

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 23.02.2018

Delivered on 06.03.2017

Civil Revision No. 70 of 2017

- Sanjay Mittal S/o Satyanarayan Mittal, Aged About 30 Years R/o Kharsia Chauk, Ambikapur, P.S. And P.O. Ambikapur, District Surguja, Chhattisgarh

---- Applicant/Defendant**Versus**

1. Bakuli D/o Devendra Nath, Aged About 50 Years R/o Sanjay Nagar, P.S. And P.O. Jainagar, District Surajpur, Chhattisgarh
2. Mu. Asha Wd/o Devendra Nath, Aged About 65 Years R/o Sanjay Nagar, P.S. And P.O. Jainagar, District Surajpur, Chhattisgarh

---- Respondents/Plaintiffs

For Applicant : Ms. Priyanka Mehta, Advocate

Hon'ble Shri Sharad Kumar Gupta, Judge**C.A.V. ORDER**

1. The civil revision is admitted and heard finally.
2. In this civil revision the challenge is levied to the order dated 22.02.2017 Annexure A1 pronounced by the 2nd Addl. Sessions Judge, Surajpur, Distt. Surajpur, C.G. in Civil Suit No. 51A/2014 whereby and whereunder he rejected the application filed by the applicant under Order 7 Rule 11 of the Code of Civil Procedure (hereinafter called as "the Code").
3. This is admitted by the applicant that late Devendra Nath, the husband of the respondent No. 2 got the land bearing Khasra No. 371 admeasuring 2.88 hectare situated at Sanjaynagar, Tehsil and District Surajpur under rehabilitation. The husband of respondent No.2 became seriously ill. The respondents executed one sale deed bearing Khasra No. 371 admeasuring

0.40 hectare on 21.12.2011 and another sale deed bearing Khasra No. 371 admeasuring 0.60 hectare on the same date vide Annexure A/3.

4. In brief, the respondents' case is that Annexure A/3 has been executed by playing fraud by the applicant. It is a forged document. They had no intention to execute Annexure A/3. When they came to know about Annexure A/3, they filed civil suit for cancellation and declaration that it is ineffective and paid the fixed Court fee.

5. In brief the applicant's case is that the respondents have executed Annexure A/3 voluntarily and knowingly. Respondents have not paid the sufficient Court fee.

6. The applicant had filed the application under Order 7 Rule 11 of the Code which was dismissed as aforesaid. The trial Court had given the findings that respondents had paid the fixed Court fee Rs. 200/-, they ought to have paid the fixed Court fee Rs. 500/-. Thus, they deposit the deficient Court fee within a week.

7. Ms. Priyanka Mehta, counsel for the applicant argued that the trial Court has failed to appreciate that the respondents were executants of Annexure A/3, therefore, they are bound to pay ad-valorem Court fee according to the consideration of Annexure A/3 under Section 7 (iv)(c) of the Court-fees Act, 1870 (hereinafter called as "the Act, 1870), thus, the trial Court has committed illegality and order Annexure A/1 may be set aside.

8. Respondents are absent, though notices have been duly served on them.

9. In the case in hand, for the adjudication of the matter, the considerable question is that whether the trial Court has committed illegality in rejecting the applicant's aforesaid application.

10. It would be pertinent to mention the relevant provisions of Section 7 of the Act, 1870, which reads as follows:

“ **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. “

11. As per the provisions of Article 17 (iii) of the 2nd Schedule of the Act, 1870, at the time of filing of this suit to obtain a declaratory decree where no consequential relief was prayed, the fixed Court fees was Rs. 500/- only.

12. Counsel for the applicant placed reliance on the decision of Hon'ble Supreme Court in the matter of **Suhrid Singh @ Sardool Singh v. Randhir Singh and others** (2010 AIR SCW 3308) para 6 of which is relevant and quoted below:-

“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 of 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. Section 7(iv)(c) provides that in suits for a declaratory decree with consequential relief, the court fee shall be computed according to the amount at which the relief sought is valued in the plaint. The proviso thereto makes it clear that where the suit for declaratory decree with consequential relief is

with reference to any property, such valuation shall not be less than the value of the property calculated in the manner provided for by Clause (v) of Section 7.”

13. In the case in hand, this is the respondents' case that they have executed the registered sale deed Annexure A/3. This is not the respondents case that they have not put their thumb impression on Annexure A/3 or some other persons have to put their thumb impression on Annexure A/3.

14. Looking to the above mentioned facts and circumstances of the case and the materials placed on record, also looking to the judicial precedent in *Suhrid Singh @ Sardool Singh (Supra)*, the respondents are the executants of the Annexure A/3, in other words they were party in Annexure A/3, thus, they are bound to seek relief of the cancellation of Annexure A/3 and valued to relief of the declaration that Annexure A/3 is ineffective and may be canceled and pay Court fee on the amount of the consideration of Rs. 15,00,000/- as stated in Annexure A/3, under Section 7(iv)(c) of the Act, 1870 instead of the Court fee as payable under Clause 17(iii) of the 2nd Schedule of the Act, 1870 which is fixed Court fees. Thus, this Court finds that respondents had not paid proper Court fee regarding the aforesaid relief.

15. Looking to the above mentioned facts and circumstances of the case, this Court finds that the trial Court has committed illegality in rejecting the applicant's aforesaid application. Thus, impugned order Annexure A/1 is set aside so far as it concerns with the rejection of the aforesaid application.

16. The trial Court is ordered that he should give reasonable and sufficient time to the respondents to pay deficient Court fee, failing which, he may

proceed in accordance with law and procedure.

17. In view of above, the order dated 27.04.2017 of stay of the proceedings of the Trial Court stands automatically vacated.

18. The civil revision is disposed off accordingly.

Sd/-

(Sharad Kumar Gupta)
Judge