
(2022) 12 CHH CK 0018
In the Chhattisgarh High Court
Case No : Writ Petition (227) No. 990 Of 2015

Dharam Rao

APPELLANT

Vs

Shafiq Ahmed Khan (Died)

RESPONDENT

Date of Decision : 07-12-2022

Acts Referred:

Citation : (2022) 12 CHH CK 0018

Hon'ble Judges : Deepak Kumar Tiwari, J

Bench : Single Bench

Advocate : Kshitij Sharma, Pooja Loniya, Schin Nidhi, S.S. Thakur

Final Decision : Disposed Of

Judgement

1. With the consent of the parties, the matter is heard finally.
2. The petitioner has filed the instant writ petition challenging the order dated 21.09.2015 passed by Additional District Judge (FTC), Rajnandgaon passed in Civil Suit No.8-A/2014 whereby the trial Court has allowed the application filed by defendant No.1 – late Shafiq Ahmed and called upon the petitioner/plaintiff to pay ad-valorem courts fees.
3. Shri Sharma, learned counsel for the plaintiff/petitioner would submit that plaintiff has filed a suit for declaration and permanent injunction. In the plaint, it is specifically averred that he got a loan of Rs.10 lacs from the respondent/defendant late Shafiq Ahmed and for the security of the said loan a sale deed dated 26.06.2012 was executed. Though the plaintiff approached the respondent for repaying the loan and to discharge the debt however, the defendant denied repayment and also re-conveyance of the suit property, so the suit has been filed. He also submits that the plaintiff has paid fixed court fees which has been valued properly but the trial Court has erroneously held that ad-valorem is required.
4. He placed reliance in the matter of Sunil and others Vs. Awadh Narayan and

others reported in (2010) 4 MPLJ 431He submits that such issue can be decided after recording of the evidence and in the judgment passed by this High Court in WP (227) No.616/2014 decided on 05.11.2015 in between Seetaram Rajak Vs. Praveen Kumar Mishra and anr it was held that such issue can be decided after recording of the evidence.

5. On the other hand, counsel for the respondents submits that impugned order is well merited and does not call for any interference by this Court.

6. Heard learned counsel for the petitioner and perused the material available in petition.

7. The matter in issue is no longer res integra as in the matter of Suhrid Singh Vs. Randhir Singh reported in (2010) 12 SCC 112 it has been clearly held that where executant of a sale 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 no binding on him. The paragraph 7 of the said judgment is reproduced hereunder:-

"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 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 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..."

8. Even in the matter of Sunil Vs. Awadh Narayan (Supra) relied by the petitioner, it has been observed that when the plaintiff makes an allegation that the instrument is void and hence not binding on him, ad valorem court fees is not payable. But in the instant case the plaintiff/petitioner himself asserts that the transaction is loan transaction so the document is not void ab initio but it is voidable.

9. So the trial Court has rightly held for payment of ad valorem court fees on the sale deed. Further, submission advanced, in view of Sitaram Rajak (supra), is also not acceptable in the instant case because when the pleadings is explicit then there is no difficulty for the court to decide issue on the basis of the plaint averments.

10. In view of the aforesaid analysis, this Court is of the considered view that the impugned order is not suffering from any illegality or infirmity and the same does not call for any interference by this Court.

11. Petitioner/plaintiff is directed to approach the concerned Court for payment of requisite court fees and in turn, the concerned Court may grant 15 days further time for payment of such court fees. As the matter is quite old, the concerned Court is directed to expedite the matter.

12. Writ petition is disposed of accordingly.