

HIGH COURT OF CHHATTISGARH, BILASPUR**WP227 No.333 of 2018**

Pratap Singh Lodhi S/o Dwarika Prasad Lodhi, aged about 38 years, R/o Village Keshla, Post Kusmi Atariya, Tahsil Khairagarh, District Rajnandgaon (CG)

---- Petitioner**Versus**

1. Santosh Kumar Lodhi, S/o Parem Lodhi, aged about 25 years, R/o Village Dunda, Post Mandla, Tahsil Khairagarh, District Rajnandgaon (CG)
2. State of C.G. through the Collector Rajnandgaon, Tahsil & District Rajnandgaon (CG)

---- Respondents

For Petitioner	:	Mr. Rakesh Pandey, Advocate
For Respondent No.1	:	Mr.Uttam Pandey, Advocate
For Respondent No.2	:	Mr.Vimlesh Bajpai, G.A.

Hon'ble Shri Justice Sanjay K. Agrawal**Order on Board****16.01.2019**

1. By the impugned order, the trial Court has rejected the application filed by the petitioner/defendant No.1 under Order 7 Rule 11 of the CPC finding no merit, against which, this writ petition has been filed.
2. Mr.Rakesh Pandey, learned counsel for the petitioner/defendant No.1, would submit that the trial Court is absolutely unjustified in rejecting the application as respondent No.1/plaintiff is party to sale deeds dated 28.7.2011 and 9.8.2011 and claimed that said sale deeds are null & void and were got executed in his favour under the

influence of liquor, therefore, it is void, but he has not paid ad-valorem court fees, therefore, the plaint is liable to be rejected.

3. On the other hand, Mr. Uttam Pandey, learned counsel for respondent No.1/plaintiff, would support the impugned order and submit that the plaintiff has not sought relief of cancellation, but only sought relief of declaration of sale deeds dated 28.7.2011 and 9.8.2011 as null and void.
4. I have heard learned counsel for the parties and perused the record of the trial Court with utmost circumspection.
5. Court fee in the State of Chhattisgarh is governed by the provisions contained in the Court-Fees Act, 1870 (hereinafter called as "the Act of 1870"). Section 6 of the Act of 1870 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 of 1870 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 of 1870, 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;"

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 & 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

¹ AIR 2010 SC 2807

court-fee is also different. If 'A', the executant of the deed, seeks cancellation of the deed, he has to pay ad-volorem 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 Vs. 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.”

² (2002) 9 SCC 28

- 8.** Thus, from the provisions of the Act of 1870 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 of 1870, 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 of 1870 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 of 1870.
- 9.** A careful perusal of the plaint would show that though the plaintiff has sought relief of declaration of sale deeds dated 28.7.2011 and 9.8.2011 to be null and void, but he is party to sale deeds, as such, the plaintiff is required to pay ad-valorem court fee under Section 7 (iv) (c) of the Act of 1870. The trial Court is absolutely unjustified in not granting the application by directing the plaintiff to pay ad valorem court fee as per Section 7 (iv) (c) of the Act of 1870.
- 10.** Accordingly, the writ petition is allowed and the impugned

order is set aside and it is held that the plaintiff is required to pay ad valorem court fee under Section 7 (iv) (c) of the Act of 1870.

11. At this stage, learned counsel for respondent No.1/plaintiff would submit that the plaintiff will be granted sometime to pay court fees.

12. As prayed, six weeks' time is granted to the plaintiff to pay ad valorem court fee as per Section 7 (iv) (c) of the Act of 1870, failing which, the trial Court will be at liberty to proceed in accordance with law. A copy of this order be sent to the trial Court by fax/e-mail.

Sd/-

(Sanjay K.Agrawal)
Judge

B/-