

**In the High Court at Calcutta
Circuit Bench at Jalpaiguri
Civil Revisional Jurisdiction**

CO 27 of 2020

**Pappu Devi Jha
-versus-
Shib Shankar Jha**

Mr. Anurag Sharma
Ms. Nikita Agarwal

... for the petitioner.

Mr. Nabankur Paul

... for the opposite party no.1.

The petitioner has filed the present application under Article 227 of the Constitution of India challenging the order passed by the learned Additional District Judge, Tufanganj in Civil Revision No.2 of 2018 dated 26.09.2019 and the order passed by the learned Civil Judge (Junior Division), Tufanganj dated 16.11.2017 in Title Suit No. 17 of 2011 wherein both the learned Courts below have rejected the application filed by the petitioner under Section 7(ivA) of the Indian Court Fees Act read with Order VII Rule 11 of the Code of Civil Procedure.

The contention of the petitioner is that the plaintiff has filed the suit praying for cancellation of the sale deed executed by the proforma defendant but the plaintiff has paid the Court fees of Rs.100/-

instead of paying the Court fees as per valuation of the sale deed. Counsel for the petitioner submits that the learned Civil Judge (Junior Division) as well the learned Additional District Judge had failed to appreciate that the suit is to be valued in terms of the valuation of the sale deed as the sale deed is questioned in the plaint but no Court fees has been paid as per the valuation of the sale deed.

Per contra, learned counsel for the opposite party no.1 submits that the opposite party no.1 has filed the suit for declaration of the deed as void and for permanent injunction and the opposite party no.1/plaintiff is not the party to the sale deed and as such it is not required for the plaintiff to pay the Court fees as per the valuation of the sale deed.

Counsel for the opposite party no.1 relied upon the judgement reported in **(2010) 12 SCC 112 (Suhrid Singh Allias Sardool Singh vs. Randhir Singh and Others)**.

Considered the rival submissions of the respective parties. Perused the materials on record and the judgment and the orders passed by the learned Civil Judge (Junior Division), Tufanganj as well as learned Additional District Judge, Tufanganj.

This Court finds that both the learned Courts below have considered the submissions made by the

respective parties and the learned Additional District Judge has come to the conclusion that the application filed by the defendant is misconceived and devoid of merit. This Court has gone through the plaint filed by the plaintiff wherein the plaintiff has made out a specific case that the property in question is jointly recorded in the name of the plaintiff and the proforma defendant but the proforma defendant had executed the deed in favour of the defendants in spite of knowing the facts that the suit property has not been partitioned amongst the parties by metes and bounds and without partition, no deed can be executed as there is no identification of the portion of the respective parties.

In the judgment referred by the counsel for the opposite party no.1/plaintiff, the Hon'ble Supreme Court held as follows :

“7. 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 void 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.”

In view of the above, this Court has also found that the opposite party no.1/plaintiff is not a party to the sale deed and he has not challenged the sale deed and only has prayed for declaration of the deed as null and void. Accordingly, the case of the opposite party no.1 is covered under the judgment reported in *Suhrid Singh Alias Sardool Singh* (Supra)

In view of the above, this Court finds that both the learned Courts below have not committed any error and the orders passed by the learned Courts below do not require any interference.

CO No. 27 of 2020 is dismissed.

(Krishna Rao, J.)