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HIGH COURT OF CHHATTISGARH, BILASPUR**Judgment reserved on 13.07.2016****Judgment delivered on 19.09.2016****WP227 No. 1005 of 2015**

1. Kalapataru Sales Private Limited, 52, Western Street Kolkata (W.B.) 700012, Through : The Director Sanjeev Saravagi Son Of Vijay Kumar Saravagi, Aged About 39 Years, R/o. Sadar Bazar Raigarh, Tahsil And District Raigarh (Chhattisgarh).....(Plaintiff)

---- Petitioner**Versus**

1. Deepak Agrawal S/o Late C.B. Agrawal, Aged About 47 Years R/o Katararoad Raigarh, Tahsil And District Raigarh (Chhattisgarh).....(Defendant)
2. M/s.Chidipal Builders & Contractors Private Limited, Through The Director Ashish Chidipal Son Of Mahesh Chidipal, Aged About 31 Years, R/o Sadar Bazar, Raigarh (Chhattisgarh).....(Defendant)
3. State Of Chhattisgarh, Through : The Collector Raigarh (Chhattisgarh).....(Defendant)

---- Respondents**And****WP227 No. 978 Of 2015**

1. Kalapataru Sales Private Limited 52, Western Street Kolkata (W. B.) 700012, Through : The Director Sanjeev Saravagi Son Of Vijay Kumar Saravagi, Aged About 39 Years, R/o. Sadar Bazar Raigarh, Tahsil And District Raigarh (Chhattisgarh).....(Plaintiff)

---- Petitioner**Vs**

1. Mukesh Kumar Chouradiya S/o Kamalchand Chouradiya, Aged About 39 Years Caste Agrawal, R/o. Aishwarya Residency Raipur (Chhattisgarh).....(Defendant)

2. M/s.Chidipal Builders & Contractors Private Limited, Through The Director Ashish Chidipal Son Of Mahesh Chidipal, Aged About 27 Years, R/o Sadar Bazar, Raigarh (Chhattisgarh).....(Defendant)
3. State Of Chhattisgarh, Through : The Collector Raigarh (Chhattisgarh).....(Defendant)

---- Respondent

For Petitioner	Ms. Hamida Siddiqui, Advocate
For Respondent No.1	Shri Abhishek Saraf, Advocate
For Respondent/State	Shri Syed Majid Ali, Panel Lawyer

Hon'ble Shri Justice Prashant Kumar Mishra

C A V Order

1. In both the petitions under Article 227 of the Constitution of India the petitioner/plaintiff is aggrieved by the order passed by the trial Court directing the petitioner to pay ad valorem Court fees on the plaint. The direction has been issued while considering the respondent No.1/defendant No.1's prayer for rejection of plaint under Order 7 Rule 11 of the Code of Civil Procedure, 1908 ('the CPC' henceforth) for declaration that the petitioner is in possession and title holder of the suit land and the sale deed dated 9-4-2010 purportedly executed by the plaintiff in favour of the defendant No.1 is null and void being forged, therefore, not binding on the plaintiff. Prayer for issuance of permanent injunction to restrain the defendant No.1 from interfering with the plaintiff's possession has also been made in the plaint.

2. It is averred in the plaint that the suit land involved in WP227 No.978 of 2015 was purchased by the plaintiff on 29-10-2007 & 31-10-2007, whereas the suit land in WP227 No.1005 of 2015 was purchased on 31-10-2007. The defendant No.2 M/s Chidipal Builders & Contractors Private Limited had prior acquaintance, business terms as a relative of the plaintiff, therefore, for affecting mutation the plaintiff handed over his photographs and original sale deed to the defendant No.2, however, in July, 2011 he came to know about the fraudulent sale deed when he requested the defendant No.2 for handing over the original sale deed. At that time, it came to the notice of the plaintiff that the defendant No.2 has forged his signature and executed the sale deed in favour of the defendant No.1 whereas, as a matter of fact, the petitioner/plaintiff has never executed the sale deed.
3. The plaintiff valued the suit for the purpose of declaration at the rate which is mentioned as sale consideration in the sale deed, however, he has paid the fixed Court fees of Rs.500/- for declaration and Rs.500/- for permanent injunction on the reasoning that since the sale deed has been executed by forging his signature, in law, he is not a signatory to the sale deed and moreover he is in possession, therefore, fixed Court fees is payable.

4. By moving an application under Order 7 Rule 11 of the CPC, the defendant No.1 raised objection that the plaintiff being a party to the sale deed he is required to pay ad valorem Court fees. The trial Court has sustained the objection and by the impugned order it has directed the plaintiff to pay ad valorem Court fees.
5. On the strength of the Full Bench judgment rendered by the Madhya Pradesh High Court in **Sunil Radhelia and Others v. Awadh Narayan and Others**¹, it is argued that when the plaintiff is alleging that the sale deed is a result of fraud and he has never executed the sale deed, he is not required to pay ad valorem Court fees. It is also argued that the plaintiff is not seeking cancellation of the document, but he is seeking a declaration that the sale deed is void, therefore, he is required to pay Court fees as payable under Article 17 (iii) of Schedule II of the Court Fees Act, 1870 ('the Act' henceforth).
6. Per contra, learned counsel appearing for the respondent No.1 would argue that the plaintiff being a party to the sale deed he is required to pay ad valorem Court fees, even if there is a pleading to the effect that the sale deed is a forged document.

1 2010 (4) MPHT 477 (FB)

7. True it is that in **Sunil Radhelia** (supra), the Full Bench of the Madhya Pradesh High Court, in some what similar circumstances, has held that if the plaintiff makes an allegation that the instrument is void and hence not binding upon him, ad valorem Court fees is not payable and he can claim declaration simplicitor for which Court fee under Article 17 (iii) of Schedule II of the Act would be sufficient, however, the prior judgment rendered by the Supreme Court on 29-3-2010 in **Suhrid Singh alias Sardool Singh v. Randhir Singh and Others**², has escaped notice of the Full Bench of the Madhya Pradesh High Court.
8. In **Suhrid Singh alias Sardool Singh** (supra) the Supreme Court has held in no uncertain terms that :

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

2 (2010) 12 SCC 112

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 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.

9. In the case at hand, the plaintiff is an executant of the sale deed. It is not the allegation of the plaintiff that any person who is not known to him has executed the sale deed by impersonating him. On the contrary, the plaintiff has made averment that the defendant No.2 who executed the sale deed in favour of the defendant No.1 in both the suits, is known to him and that the plaintiff had handed over the sale deed and his photographs to him for effecting mutation.
10. The question as to whether the plaintiff has executed the sale deed or not shall be gone into in course of trial. For the present this Court is only required to see as to whether the plaintiff is shown as executant of the sale deed or not, if he is an executant, in view of the law laid down by the Supreme Court in **Suhrid Singh alias Sardool Singh** (supra), the plaintiff is required to pay ad valorem Court fees. In the

teeth of what has been held by the Supreme Court in **Suhrid Singh alias Sardool Singh** (supra), this Court is not bound by a contrary judgment rendered by the Full Bench of the Madhya Pradesh High Court in **Sunil Radhelia** (supra).

11. *Ex-consequenti*, both the writ petitions, *sans substratum*, are liable to be and are hereby dismissed, leaving the parties to bear their own costs.

Sd/-

Judge
Prashant Kumar Mishra

Gowri