

HIGH COURT OF CHHATTISGARH, BILASPUR**Civil Revision No. 156 of 2013****Order reserved on : 22.09.2016****Order passed on : 07-10-2016**

1. Raju Tiwari, S/o Ram Prasad Tiwari, aged-about 45 years, caste-Brahmin,
2. Smt. Krishna Tiwari, W/o Raju Tiwari, aged-about 39 years, caste-Brahmin,

Both are R/o Shiv nagar Dhaba road, ward no. 4 city, P.O.,
Tahsil & Distt.- Rajnandgaon (C.G.)

---- Petitioners**Versus**

1. Baishakhin Bai, Wd/o Arjun Singh Yadav, aged-about 65 years, occupation -house
2. Motilal, S/o late Arjun Singh Yadav, aged-about 32 years, occupation -labour
3. Budhiyarin Bai, S/o late Arjun Singh Yadav, aged about 40 years, occupation -labour
4. Dhanuk, S/o Punaram Yadav, aged about 60 years, occupation -Kastkari

All are the R/o village -daganiya, P.O.- Padumtara, tahsil &
Distt.- Rajnandgaon (C.G.)

5. Gajendra Singh, S/o Sukhnandan Singh Rajput, aged-about 28 years, R/o Sheetala mandir road, Purani Basti, Chikhali ward no. 3, city, P.O.- Tahsil & Distt. Rajnandgaon (C.G.)
6. Pradeep Yadav, S/o Jethu Yadav, aged-about 28 years Sheetala mandir road, Purani Basti, Chikhali ward No.3, city, P.O. Tahsil & Distt. Rajnandgaon (C.G.)
7. Shaturhan Yadav, S/o Balbhadra Yadav, aged-about 45 years, R/o Moti Talab Par Baila Pasara, ward No. 14, city, P.O.- Tahsil & Distt. - Rajnandgaon (C.G.)
8. State of Chhattisgarh Through – Collector, Distt. Office – Rajnandgaon (C.G.)

---- Respondents

For Petitioners: Mr. Arun Kumar Shukla, Advocate.

For Respondents No. 1 to 4
: Mr. Prakash Tiwari, Advocate.

Respondents No. 5 to 7:
Mr. Abhishek Sharma, Advocate.

Respondent No.8 :Mrs. Astha Shukla, PL

Hon'ble Shri Justice Sanjay K. Agrawal

ORDER [C.A.V.]

(1) Invoking provision contained in Section 115 of the Code of Civil Procedure, defendants No. 1 & 2 petitioners herein have filed this revision calling in question the legality, validity and propriety of the order dated 31.10.2013 by which their application filed under Order 7 Rule 11 has been rejected by the trial Court.

(2) Plaintiffs No. 1 to 4/respondents No. 1 to 4 herein filed a suit for declaration that sale deed dated 31.03.2012 & 25.07.2012 is null & void as that has been executed beyond their back and they have not executed power of attorney in favour of defendants No. 1 & 2 and thus the sale made by defendant No. 1 in favour of defendant No. 2 and further sale made by defendant No. 2 in favour of defendants No. 5 & 6 are null & void, and they also sought declaratory decree and perpetual injunction.

(3) The defendant Nos. 1 & 2 filed an application under Order 7 Rule 11 of the CPC stating that as the plaintiffs are challenging

the validity of sale deeds, they are required to pay *ad velorem* court fee, which the trial Court has rejected and against which, the instant revision has been preferred challenging the same.

(4) Mr. Arun Kumar Shukla, learned counsel appearing for the petitioners would submit that the plaintiffs have sought cancellation of the sale deeds dated 31.03.2012 and 25.07.2012 and, therefore, they are required to pay *ad velorem* court fee. He placed reliance upon the decision of the Supreme Court in the matter of **Suhrid Singh @ Sardool Singh Vs. Randhir Singh & others**¹ and in the matter of **Satwinder Kaur Vs. Surjeet Singh & Ors**² in support of his submissions.

(5) Mr. Prakash Tiwari, learned counsel appearing for respondents No. 1 to 4/plaintiffs would submit that plaintiffs have only sought declaration of sale deeds dated 31.03.2012 & 25.07.2012 to be null & void as they are not party to the sale deeds and they are not in possession of the suit land and have not sought cancellation of the sale deeds. He placed reliance upon upon the order of this Court passed in the matter of **Tarun Chandrakar Vs. Smt. Kumari Bai & others**³ in support of his submissions.

(6) Mr. Abhishek Sharma, learned counsel appearing for the respondents No. 5 to 7/subsequent purchaser would adopt the arguments advanced by learned counsel appearing for the

1 AIR 2010 SC 2807

2 AIR 2007 Punjab & Haryana 52

3 Decided on 29.08.2016 passed in W.P. (227) No.229 of 2016

petitioners.

