

HIGH COURT OF CHHATTISGARH, BILASPURWrit Petition (Art. 227) No.3 of 2014

Dharmendra Khobragadhe son of Shri Chintaram Khobragadhe, aged about 37 years, resident of Village – Kumhari, Tahsil and Police Station – Dhamdha, District – Durg (Chhattisgarh), through general power of attorney Ravindra Tiwari, aged about 45 years, son of Shri Mohan Lal Tiwari, resident of House No. 842, Cross Street No.4, Smriti Nagar, Bhilai, Police Station – Bhilai, District – Durg (Chhattisgarh).

(Plaintiff)
---Petitioner

Versus

1. Ibrar Ahmed son of Marhum Mohammad Usman, aged about 56 years, resident of House No. 307, Goutam Nagar, Sector 11 Zone-1, Bhilai, Police Station – Bhilai, District - Durg (Chhattisgarh).
2. State of Chhattisgarh, through the Collector, District Office Durg, Tahsil & District Durg (Chhattisgarh)

(Defendants)
---Respondents

For Petitioner	:	Mr. T. Bhattacharya, Advocate.
For Respondent No.1	:	Mr. B. P. Singh, Advocate.
For Respondent No.2/State	:	Mr. Aditya Sharma, Panel Lawyer.

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

11.04.2017

(1) The petitioner/plaintiff filed a suit for declaration that sale deed dated 02.08.2011 issued by him in favour of defendant No.1 be declared null and void and also sought permanent injunction against defendant No.1. Defendant No.1 after appearance before trial court filed an application under Order 7 Rule 11 of the CPC stating that the petitioner/

plaintiff has sought declaration that sale deed dated 02.08.2011 be declared null and void, whereas sale deed is executed by the plaintiff in favour of defendant No.1 and sale deed is valued at ₹ 9,76,000/-, and since the plaintiff is party to sale deed, he is required to pay full court fee on the said amount and only in order to avoid full court fee such a suit for declaration and permanent injunction has been filed. The trial court by its impugned order allowed the application in part and directed payment of court fee according to the value of sale deed. Feeling aggrieved against the order of trial court this writ petition under Article 227 of the Constitution of India has been filed.

(2) Learned counsel for the petitioner would submit that the trial court has committed jurisdictional error in passing the impugned order, however, learned counsel for defendant No.1 would support the impugned order.

(3) I have heard learned counsel appearing for the parties and perused the record of court below with utmost circumspection.

(4) 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.”

(5) 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 the matter of **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 nonexecutant 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

¹ AIR 2010 SC 2807

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 nonbinding. 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.”

(6) The Supreme Court in the matter of **Govt. 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 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.”

2 (2002) 9 SCC 28

(7) 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.

(8) A careful perusal of the plaint would show that the plaintiff is party to sale deed dated 02.08.2011 executed by him in favour of defendant No.1 and he is seeking declaration that sale deed is null and void. Thus, in fact he is seeking cancellation of the sale deed in which he is party, though not clearly mentioned in the plaint. Since the petitioner/plaintiff is party to sale deed, declaration sought is cancellation of sale deed therefore he is required to pay court fee under Section 7(iv)(c) of the Court Fee Act, as such I do not find any illegality in the order impugned warranting interference by this Court under its supervisory jurisdiction.

(9) Accordingly, the writ petition fails and is hereby dismissed leaving the parties to bear their own cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge