to recall that even with regard to a line of precedent only 20 years old, Mookerjee, J., speaking for the Division Bench in *Kedar Nath Hazra,* v. *Maharajah Manindra* ***Chandra Nandi*** (32), observed as follows:—

> "If the matter had been *res integra,* we might perhaps have accepted the view urged on behalf of the appellant. But

(30) 1975 P.L.R. 186.
(31) 1978 P.L.R. 681.
(32) 5 Indian Cases 309 (310).

when we remember that the first of these cases to which we have referred was decided in 1891 and has since then been uniformally followed in this Court in numerous cases, we feel that we ought not to dissent from it at the distance of time. The Courts must always hesitate to overrule decisions which are not manifestly erroneous and mischievous which have stood for many years unchallenged and which from their nature may reasonably be supposed to have affected the conduct of a large portion of the community in matters relating to rights of property".

The aforesaid observations were quoted with approval by the Full Bench in *Tribani Prasad Singh and others* v. *Ramasray Prasad Chaudhari and others* (33).

13. A Division Bench of the Madras High Court highlighted another fact of this rule in *C. Varadarajulu Naidu* v. *Baby Ammal and another* (34), with the following conclusion:

"The evil of unsettling consistent judicial opinion would be much greater than the evil of laying down what is alleged to be bad law. The Full Bench decisions should, as far as possible, be held to be binding on unless they be so glaringly bad as not being in conformity with any statute or with any decision of a superior court like the Supreme Court".

14. Lastly in this context the lament of Khanna, J., about easily overruling earlier precedent may be quoted from *Maganlal Chhagganlal (P) Ltd.* v. *Municipal Corpn. of Greater Bombay and others* (35).

"So far as the question is concerned about the reversal of the previous view of this Court, such reversal should be resorted to only in specified contingencies. It may perhaps be laid down as a broad proposition that a view which has been accepted for a long period of time should not be disturbed unless the Court can say positively that it was wrong or unreasonable or that it is productive of public hardship or inconvenience".

(33) A.I.R. 1921 Patna 241.
(34) A.I.R. 1964 Madras 448.
(35) A.I.R. 1974 S.C. 2009.

15. I am, therefore, of the view that not even one out of the many considerations which can possibly impel one to take a view contrary to a long line of unbroken precedent is satisfied in this context. Therefore, following the settled law within this jurisdiction we would answer the question posed at the very outset of this judgment in the negative and hold that sub-rule (c) of rule 11 of order 7 Civil Procedure Code, is not attracted in the case of the memoranda of appeal.

16. Before parting with this judgment it seems necessary to dispel the doubt that there is any conflict of view in the Division Bench judgments of this Court in *Gurdial Singh* v. *Massa Singh and others* (supra) and *Jobar Singh* v. *Shadi* (supra). In *Gurdial Singh's* case (supra) the Division Bench had virtually adopted the exhaustive referring order and made it an integral part of the judgment with regard to the question posed before it. The question therein was primarily and squarely with regard to the scope and applicability of sections 148 and 149 of the Civil Procedure Code. An analysis of the judgment would show that in the reference order virtually the whole discussion was centred around the provisions of the said sections and the judgments with regard thereto. However, it was noticed that the matter could also be examined from another angle and it was observed that a number of High Courts (as is evident from the earlier discussion here) were of the view that Order 7, rule 11(c) of the Civil Procedure Code was also applicable to the memoranda of appeals. In the referring order it was noticed in categoric terms that the view of the Lahore High Court as also of the Allahabad and Madras High Courts was to the contrary. Because the point was not directly in issue counsel did not cite at that stage the Division Bench judgment of this Court in *M/s. Ajey Textile and others' case* (supra) and it was, therefore, observed that no decision of our own Court had been brought to notice. Since this issue was totally an ancillary one in *Gurdial Singh's case,* all the authorities were not cited and, therefore, the passing observation therein that the weight of authority was in favour of applying Order 7, Rule 11(c) to the appellate forum does not appear to represent the true position now. It was in that situation that it was observed in the reference order that if the Bombay and Patna views were to hold the field then the preliminary objection of allowing the deficiency of court-fee on the memoranda of appeals to be made up would be wholly devoid of merit. It is obvious that sitting singly a view contrary to the Division Bench of the Lahore High Court could not be taken and since

the observations were made in the order of reference the same were only done to present the case from all its angles for consideration by a larger Bench. Now a reference to the Division Bench judgment in *Gurdial Singh's case* would show that it did not at all advert to the question of the applicability or otherwise of Order 7, rule 11(c) to the memoranda of appeals. There is indeed not a word of reference to it either expressly or implicity. The Bench confined itself exclusively to section 149 of the Civil Procedure Code and overruled the earlier Single Bench judgments of the Lahore High Court and of our own Court on this point. That being so, it would be more than manifest that there is no conflict or divergence of opinion in the observations made in the Division Bench judgment of *Gurdial Singh's* case and that of the Division Bench judgment in *Jabar Singh's* case (supra).

17. In the light of the answer to the question of law rendered in paragraph 15 above, the case should now go back to the learned Single Judge for decision on merits. There will be no order as to costs.

Rajendra Nath Mittal, J.—I agree.

Gokal Chand Mital, J.—I agree.

N. K. S.

FULL BENCH

Before Prem Chand Jain, D. S. Tewatia and Harbans Lal, JJ.

J. S. CHOPRA and others,—*Petitioners*

versus

UNION OF INDIA ETC.,—*Respondents.*

Civil Writ Petition No. 3363 *of* 1979.

May 8, 1980.

Indian Administrative Service (Appointment by Promotion) Regulations 1955—*Regulations* 5, 6(*iii*) *and* 7—*Constitution of India* 1950—*Articles* 16, 318 *and* 320—*Clause* (*iii*) *of regulation* 6 *requiring forwarding of reasons by the Committee for superseding any member*