

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP No. 1542 OF 2018

Laxmidhar Mishra and others **Petitioners**

Mr. Digambara Mishra, Advocate

-Versus-

Godabarish Mishra **Opp. Party**

Mr. Amitav Tripathy, Advocate

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

Order No.

26.07.2022

5. 1. This matter is taken up through hybrid mode.
2. The Petitioners in this writ petition seek to assail the order dated 28th September, 2018 (Annexure-3) passed by learned Civil Judge (Junior Division), Nayagarh in Civil Suit No.23 of 2015, whereby an application filed by the Defendants-Petitioners to call upon the Plaintiff to deposit the ad-valorem court fees as per the valuation of suit property was rejected.
3. Mr. Mishra, learned counsel for the Petitioners submits that C.S. No.23 of 2015 has been filed for the following relief:
- (i) *For a declaration that plaintiff is exclusive owner in possession of suit property with all right, title and interest over it.*
- (ii) *For declaration that RSD No.896/2008 of District Sub-Registrar, Nayagarh and Mutation allowed by Tahasilar, Nayagarh vide M.C. No.2994 of 2009 on the basis of the said RSD, is not binding on the plaintiff and his successors.*
- (iii) *For cost of the suit, and*
- (iv) *For any other relief or reliefs which the plaintiff is entitled to the fact and circumstances of the suit."*
4. It is his submission that the suit land is a coparcenary property. Since the Plaintiff claims possession along with a

prayer to declare the registered sale deed vide RSD No. 896 of 2008 to be void, he has to pay ad-valorem court fee as per the provision under Section 7(V) of the Court Fees Act, 1870. But the Plaintiff-Opposite Party valuing the suit as per his choice has filed the suit without valuing the relief in accordance with the consideration amount of the sale deed. Learned trial Court without considering the same has passed the impugned order under Annexure-3, which is not sustainable in the eyes of law. He, therefore, prays that the Opposite Party may be directed to value the suit in accordance with the consideration amount of the registered sale deed and to pay ad-valorem court fee on the same. In support of his case, he relies upon the decision in the case of **Suhrid Singh @ Sardool Sing –v- Randhir Singh & others**, reported in AIR 2010 SC 2807, wherein the Hon'ble Supreme Court at Paragraph-6 has held as under:

“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 17(iii) of the 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."

5. Mr. Tripathy, learned counsel for the Plaintiff-Opposite Party relies upon the decision of this Court in the case of ***Kalinga Institute of Industrial Technology, Bhubaneswar -v- Shree Birendra Kumar Swain and others***, reported in 2017 (II) OLR 753, wherein this Court relying upon the decision in the case of ***Suhrid Singh @ Sardool Singh*** (supra) has held at paragraph-6 as under:

"6. In view of the authoritative pronouncement of the apex Court in the case of Suhrid Singh @ Sardool Singh (supra), the inescapable conclusion is that when a non-executant is not in possession and seeks a declaration that deed is null and void and is not binding on him, he has to pay the court fee under Sec. 7(iv)(c) of the Court Fees Act. The plaintiff is free to make his own estimation of the reliefs sought in the plaint and such valuation both for the purposes of court-fee and jurisdiction has to be ordinarily accepted. It is only in cases where it appears to the Court on a consideration of the facts

and circumstances of the case that the valuation is arbitrary, unreasonable and the plaint has been demonstratively undervalued, the Court can examine the valuation and can revise the same.”

6. It is his submission that since the Petitioner is in possession over the land in the question and prays for a declaration of the sale deed to be void, which was not executed by him, it is not required to value the suit in accordance with consideration amount of the sale deed. He can value the relief in the suit as per his choice and pay the ad-valorem court fee, which he has done. Learned trial Court considering the same has rightly held that the Plaintiff is not required to value the suit as per the consideration amount of the sale deed.

7. Taking into consideration the rival contentions of the parties, this Court finds that the suit land is a coparcenary property. The Petitioners-Defendants have alienated a portion of the suit land by virtue of a registered sale deed vide RSD No.896 of 2008, which is under challenge in the suit. Since the suit land is a coparcenary property, it is deemed that the Defendants-Petitioners are in possession over the same. There is also no plea of ouster of the Plaintiff by the Defendants. When the Plaintiff is in possession over the property in question and only claims for confirmation of his possession over the same, he is not required to value the relief as per the consideration amount of the sale deed in question. He can value his relief as per his own choice and pay the ad-valorem court fee, which he has done.

8. In view of the above, I find no infirmity in the impugned order.

9. Accordingly, this CMP being devoid of any merit stands dismissed.

10. The interim order dated 21st December, 2018 passed in I.A. No. 1633 of 2018 stands vacated.

Urgent certified copy of this order be granted on proper application.

(K.R. Mohapatra)
Judge

