

(2010) 11 MP CK 0012
In the Madhya Pradesh High Court
Case No : Writ Petition No. 2431 of 2004

Ambika Prasad and Others

APPELLANT

Vs

Ram Shiromani alias Chandrika Prasad Dwivedi and Another

RESPONDENT

Date of Decision : 09-11-2010

Acts Referred:

Constitution of India, 1950 — Article 17, 227
Court Fees Act, 1870 — Section 6, 7

Citation : AIR 2011 MP 18 : (2011) ILR (MP) 154 : (2011) 2 MPHT 488 : (2011) 4 RCR(Civil) 202

Hon'ble Judges : Sanjay Yadav, J;Ajit Singh, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Ajit Singh, J.—This petition, under Article 227 of the Constitution, is directed against the order dated 28-4-2004 passed in Civil Suit No. 33-A/2004 by the Fifth Additional District Judge, Rewa, whereby he has directed the Petitioners to pay ad-valorem court-fee on the sale consideration mentioned in the sale deed dated 21-10-1998.

2. The Petitioners are Plaintiffs in the civil suit filed against the Respondents in the year 1999. In the civil suit, Bhuar Rai was Plaintiff No. 1 and after his death the name of his widow Sitrajia was substituted in the plaint in the year 2001. The plaint contains the relief that the sale deed dated 21-10-1998 executed by Plaintiff No. 1 be declared inoperative, void and illegal as his thumb impression was obtained by misrepresentation. Another relief sought is that Respondent No. 1 be permanently enjoined from interfering with the Plaintiff's possession over the suit property. The sale consideration mentioned in the sale deed is Rs. 1,49,000/-. The Plaintiffs have paid Court-fee of Rs. 60/- for the relief of declaration and Rs. 30/- for the relief of permanent injunction i.e. total Rs. 90/-.

3. The trial Court, after hearing the Petitioners, held that prayer relating to sale deed amounted to seeking its cancellation and, therefore, ad-valorem court-fee

was payable on the sale consideration shown therein. Aggrieved, the Plaintiffs have filed the present petition.

4. It is argued on behalf of Petitioners that the suit was not for cancellation of sale deed and, therefore, the court-fee paid by them was proper. Relying upon the recent Full Bench judgment dated 8-9-2010 of this High Court in Writ Petition No. 14679/2006 (Sunil Radhelia v. Awadh Narayan Writ Petition No. 14679/2006) the Petitioners have argued that since an allegation has been made that the sale deed is void, ad-valorem court-fee is not payable. The learned Counsel for Respondent No. 1, on the other hand, cited the decision of the Supreme Court in *Suhrid Singh v. Randhir Singh* AIR 2010 SCW 3308 and argued that the order passed by the trial Court is legal and proper.

5. We have perused the plaint wherein the Plaintiffs have not denied the fact that sale deed dated 21-10-1998 bears the thumb impression of Plaintiff No. 1. Their main contention is that the thumb impression of Plaintiff No. 1 on the sale deed was obtained by misrepresentation. It is, therefore, an admitted fact that the sale deed does bear thumb impression of the executant/Plaintiff No. 1 (now dead).

6. The payment of court-fee is governed by the provisions of the Court Fees Act, 1870 (in short, "the Act"). According to Section 6, no document of the kinds specified as chargeable in the first or second schedule to the Act shall be filed, exhibited or recorded in any Court of justice unless the fee indicated therein is paid. Entry 17(iii) of Second Schedule requires payment of court-fee of Rs. 60/- on plaint in suit to obtain a declaration decree where no consequential relief is prayed- However, where the suit is for declaration and consequential relief, the court-fee is to be paid as provided u/s 7(iv)(c) which reads 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 --

(c) for a declaratory decree and consequential relief, 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 with a minimum fee of forty rupees. In all such suits the Plaintiff shall state the amount at which he values the relief sought.

7. The question required to be addressed in this petition is that whether the Plaintiffs are liable to pay ad-valorem court-fee on the sale consideration stated in the sale deed of which Plaintiff No. 1 is the executant when they have made an allegation in the plaint that it is void.

8. In *Suhrid Singh @ Sardool Singh Vs. Randhir Singh and Others*, the Supreme Court dealt with an identical issue and resolved the same by giving an illustration of two brothers. We find it useful to reproduce the relevant portion of para 6 of

the order. It is 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-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 the Act.

9. Thus, by the above illustration of "A" and "B" brothers the Supreme Court has answered the issue in a very simple manner that where the executant of the sale deed wants it to be annulled, he has to seek cancellation of that deed for which ad-valorem court-fee on the consideration stated in the sale deed is payable.

10. The Supreme Court earlier in *Government of Orissa Vs. Ashok Transport Agency and Others*, explained the distinction between the meaning of void and voidable acts. In this case, it held that 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 as law does not take any notice of the same and they can be disregarded in collateral proceeding. According to the Supreme Court, the other type of void act like transaction against a minor without being represented by a next friend is a good transaction against the whole world but if the minor decides to avoid the same and succeeds in avoiding it by taking recourse to appropriate proceeding, the transaction becomes void from the very beginning. In this case, the Supreme Court referred to yet another type of void act which may be not a nullity but for avoiding the same a declaration has to be made. It observed that voidable act is that which is a good act unless avoided for instance if a suit is filed for 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.

11. In the case at hand, Plaintiff No. 1 was admittedly an executant of the sale deed sought to be declared as void. The sale deed also bears his thumb impression and the sale consideration is clearly mentioned therein. The Plaintiffs in their suit for declaration have prayed that the sale deed be declared as void by

alleging that it was executed by playing fraud and misrepresentation. The relief claimed implies a relief for cancellation of sale deed because Plaintiff No. 1 (now dead) was an executant of the same. The sale deed, in our considered opinion, is voidable as the apparent state of affairs is a real state of affairs and the Plaintiffs, who have alleged otherwise, are obliged to prove it as void. The Plaintiffs, therefore, have to pay ad-volorem court-fee on the consideration stated in the sale deed. As held by the Supreme Court in *Suhrid Singh @ Sardool Singh Vs. Randhir Singh and Others*, had Plaintiff No. 1 been a non-executant the Plaintiffs could have merely paid a fixed court-fee provided in Entry 17(iii) of Second Schedule of the Act.

12. It is true that in *Sunil Radhelia* (supra) the Full Bench has held that ad-valorem court-fee is not payable when the Plaintiff makes an allegation that the instrument is void and not binding on him even if he be the executant of the document. But it is equally true that the decision of the Supreme Court in *Suhrid Singh* (supra) was not placed before the Full Bench and, therefore, it is not referred therein. Had the decision of *Suhrid Singh* been brought to the notice of the Judges of Full Bench, in all probability they too would have taken the same view which we have taken.

13. For these reasons, we decline to interfere with the impugned order of the trial Court. The petition fails and is dismissed. No order as to costs.