

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CIVIL REVISION No. 14 of 2017

1. Shrimati Anuradha Agrwal, W/o. Sourabh Agrwal, aged about 27 years, R/o. Sahdevpali, Tahsil and District – Raigarh (C.G.)

----Petitioner

Versus

1. Shivdatta, S/o. Makar Tandan, aged about 16 years,
2. Ku. Shashikala, aged about 14 years, D/o. Makar Tandan,
Respondent No.1 and 2 both are minors, represented through their mother, Shrimati Etwara Bai, W/o. Makar Tandan, aged about 32 years, R/o. Village-Pandripani East, Tahsil and District – Raigarh (C.G.)
3. Makar Tandan, aged about 34 years, S/o. Sunder Say Tandan, R/o. Village-Pandripani East Tahsil and District – Raigarh.
4. Sharda Kripa Buildtech Private Limited, through : Director Pankaj Agrawal, S/o. Prahalad Rai Agrawal, aged about 34 years, R/o. Gouri Shankar Square Raigarh (C.G.).
5. Government of Chhattisgarh, Through : District Collector, Raigarh (C.G.)

---- Respondents

For Petitioner : Mr. Chandra Bhushan Keshwarwani, Advocate
For State/Respondent : Mr. Anupam Dubey, Dy. Govt. Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

07/02/2017

1. Challenge in this petition is to the order dated 30.11.2016, passed in Civil Suit No.152/2012, by the First Additional District Judge, Raigarh, whereby an application filed by the defendant No.2 and 3

under Order 7 Rule 11 of Civil Procedure Code has been rejected.

2. A suit was filed by the plaintiff - Shivdutta and Ku. Shashikala, the minor for declaration and permanent injunction and for cancellation of two sale deeds registered on 26.06.2009 and 05.10.2009. It was pleaded that the plaintiffs were not a party to the said sale deed and therefore, cancellation was sought for and also prayer was made not to dispossess them.
3. Learned counsel for the petitioner would submit that the plaintiffs have asked for cancellation of sale deed and as such ad valorem Court fees is required to be paid under Clause (c) of Section 7 (iv) of Court Fees Act and in absence of payment of Court fees, the suit is not tenable, therefore, the trial Court should have entertained the application filed under Order 7 Rule 11 of Civil Procedure Code.
4. Perused the order of the Court below. The copy of the plaint is also enclosed, which is also perused. Perusal of the prayer clause of the plaint would show that prayer for cancellation of two sale deeds has been made. No claim for possession has been made and it is stated that the plaintiffs are in possession and the property which is sold wherein the right is vested with the plaintiffs for which a sale deed has been executed, consequently, the cancellation is prayed for.
5. At this juncture I am guided by the law laid down by the Hon'ble Supreme Court in case of ***Suhrid Singh @ Sardool Singh Vs. Randhir Singh & Others***, reported in ***(2010) 12 Supreme Court Cases 112***. The relevant para-7 of the said judgment is reproduced as here in below:-

“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 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.”

6. Applying the aforesaid principle in this case, since the plaintiffs were not a party to the sale deeds for which cancellation is sought for and

possession has not been claimed, the law laid down in the above, shall squarely cover-up the issue.

7. Consequently, I am of the opinion that the learned Court below has neither exceeded his jurisdiction nor has failed to exercise his jurisdiction vested in it in dismissing the application under Order 7 Rule 11 of C.P.C.
8. Resultantly, the revision has no merit and is accordingly dismissed.

Sd/-
(Goutam Bhaduri)
Judge