

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 158 of 2020

1. Smt. Rimpi Sharma, D/o Late Shivlal Vishwakarma, Aged About 29 Years Resident of Village Bahera, P.H.N.- 00028, R.N.M.- Anandgaon, Tehsil Berla, District Bemetara, Chhattisgarh, Present Resident Of- In Front of Basant Petrol Pump, Nandini Road, Jamul, Tehsil Bhilai, District-Durg Chhattisgarh.

---- Petitioner

Versus

1. Babu Gyan Prakash, S/o Shivlal Vishwakarma Aged About 21 Years Resident of Ekta Nagar, Fish Market, Ward No. 31, Padda Pride, Vishwakarma Timber in front of Hotel, Khursipar, Bhilai, Tehsil and District-Durg, Chhattisgarh.
2. Mukesh Nandi, S/o Ranjeet Nandi, Aged About 24 Years, Resident Of Mig 2, H.No. 1597, Ward No. 26, Housing Board Bhilai, Tehsil and District-Durg, Chhattisgarh.
3. Shyam Yadav, S/o Vimal Yadav, Aged About 49 Years, Resident Of H.No. 1308, Ward No. 15, Near Durga March Ghasidas Nagar Bhilai, Tehsil and District-Durg Chhattisgarh.
4. Gaurav Singh Rajput, S/o Kanhaiya Singh Thakur, Aged About 37 Years, Resident of H.No. 222, Saraswati Vihar, Near Sahu Ata Chakki, Old Changorabhata Raipur, Tehsil and District Raipur Chhattisgarh.
5. Anantjeet Singh Chandel, S/o Raghav Singh Chandel Aged About 44 Years Resident of Village Reve, Post Pithora, Police Station-Berla, Tehsil Berla, District-Bemetara, Chhattisgarh.
6. Kanhaiya Singh Thakur, S/o Shri Achal Singh Thakur, Aged About 59 Years, Resident Of H.No. 222, Saraswati Vihar, Near Sahu Ata Chakki, Old Changorabhata Raipur, Tehsil and District-Raipur, Chhattisgarh.
7. State of Chhattisgarh Through Collector, Bemetara, District-Bemetara, Chhattisgarh.

---- Respondents

&

WP227 No. 187 of 2020

1. Smt. Pushpa Vishwakarma, D/o. Late Shivlal Vishwakarma, Aged About 32 Years, R/o. Village Bahera, P.H.N.- 00028, R.I. Circle-Anandgaon, Tehsil Berla, District-Bemetara, Chhattisgarh Present R/o. In Front of Basant Petrol Pump, Nandini Road, Jamul, Tehsil Bhilai,

District-Durg, Chhattisgarh.....Plaintiff

---- Petitioner

Versus

- 1. Babu Gyan Prakash, S/o Shivilal Vishwakarma, Aged About 21 Years R/o. Ekta Nagar, Fish Market, Ward No. 31, Padda Pride, Vishwakarma Timber In Front Of Hotel, Khursipar, Bhilai, Tehsil and District Durg Chhattisgarh.....Defendant.
- 2. Mukesh Nandi, S/o. Ranjeet Nandi, Aged About 24 Years R/o Mig 2, H.No. 1597, Ward No. 26, Housing Board Bhilai, Tehsil and District Durg Chhattisgarh.....Defendant.
- 3. Shyama Yadav, S/o Vimal Yadav, Aged About 49 Years R/o H.No. 1308, Ward No. 15, Near Durga Manch Ghasidas Nagar Bhilai, Tehsil And District Durg Chhattisgarh.....Defendant.
- 4. Kanhaiya Singh Thakur, S/o Shri Achal Singh Thakur, Aged About 59 Years R/o. H.No. 222, Saraswati Vihar, Near Sahu Ata Chakki, Old Changorabhata Raipur, Tehsil and District Raipur Chhattisgarh.....Defendant.
- 5. Gayatri Rajput, D/o Gaurav Singh Rajput, Aged About 32 Years R/o House No. 222, Saraswati Vihar, Sahu Aata Chakki, Near Talab, Old Changorabhata, Raipur, Tehsil and District Raipur Chhattisgarh.....Defendant.
- 6. Devendra Singh Thakur, S/o. Kanhaiya Singh Thakur, Aged About 32 Years R/o. H.No. 222, Saraswati Vihar, Sahu Ata Chakki, Near Talab, Old Changorabhata Raipur, Tehsil and District Raipur Chhattisgarh.....Defendant.
- 7. State Of Chhattisgarh Through Collector, Bemetara, District Bemetara Chhattisgarh.....Defendant.

---- Respondents

For petitioners	:	Mr. Prasoon Agrawal, Advocate.
For respondent No.2	:	Mr. Uttam Pandey, Advocate
For respondent No.4 & 6	:	Mr. Yogendra Singh, Advocate
For respondent No.5	:	Mr. R.S. Baghel, Advocate.
For State/respondent No.7.:	:	Mr. Adil Minhaj, Govt. Advocate

Hon'ble Shri Justice Rajendra Chandra Singh Samant
Order On Board

29/10/2020

Heard.

1. Both these petitions under Article 227 of Constitution of India have been brought seeking indulgence of this Court and praying for quashment of impugned order dated 1.10.2018.
2. Petitioner in WP227 No.158/2020 has filed **Civil Suit No.22A/2017** against the respondents and petitioner Smt. Pushpa Vishwakarma in WP227 No.187/2020 has filed similar suit against the same respondents.
3. In both the civil suits, it has been pleaded by the petitioner/plaintiff that respondent No.1 by making use of forged Power of Attorney has executed sale-deeds of the suit property in favor of respondents No.2 & 3. It has been pleaded that petitioners in both the cases are sisters. They have never executed any Power of Attorney in favor of respondent No.1, therefore, sale-deed executed on the basis of this forged Power of Attorney is void ab-initio. On the basis of sale-deed executed by respondent No.1, respondent Nos.2 & 3 have made further transfers of the property to respondent Nos.4, 5 & 6.
4. The respondents filed application under Order 7 Rule 11 r/w Section 151 of CPC in both the cases raising objection that the suit has been undervalued and valuation is required to be made according to the value mentioned in the sale-deeds, therefore, the suit is not maintainable. This application was opposed by the petitioners/plaintiffs in both the cases. The impugned order has been passed by the learned District Judge allowing the application filed under Order 7 Rule 11 CPC and directing the petitioners to make payment of ad valorem Court fees in accordance with the valuation of the sale-deeds.
5. It is submitted by the counsel for petitioners in both the cases, that the pleadings and claim made by the petitioners is very clear, that the Power of Attorney on the basis of which the sale-deed has been executed is forged, therefore, the sale-deed executed by respondent No.1 is without any authority and non-existent in the eyes of law. Hence, it is neither a case for cancellation of sale-deed nor is there

any prayer for cancellation of sale-deed. The petitioner are neither party to sale-deed nor they had authorized respondent No.1 to execute any sale deed, therefore, the prayer has been made that the concerned sale-deeds be declared as illegal and *void-ab initio*. It is admitted in the submissions that Court fees has not been paid for the relief of damages which shall be paid by the petitioners. The observation made by the learned trial Court, that the petitioners/plaintiffs are party to the sale-deed is erroneous as that has been clearly denied by the petitioners. It is also submitted that the petitioners are in possession of the suit property, therefore, the transfer made by way of fraudulent sale-deeds is not complete. Reliance has been placed on the judgment of Supreme Court in the case of **Suhrid Singh @ Sardool Singh v. Randhir Singh & others** reported in (2010) 12 SCC 112. Reliance has also been placed on the order of this Court dated 7.10.2016 passed in Civil Revision No.156/2013, parties being Raju Tiwari & another v. Baishakhin Bai & other; order dated 29.8.2016 passed in WP227 No.229/2016 between Tarun Chandrakar v. Smt. Kumari Bai & others; and the judgment of M.P. High Court in the case of Sunil v. Awadh Narayan & others reported in 2010 SCC Online MP 341. It is prayed that the impugned order be quashed .

6. Respondent No.1 & 3 are not represented.
7. Learned counsel for respondent No.2 submits that the sale-deeds in question in both the civil suits have been executed by respondent No.1 on the basis of power of attorney executed in his favor. The petitioners have not claimed any relief with respect to the power of attorney, therefore, in absence of relief for cancellation of sale deeds, it would be deemed that the sale deeds have been executed on behalf of petitioner. In order to seek relief of declaration, that the sale deeds in question are illegal and void, the petitioners are required to pay court fee by valuing their suit on the value of the sale deeds. Hence, the petitions filed by the petitioners have no substance and the same are liable to be dismissed.
8. Learned counsel for respondent No.4 & 6 adopts the arguments advanced by counsel for respondent No.2 and submits that the respondents are in possession of the suit property on the basis of the

questioned sale-deed regarding which the petitioners have not prayed for relief in their suit. Therefore, the petitions are liable to be dismissed.

