

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(227) No. 753 of 2016

1. Basant Kotla, S/o. Sankirtan, aged about 45 years,
2. Setkumar, S/o. Sankirtan, aged about 38 years,
3. Suresh Kumar, S/o. Sankirtan, aged about 35 years,
4. Haripriya, S/o. Sankirtan, aged about 48 years,
5. Jambobai, W/o. Sankirtan, aged about 67 years,

The petitioners No.1 to 5 are R/o.Village- Sinha, Tahsil Pusaur, Police Station and Post Pusaur, Civil and Revenue District – Raigarh (C.G.)

----Petitioners

Versus

1. Raigarh Cinema Entertainments, Raigarh, through : Shakti Agrawal, S/o. Pramod Agrawal, aged about 23 years, R/o. In front of Town Hall Raigarh, Tahsil and District Raigarh (C.G.) (Respondent/plaintiff).
2. Puranchand, S/o. Lav Sahu, aged about 47 years, R/o. Village Guddu, Tahsil Pusaur, Police Station and Post Pusaur, Civil and Revenue District – Raigarh (C.G.). (Defendant No.6)
3. State of Chhattisgarh, through : Collector, Raigarh, District – Raigarh (C.G.) (Defendant No.7)

---- Respondents

For Petitioners : Mr. Manoj Paranjpe, Advocate

For State/Respondent : Mr. Sangharsh Pandey, Dy. Govt. Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

13/12/2016

1. Challenge in this petition is to the order dated 04.07.2016, passed by the 2nd Additional District Judge, Raigarh, whereby the application filed by the plaintiff under Order 7 Rule 11 has been allowed and the defendants/petitioners have been directed to pay ad valorem Court fees, wherein the sale deed dated 23.08.2011 was subject of challegne. The prayer was made in the counter claim that sale deed dated 23.08.2011 be declared as void and out come of fraud.

2. Perused the order dated 04.07.2016. The suit was filed by the respondent No.1, who is the plaintiff before the Court below, through its partner, wherein declaration was sought for in respect of sale deed dated 18.10.2016 to be null and void and also permanent injunction was prayed for. In such suit, after notice counter claim was filed by the defendants/petitioners, wherein it was stated that the defendants have executed a sale deed which is of dated 23.08.2011, which was executed by defendant in favour of the plaintiff be declared as null and void. After filing of the counter claim, an application under Order 7 Rule 11 of C.P.C. was filed by the plaintiff stating that ad valorem Court fees has not properly been paid for the prayer made in counter claim for declaration against the sale deed.
3. The learned trial Court after hearing both the parties, directed the defendants/petitioners to pay ad valorem Court fees for prayer made in counter claim, which is subject of challenge before this court.
4. Perusal of the order and the documents filed along with the petition would show that declaration was sought for by way of counter claim in respect of the sale deed dated 23.08.2011 to be declared null and void. The defendants/petitioners have not denied the fact that the sale deed do not bear their signatures and they were not a party to it, however, the pleading is made that the sale deed is void and is outcome of fraud.
5. The pleading of defendants/petitioners at this stage can not be accepted as gospel truth as it is question of fact and the case is to be adjudicated on the basis of the pleading of the parties. The defendants/petitioners wanted to get the sale deed annulled by way of counter claim. Pleading would show that the petitioners were party to

the sale deed and it is not a case of petitioners that in place of petitioners some other persons have executed the sale deed. So a registered deed exists, which is sought to be annulled. Therefore, in view of the law laid down in case of *Suharid Singh Vs. Randhir Singh*, reported in 2010 A.I.R. S.C.W. 3308, ad valorem Court fees is required to be paid.

6. Taking into the fact and the issue involved in this case, and further after going through the order, in my considered opinion as appears no jurisdictional error has been committed or it can be stated that it is a case where the Court has exceeded the jurisdiction vested in it by law. Consequently I am of the opinion that this is not a case where the power under Article 227 of the Constitution of India is to be invoked.
7. Accordingly, the petition is dismissed at admission stage itself.

Sd/-
(Goutam Bhaduri)
Judge