(7) I have heard learned counsel appearing for the parties and perused the record of court below with utmost circumspection.

(8) Court fee in the State of Chhattisgarh is governed by the provisions contained in the Court Fees Act, 1870. Section 6 of the Act provides that no document of any of the kinds specified as chargeable in the First or Second Schedule to this Act annexed shall be filed, exhibited or recorded in any Court of Justice, or shall be received or furnished by any public officer, unless the court fee indicated therein is paid. Entry 17(iii) of Schedule II of the Act requires payment of fixed fee to obtain a declaratory decree, where no consequential relief is prayed. However, where the suit is for declaration and consequential relief of possession and injunction, court fee therein is governed by Section 7(iv)(c) of the Act, which states as under:-

“7. Computation of fees payable in certain suits.-
The amount of fee payable under this Act in the suits next hereinafter mentioned shall be computed as follows:-

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(iv) In suits.-

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for a declaratory decree and consequential relief.-
(c) to obtain a declaratory decree or order, where consequential relief is prayed.

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according to the amount at which the relief sought is valued in the plaint or memorandum of appeal;

In all such suits the plaintiff shall state the amount at which he values the relief sought;

(9) The interpretation regarding the provisions of the Court Fee Act in cases relating to immovable property for partition and for other related aspects was considered by the Supreme Court in **Suhrid Singh (supra)** and the court held as follows:-

“6. 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-volorem court-fee on the consideration stated in the sale deed. If 'B', who is a non-executant, is in possession and sues for 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 Second Schedule of Act.”

(10) The Supreme Court in the matter of **Govt. of Orissa Vs. Ashok Transport Agency**⁴, explained the distinction between meaning of void and voidable acts and held as under:-

“50. Thus the expression “void and voidable” have been the subject-matter of consideration on innumerable occasions by courts. The expression “void” has several facets. One type of void acts, transactions, decrees are those which are wholly without jurisdiction, ab initio void and for avoiding the same, no declaration is necessary, law does not take any notice of the same and it can be disregarded in collateral proceeding or otherwise. The other type of void act, e.g., may be transaction against a minor without being represented by a next friend. Such a transaction is a good transaction against the whole world. So far as the minor is concerned, if he decides to avoid the same and succeeds in avoiding it by taking recourse to appropriate proceeding the transaction becomes void from the very beginning. Another type of void act may be one which is not a nullity but for avoiding the same, a declaration has to be made. Voidable act is that which is a good act unless avoided, e.g., if a suit is filed for a declaration that a document is fraudulent and/or forged and fabricated, it is voidable as the apparent state of affairs is the real state of affairs and a party who alleges otherwise is obliged to prove it. If it is proved that the document is forged and fabricated and a declaration to that effect is given, a transaction becomes void from the very beginning. There may be a voidable transaction which is required to be set aside and the same is avoided from the day it is so set

4 (2002) 9 SCC 28

aside and not any day prior to it. In cases, where legal effect of a document cannot be taken away without setting aside the same, it cannot be treated to be void but would be obviously voidable.”

(11) Thus, from the provisions of the Court Fees Act and the law laid down by the Supreme Court in **Suhrid Singh** (supra) it is *quite lucid* that if the executant of a document wants a deed to be annulled, he has to seek cancellation of the deed and to pay ad valorem Court fee on the consideration stated in the said sale deed, but if a non-executant seeks annulment of deed i.e. when he is not party to the document, he has to seek a declaration that the deed is invalid, non-est, illegal or that it is not binding upon him. In that eventuality, he has to pay the fixed Court fee as per Article 17(iii) of the Second Schedule of the Act, but if the non-executant is not in possession and he seeks not only a declaration that the sale deed is invalid, but also a consequential relief of possession, he has to pay the ad valorem Court fee as provided under Section 7(iv)(c) of the Act and such valuation in case of immovable property shall not be less than the value of the property as calculated in the manner provided for by clause (v) of Section 7 of the Act.

(12) A careful perusal of the plaint would show that the plaintiffs have only sought declaration of sale deeds dated 31.03.2012 and 25.07.2012 to be null & void as they are not party to the sale deeds and they are not in possession of the suit land and since

they have not sought cancellation of the sale deeds dated 31.03.2012 and 25.07.2012, they are not only required to pay court fee under Entry 17(iii) of Schedule II of the Court Fees Act and they are not required to pay court fee under Section 7(iv)(c) of the Court Fees Act, as such I do not find any illegality in the order impugned warranting interference by this Court under its revisional jurisdiction.

(13) Accordingly, the civil revision fails and is hereby dismissed leaving the parties to bear their own costs.

Sd/-

(Sanjay K. Agrawal)

Judge

D/-