9. Learned counsel for respondent No.5 adopts the argument advanced by counsel for respondent No.2 and submits that the petitioners are required to pray for relief of cancellation of sale-deeds.
10. Reliance has been placed on the judgment of Nagpur High Court in *Girrav v. Srikrishna and others*, reported in AIR 1957 Nagpur High Court 53. It is submitted that the petitioners are not in possession of the suit property, therefore, they need to pray for the relief of possession and on this basis, hence, there will be requirement for payment of ad valorem court fees. It is submitted that the both the petitions have no force and both are liable to be dismissed.
11. In reply, it is submitted by the counsel for petitioners that there is no need for the petitioners to pray for any relief with respect to the power of attorney, which is clearly claimed to be a forged document. Any sale-deed executed on the basis of forged power of attorney by itself has no legality. Pleadings have been made, which if rebutted and refuted then on the basis of the same issue can be framed with respect to the validity of power of attorney, possession and the same can be decided in the trial Court, therefore, both the petitions be allowed and relief be granted to the petitioners.
12. Learned State counsel makes formal objection and submits that there appears to be a dispute between the parties with respect to the power of attorney in favor of respondent No.1 but no relief has been prayed by the petitioner for the same, therefore, suitable orders be passed in both the petitions.
13. I have heard both the parties and perused the documents on record.
14. Considered on the submissions and perused the copy of plaint filed along with the petitions. The provision under Order 7 Rule 11 CPC is very specific, that if on plain reading itself, apart from other things, it appears that the relief claimed is under valued then the plaintiffs will be required to correct the valuation and make good the court fee that is payable and on his failure to do so, the plaint may be rejected.

Therefore, the scope of consideration on the arguments submitted from both the sides becomes limited to the extent of pleadings of valuation of civil suits made in both the cases. The other argument submitted regarding the relief not claimed by the plaintiffs and the question raised regarding the possession are out of scope of consideration under Order 7 Rule 11 of CPC.

15. It has been held in the case of Surhid Singh(supra) where the plaintiff claimed that he has not executed sale-deed, then there is no requirement for payment of ad valorem court fees. It was similarly held by the Full Bench of M.P. High Court in Sunil (supra). The principle laid down is very clear that if 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 declaration that the deed is invalid or non-est or illegal or that it is not binding on him. Similar principle has been followed in case of Raju Tiwari(supra) Tarun Chandrakar (supra) by this Court. The ratio laid down in the case of Girram (supra) is distinguishable as the matter in issue in that case does not appear to be similar to this case.
16. In such a case, pleading made by the petitioner has relevance. On perusal of the copy of the plaint in both the cases, it is found that both the petitioners have pleaded very clearly that the respondent No.1 got prepared a forged power of attorney showing the petitioners as executant of the same and on the basis of that power of attorney, he has executed the sale-deeds regarding which relief is prayed for in the civil suit. As it is the pleadings of the petitioners/plaintiffs themselves that the power of attorney is forged, in that case, the burden is upon the petitioners to prove the same in the trial and if it so proved, then no law requires, that any forged power of attorney has to be revoked, cancelled or set aside by any process of law. Similarly the basis of execution of sale-deed is also the same power of attorney and on proof of forgery and in case it is found that the power of attorney is forged, then the petitioners may be able to prove that they are non-executant of the said sale-deeds. In such a case, the observation made by the learned trial Court in the impugned order that the petitioners are executants of the disputed sale-deeds is pre-mature, without any basis and uncalled for at this stage, when the pleadings of

both the parties are not complete and there is no evidence present to draw any such conclusion, Hence, the pleadings in the plaint has to be read as it is for the purposes of Order 7 Rule 11 CPC, which shows that the petitioners/plaintiffs are clear on their stand that they are non-executant of the sale-deed. Therefore, the direction of the Court below to the petitioner to value their suits in accordance with valuation of the sale-deeds and make payment of court fee accordingly is erroneous, which is liable to be set aside.

17. Consequently, both the petitions are allowed. The impugned order in both the petitions are quashed and at the same time that the application filed by the respondent side under Order 7 Rule 11 CPC is also rejected. The learned trial Court is directed to proceed with the trial in accordance with law.

Sd/-

(Rajendra Chandra Singh Samant)
Judge