

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR
WP227 No. 948 of 2018

- Prasan Kumar Deshlehre, S/o Late Kuberchand Deshlehre, Aged About 61 Years, R/o House No. 15, South Avenue, Choubey Colony, Raipur, Tehsil and District- Raipur, Chhattisgarh.....(Plaintiff).

---- **Petitioner**

Versus

- Smt. Kala Somani, W/o Late Maniklal Chandulal Somani, Aged About 81 Years, R/o House No. C-229, Shailendra Nagar, Near Budhi Mata Mandir, Raipur, Tehsil and District- Raipur, Chhattisgarh..... (Defendant).

---- **Respondent**

For Applicant	: Mr. Ankur Agrawal, Advocate.
For respondent	: Mr. Amit Kumar, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

30/07/2021

1. This petition has been brought seeking indulgence of this Court for setting aside the impugned order dated 26.9.2018 passed by the trial Court in civil suit filed by the petitioner/plaintiff against the respondent.
2. Learned counsel for the petitioner submits that the petitioner has filed the civil suit praying for relief of declaration that the will dated 15.9.2017 on which the respondent is relying, is a forged document on that basis after making valuation of the civil suit, the petitioner/plaintiff has paid fixed Court fees of Rs.500/-, which has been paid in accordance with law under Court Fees Act Schedule-II Article 17(iii) Court Fees Act, 1870.
3. It is submitted that the learned trial Court has at the stage of registration of suit held, that petitioner has prayed for consequential

relief, therefore, the Court Fees in this case is payable under Section 7(iv)(c) of Court Fees Act, which is an erroneous conclusion drawn by the trial Court, consequential relief prayed for by the petitioner is only to restrain the respondent from alienating and creating third party interest on the suit property. Therefore, the impugned order is erroneous, which is liable to be set aside.

Reliance has been placed on the judgment of full Bench of M.P. High Court in the case of Sunil Radhelia and others v. Awadh Narayan and others, reported in (2010)4 MPLJ 431, in which, it has been held that when the plaintiff claims that document is forged, then there is no requirement for payment of ad valorem Court fees. Therefore, it is prayed that the impugned order be set aside and the trial Court be directed to register the civil suit and proceed with the trial.

4. Learned counsel for respondent opposes the submissions made by counsel for applicant and submits that the prayer in the plaint is for declaratory relief along with the permanent injunction. The relief of permanent injunction is clearly a consequential relief, therefore, the payment of Court fees in the suit shall be governed by Section 7(iv)(c) of the Court fees Act, 1870.

Reliance has been placed on the judgment of M.P. High Court in the of State of M.P. and another v. Jiwanlal Chikotiya and another, in (2004) 4 MPLJ 470, in which, it was held that ad valorem Court fees shall be required from the relief of injunction, therefore, the petition be dismissed.

5. I have heard both the parties and perused the documents on record.
6. The petitioner/plaintiff has pleaded in the plaint very clearly that the will dated 15.9.2017 is a forged and invalid document and it is on this

basis, he had prayed that the relief of declaration that the will dated 15.9.2017 is *null and void*. The other relief prayed by the petitioner is to this effect, that the defendant be restrained from alienating the suit property or creating third party on the suit property.

7. Section 7(iv)(c) of the Court Fees Act is as follows:-

1.The amount of fee payable under this Act in the suits next hereinafter mentioned shall be computed as follows:

for money.--(i) In suits for money (including suits for damages or compensation, or arrears of maintenance, of annuities, or of other sums payable periodically) according to the amount claimed.

for maintenance and annuities.--(ii) In suits for maintenance and annuities or other sums payable periodically-according to the value of the subject-matter of the suit, and such value shall be deemed to be ten times the amount claimed to be payable for one year:

for other movable property having a market-value. (iii) In suits for movable property other than money, where the subject-matter has a market-value according to such value at the date of presenting the plaint;

(iv) In suits---

for movable property of no market-value.--(a) for movable property where the subject-matter has no market-value, as, for instance, in the case of documents relating to title,

to enforce a right to share in joint family property.--(b) to enforce the right to share in any property on the ground that it is joint family property,

for a declaratory decree and consequential relief.--(c) to obtain a declaratory decree or order, where consequential relief is prayed.

8. In the case of Sunil Radheliya it has been held in paragraph-14 is as follows:-

“In view of the aforesaid discussion, there is no doubt that if plaintiff makes an allegation that the instrument is void and hence not binding upon him then ad valorem Court fee is not payable and he can claim declaration simplicitor for which Court fee and Article 17 (iii) of Schedule II would be sufficient. The question No. 1 is answered accordingly.”

9. In the case of Smt. Sabina Alias Farida vs Mohd. Abdul Wasit, reported in AIR 1997 MP25, it was held that the expression "consequential relief means some relief, which would follow directly from the declaration

given, the valuation of which is not capable of being definitely ascertained and which is not specifically provided for anywhere in the Act and cannot be claimed independently of the declaration as a "substantial relief. Therefore, the true test for ascertaining whether the consequential relief infact follows from the declaratory relief where said consequential relief can be claimed independently of the declaration as a substantial relief or not. The petitioner/plaintiff is not seeking any other relief except that the respondent be restrained from alienating the suit property, but without the relief of declaration the relief of such nature in the form of permanent injunction cannot be claimed by him independently, therefore, I am of this view that the learned trial Court has not committed any error in passing the impugned order, therefore, this petition appears to without any substance, which is dismissed.

10. Accordingly, the petition is dismissed as disposed off.

Sd/-

(Rajendra Chandra Singh Samant)

Judge

Nisha