

proceedings in terms of Section 138 of the Negotiable Instruments Act.

[2] Plaintiffs filed suit for declaration seeking the sale deed in question to be null and void being executed without payment of consideration. They also sought permanent injunction restraining the defendant No.2 from alienating the suit land or creating any incumbrances or charge over the suit land. In the suit, defendant No.1 moved an application under Order 7 Rule 11 CPC, requiring the plaintiffs to affix ad valorem court fee as they have assailed the sale deed and therefore, declaration to seek cancellation of deed attracts payment of ad valorem court fee.

[3] Plaintiffs alleged that since no consideration was passed over to them, therefore, possession of the property always remained with them and only delivery of symbolic possession was recorded in favour of the defendant No.1. Defendant in a very clandestine manner mortgaged the property of defendant No.2 on the next date of execution of sale deed. That is how the sale deed came to be pledged in favour of defendant No.2. At this stage only averments/allegations made in the plaint are to be seen.

[4] Apparently the plaintiffs have alleged that on account of non passing of consideration, the possession of the land remained with

them and defendant No.1 acted in a very fraudulent manner to pledge the sale deed in favour of defendant No.2 without honouring the cheques issued towards consideration.

[5] Learned counsel cites **Rambai Vs. Kapoori 2014 Volume 4 R.C.R (Civil) 376**, to contend that if a person commits fraud and gets the sale deed executed without payment of consideration and the possession remained with the vendor, then in a suit for declaration filed by vendor, ad valorem court fee is not required to be paid. Learned counsel for respondent No.1 did not appear despite service. Learned counsel for the respondent No.2 vehemently contested the claim of the petitioners on the ground that the property has been duly mortgaged with defendant No.2 and it is on account of unholy alliance between the plaintiffs and defendant No.1, the claim of the defendant No.2 is being put to stake.

[6] I have considered the submissions made by both the parties. At this stage of litigation, only averments in the plaint are to be seen. The allegations of plaint are categoric in nature that the consideration was never passed over to the plaintiffs. Sale deed has been executed without passing of consideration. Possession always remained with the vendor/plaintiffs.

[7] In view of aforesaid, I am fully in agreement with the proposition held in Rambai Vs. Kapoori (supra). Accordingly, this revision petition is accepted. Impugned order is set aside. Trial Court is directed to proceed with the suit without insisting upon payment of ad valorem court fee under the impugned order.

(RAJ MOHAN SINGH)
JUDGE

December 03, 2015

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