

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**WP227 No. 570 of 2016**

1. Chitrekha Bai W/o Dinesh Kumar Deshmukh, Aged About 37 Years R/o Village & Post-Bhedasar, Tahsil & District-Durg, Chhattisgarh.
2. Binda Bai W/o Late Ramlal, D/o Bodhrai Aged About 50 Years Caste-Kurmi, R/o Village-Birejhar, Tahsil & District-Durg, Chhattisgarh.

**---- Petitioner**

**Versus**

1. Janak Bai, W/o Samaylal, D/o Bodhrai Aged About 45 Years, Caste Kurmi, R/o Village & Post-Tirga, Tahsil & District-Durg, Chhattisgarh.
2. Smt. Janki Bai W/o Ramsharam Deshmukh D/o Bodhrai, Aged About 40 Years, Caste-Kurmi, Address-Janjgir, Tahsil & District-Durg, Chhattisgarh.
3. Bodhrai S/o Late Samaru Aged About 85 Years R/o Village & Post-Bhedasar, Tahsil & District-Durg Chhattisgarh.
4. State Of Chhattisgarh. Through The Collector, Durg, Chhattisgarh

**---- Respondents**

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| For Petitioners      | Shri Goutam Khetrapal, Advocate |
| For Respondent-State | Shri Shashank Thakur, GA        |

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**Hon'ble Shri Justice Prashant Kumar Mishra**

**Order On Board**

**03/10/2016**

1. This petition under Article 227 of the Constitution of India has been preferred by the defendant Nos.2 & 3 in the suit assailing the order passed by the trial Court dismissing their application under Order 7 Rule 11 CPC by which the petitioners had raised objection to the maintainability of the suit for non payment of ad valorem court fee.
2. The plaintiffs Janak Bai and Janki Bai are daughters of defendant No.1 Bodhrai. They have preferred the suit for a declaration that the sale deed dated 26.04.2014 executed by the defendant No.3 in favour of defendant Nos.1 & 2 is null and void as also for partition to the extent of 1/4th share each and for permanent injunction to restrain the defendants from interfering in their possession.
3. Admittedly, the plaintiffs were not a party to the sale deed, which was executed for a sum of Rs.2,51,000/-.
4. The trial Court has dismissed the application on the ground that a non executant cannot be compelled to pay ad valorem court fee.
5. Referring to the order passed by this Court on 19.09.2016 in the matter of **Kalapataru Sales Private Limited v. Deepak Agrawal and others** in WP227 No.1005/2015 and another connected matter, it is argued that since the plaintiffs have alleged that the sale deed has been executed by defendant No.3 without receiving any sale consideration from defendant

Nos.1 & 2, which is not correct because the sale deed has been executed after payment of consideration, therefore, the plaintiffs are also liable to pay ad valorem court fee on the value of the sale deed. He would particularly refer to para 9 of the judgment rendered by this Court in the matter of **Kalapataru Sales Private Limited** (supra).

6. In **Kalapataru Sales Private Limited** (supra), this Court has referred to the law laid down by the Supreme Court in the matter of **Suhrid Singh alias Sardool Singh v. Randhir Singh and others**<sup>1</sup> quoting para 7 thereof, which is again reproduced hereunder for ready reference.

7. Where the executant of a deed wants it to be annulled, he has to seek cancellation of the deed. But if a non-executant seeks annulment of a deed, he has to seek a declaration that the deed is invalid, or non-est, or illegal or that it is not binding on him. The difference between a prayer for cancellation and declaration in regard to a deed of transfer/conveyance, can be brought out by the following illustration relating to 'A' and 'B' -- two brothers. 'A' executes a sale deed in favour of 'C'. Subsequently 'A' wants to avoid the sale. 'A' has to sue for cancellation of the deed. On the other hand, if 'B', who is not the executant of the deed, wants to avoid it, he has to sue for a declaration that the deed executed by 'A' is invalid/void and non-est/ illegal and he is not bound by it. In essence both may be suing to have the deed set aside or declared as non-binding. But the form is different and court fee is also different. If 'A', the executant of the deed, seeks cancellation of the deed, he has to pay ad-valorem court fee on the consideration stated in the sale deed. If 'B', who is a non-executant, is in possession and sues for

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1 (2010) 12 SCC 112

a declaration that the deed is null or void and does not bind him or his share, he has to merely pay a fixed court fee of Rs.19.50 under Article 17 (iii) of the Second Schedule of the Act. But if 'B', a non-executant, is not in possession, and he seeks not only a declaration that the sale deed is invalid, but also the consequential relief of possession, he has to pay an ad-valorem court fee as provided under Section 7 (iv)(c) of the Act."

7. The law is thus fairly well settled that where the executant of a deed wants it to be annulled, he has to seek cancellation of the deed, but if a non-executant seeks annulment of a deed, he has to seek a declaration that the deed is invalid, or non-est, or illegal or that it is not binding on him. Indisputably, the plaintiffs in the present case are not the executant of the sale deed, which is sought to be avoided, therefore, the plaintiffs are not liable to pay ad valorem court fee.
8. In the considered opinion of this Court, the trial Court has not committed any illegality in dismissing the application, therefore, the instant petition has to fail and it fails. It is accordingly dismissed.

Sd/-

JUDGE  
PRASHANT KUMAR MISHRA

Nirala