

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (227) No.180 of 2016

1. Smt. Saraswati Guruwani W/o Late Mohan Lal Guruwani, Aged About 75 Years R/o Tirthani Gali, New Sarkanda Bilaspur Police Staiton Sarkanda, Tahsl And District Bilaspur Chhattisgarh Civil & Revenue District Bilaspur Chhattisgarh.
- 2. Suresh Guruwani, S/o Late Mohanlal Guruwani, Aged About 54 Years R/o Tirthani Gali, New Sarkanda Bilaspur Police Staiton Sarkanda, Tahsl And District Bilaspur Chhattisgarh Civil & Revenue District Bilaspur Chhattisgarh.
- 3. Ashok Kumar Mishra, S/o Kaushal Kishore Mishra, Aged About 61 Years R/o Ward No. 12, Mahamaya Para, Bada Bazar Mungeli, Police Station Mungeli, Tahsil And District Bilaspur, Chhattisgarh Civil & Revenue District Raipur Chhattisgarh.
- 4. Smt. Sudha Mishra, W/o Banshi Lal Mishra, Aged About 54 Years R/o Hotel Ilahabadi Infront Of Petroal Pump Chantidih Bilaspur, Police Staiton Sarkanda, Tahsil And District Bilaspur Chhattisgarh Civil & Revenue District Bilaspur Chhattisgarh.
- 5. Yogesh Kumar Mishra, S/o Banshi Lal Mishra, Aged About 35 Years R/o Hotel Ilahabadi Infront Of Petroal Pump Chantidih Bilaspur, Police Staiton Sarkanda, Tahsil And District Bilaspur Chhattisgarh Civil & Revenue District Bilaspur Chhattisgarh.
- 6. Smt. Harshlata Vaishnav, W/o Govind Das Vaishnav, Aged About 39 Years R/o Arvind Nagar Bandhwapara Sarkanda Bilaspur, Police Staiton Sarkanda, Tahsil And District Bilaspur, Chhattisgarh Civil & Revenue District Bilaspur Chhattisgarh .
- 7. Govind Das Vaishnav, S/o Ganesh Das Vaishnav, Aged About 50 Years R/o Arvind Nagar Bandhwapara Sarkanda Bilaspur, Police Staiton Sarkanda, Tahsil And District Bilaspur, Chhattisgarh Civil & Revenue District Bilaspur Chhattisgarh

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Versus

1. Chandrapal Guruwani S/o Ganesh Das Vishnav, Aged About 47 Years R/o Arvind Nagar Bondhwapara Sarkanda Bilaspur, Police Staton Sarkanda, Tahsil And District Bilaspur, Chhattisgarh Civil & Revenue District Bilaspur Chhattigarh.
- 2. State Of Chhattisgarh Through The Collector Bilaspur, Police

Station Civil Lines, Tahsil And District Bilaspur, Civil & Revenue
District Bilaspur Chhattisgarh.

---Respondents

For Petitioners : Mr. Ratnesh Kumar Agrawal, Advocate
For State : Mr. Aditya Sharma, Panel Lawyer
For Respondent No.1: Mr. Ravindra Agrawal, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal
Order On Board

29/06/2017

(1) By this writ petition under Article 227 of the Constitution of India, the petitioners are only challenging the impugned order dated 02.03.2016 by which, the petitioners' applications under Order 7 Rule 10 and Order 7 Rule 11 of CPC have been rejected by the trial Court.

(2) Learned counsel appearing for the petitioners would submit that the trial Court is absolutely unjustified in rejecting the petitioners' applications taking into account the consideration made in three sale deeds dated 08.09.2015, 19.10.2015 & 21.10.2015.

(3) On the other hand, learned counsel appearing for the respondent No.1 would oppose the prayer and submission made by the learned counsel for the petitioners.

(4) I have heard learned counsel for the parties and perused the impugned order.

(5) 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 if 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.

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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 that plaintiff shall state the amount at which he values the relief sought."

(6) The interpretation regarding the provisions of the Court-fees Act in cases relating to immovable property for partition and for other related aspects was considered by the Supreme Court in **Suhrid Singh @ Sardool Singh v. Randhir Singh and others**¹ 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-

1 AIR 2010 SC 2807

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 Second Schedule of Act."

(7) The Supreme Court in the matter of **Government of Orissa v. Ashok Transport Agency**², 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 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."

(8) 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.

(9) A careful perusal of plaint would show that plaintiff have only sought declaration that three sale deeds are null and void and he has not sought cancellation of sale deeds, they are only required to pay court fee under Entry 17(iii) of Schedule-II of Court Fee Act and they are not required to pay the Court fee under Section 7(iv)(c) of the Court Fees Act.

(10) After hearing learned counsel for the parties and after going through the impugned order and in view of above-stated discussion, I am of the considered opinion that the trial Court has given sufficient and valid reasons in rejecting the Order 7 Rule 10 and Order 7 Rule 11 of CPC.

(11) With the aforesaid observation, the writ petition stands finally disposed of.

SD/-

(Sanjay K. Agrawal)
Judge

L/-