

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WP227 No. 723 of 2012**

Agroha Grih Nirman Sahakari Samiti Maryadit A Registered Co-Operative Society, Under The Provisions Of The C.G Co-Operative Societies Act 1990 Through Its President, Shri Suresh Kumar Agrawal, S/o Late Shri R.L. Agrawal, R/o Abhilasha Traders, Gurunanak Chowk, Raipur, Thana Ganj, P.O. Ganj, District Raipur, Chhattisgarh. 492009

---- Petitioner**Versus**

1. M/s Jai Narayan Hariram Goyal &^ Ors Charitable Trust, New Timber Market, Fafadih, Raipur, Thana Fafadih, P.O. Raipur District Raipur, Chhattisgarh.
2. Died (Shri Balkrishna Agrawal), Through Legal Heirs :
 - 2 . (1)** Smt. Neelam Agrawal, W/o Late Shri Balkrishna Agrawal R/o 24, Dungaji Colony, Raipur, District Raipur, Chhattisgarh.
 - 2 . (2)** Ku. Chidambra Agrawal, D/o Late Shri Balkrishna Agrawal, R/o 24, Dungaji Colony, Raipur, District Raipur, Chhattisgarh.
 - 2 . (3)** Ku. Ritambra Agrawal, D/o Late Shri Balkrishna Agrawal, R/o 24, Dungaji Colony, Raipur, District Raipur, Chhattisgarh.
3. Deputy Registrar Co-Operative Societies, Office Of Deputy Registrar, Cooperative Societies, Paikage, Raipur, Thana Raipur Main, Po Raipur Main, District Raipur, Chhattisgarh.
4. State Of Chhattisgarh, Through The Collector Raipur, Collectorate Premises, Raipur, Thana Civil Lines, Po Raipur . District Raipur, Chhattisgarh.

---- Respondents

For Petitioner : Shri Amrito Das, Advocate.
 For Respondent No. 4 : Shri Aditya Sharma, PL

Hon'ble Shri Justice Sanjay K. Agrawal**Order On Board****29/06/2017**

(1) The trial Court, by its impugned order dated 06.09.2012, has directed the plaintiff, petitioner herein to pay *ad valorem* court fee on the consideration amount of the sale deed dated 29.09.2001.

(2) Learned counsel for the petitioner would submit that the order impugned is absolutely illegal and bad in law, which is liable to be set aside.

(3) On the other hand, counsel for the State would support the impugned order.

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

(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 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.-		
*****	*****	*****
<u>for a declaratory decree and consequential</u>		
<u>relief.</u> (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."		

(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-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 **Govt. of Orissa v.**

Ashok Transport Agency², 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 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) The trial Court has clearly recorded a finding that the petitioner-Society is a party to the sale deed dated 29.09.2001 and, therefore, he is required to pay *ad valorem* court fee. Accordingly, sufficient and valid reasons have been assigned by the trial Court while directing the plaintiff to pay *ad valorem* court on the consideration of the sale deed and since the petition is a party to the sale deed, he is required to pay *ad valorem* court fee for the reliefs claimed in the suit and, therefore, I do not find any illegality in the order impugned warranting interference by this Court in the instant writ petition.

(10) Accordingly, the writ petition fails and is hereby dismissed.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-