

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR
Writ Petition (227) No.597 of 2016

Manoj Toshniwal Aged about 50 years, S/o Shri M.D. Torniwal, Caste-Vaishya, R/o Amlai Colliery, District-Anuppur, Presently residing Subham Vihar, Bilaspur (CG)

---- **Petitioner**

Versus

1. M/s K.S.K. Water Infrastructure Private Ltd., Registered Office at-8/2/293/82/A/431/A Road No.22, Jubli Hills Hyderabad - 500033 Through - Shri C. Shrinivas Aged about 55 years, S/o Late Shri C. Bapi Raju Power of Attorney M/s K.S.K., Registered Office at-8/2/293/82/A/431/A Road No.22, Jubli Hills Hyderabad - 500033
2. State of Chhattisgarh, Through - Collector, Janjgir, District-Janjgir Champa (CG)

Respondents

For Petitioner	:	Mr.Anand Shukla, Advocate
For Respondent No.2	:	Mr.Ashish Surana, P.L.

Hon'ble Shri Sanjay K. Agrawal, J.

Order on Board

26/10/2016

1. The plaintiff/petitioner filed a suit that sale deed executed by him dated 14.10.2011 in favour of defendant No.1/respondent No.1 is null and void and has been obtained by fraud.
2. The trial Court at the time of registration of suit while verifying the claim came to the conclusion that the effect of

relief claimed by the petitioner/plaintiff is cancellation of sale deed as he is party to sale deed and therefore, directed for payment of court fees under Section 7 (iv) (c) of the Court Fees Act.

3. Against which, this writ petition has been filed.
4. Mr. Anand Shukla, learned counsel appearing for the petitioner, would submit that the trial Court at the time of registration of suit directed for court fees. He would further submit that the petitioner is simply seeking the relief that sale deed dated 14.10.2011 is null and void and therefore, he is not required to pay the *ad valorem* court fees and as such, there is no cancellation of sale deed.
5. I have heard learned counsel appearing for the parties.
6. 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:-

***** ***** *****

(iv) In suits.-

***** ***** *****

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

***** ***** *****

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;

7. 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.”

8. The Supreme Court in the matter of **Govt. of Orissa Vs. Ashok Transport Agency**¹, 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

1 (2002) 9 SCC 28

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 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.”

9. 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.

10. In this case, the petitioner/plaintiff is alleging that sale deed was obtained by fraud and misrepresentation and therefore, it appears that the plaintiff is seeking relief of cancellation of sale deed and therefore, he is required to pay *ad valorem* court fees under Section 7 (iv) (c) of the Court Fees Act. Likewise the trial Court has also looked into whether the suit is properly valued and proper court fees is paid or not at the time of registration of suit.

11. I do not find any jurisdictional error in the order impugned. Accordingly, the writ petition being without

substance is liable to be and is hereby dismissed. No order as to cost(s).

Sd/-

(Sanjay K. Agrawal)
Judge

B/-