

(2010) 09 MP CK 0046

In the Madhya Pradesh High Court

Case No : Writ Petition No"s. 7582 of 2005 and 14679 of 2006

Sunil Radhelia and Others

APPELLANT

Vs

Awadh Narayan and Others
 Chhotelal and Others Vs
Bala Prasad @ Tribhuvan Prasad Bramhan (dead) through his
L.Rs. and Others

RESPONDENT

Date of Decision : 08-09-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11
Constitution of India, 1950 — Article 226, 227
Court Fees Act, 1870 — Article 17, 7
Specific Relief Act, 1963 — Section 42

Citation : (2010) ILR (MP) 2454 : (2011) 1 JLJ 71 : (2010) 4 MPHT 477 :
(2010) 3 MPJR 412 : (2010) 4 MPLJ 431 : (2011) 1 RCR(Civil) 312

Hon'ble Judges : K.K. Lahoti, J;Arun Mishra, J;Alok Aradhe, J

Bench : Full Bench

Judgement

K.K. Lahoti, J.

A Division Bench of this Court has referred following two questions for the consideration of the Full Bench:

(1) Whether ad valorem Court fee is not payable when the Plaintiff/Plaintiffs make an allegation that the instrument is void and hence, not binding upon him/them ?

(2) Whether the decision rendered in Narayan Singh (supra), lays down the law correctly that the Plaintiff, a party to the instrument, is not required to pay ad valorem Court fee as he has made an allegation that the instrument is void ?

Before proceeding further in the matter, it would be appropriate to refer to facts of the case.

(A) In Writ Petition No. 14679/06, the facts are as under:

(i) Respondent No. 1 Awadh Narayan filed a suit before the District Judge, Katni

bearing No. 6-A/2005 for declaration and permanent injunction. The suit was valued at Rs. 27,89,911/- and Court fee of Rs. 540/- was paid. In the relief clause, the Plaintiff sought a declaration that he be declared to be entitled to receive an amount of Rs. 14,80,000/- as the detained salary from the Defendant No. 1. He also claimed a relief that the agreement dated 26-6-2000, which was executed for an amount of Rs. 3,45,000/-, be declared as null and void.

(ii) The Petitioners/Defendants filed an application under Order 7 Rule 11, CPC on the ground that Plaintiff had not paid requisite Court-fee regard being had to the relief of declaration and permanent injunction as claimed by him. The application filed by the Petitioners was dismissed by the Court below on the ground that Respondent/Plaintiff was free to value the suit for declaration at the amount by paying fixed Court-fee Rs. 500/-. The Trial Court assigned the reason that the Plaintiff sought a declaration that the agreement dated 26-6-2000 be declared as void as it was executed practising misrepresentation and fraud on him. The Trial Court found that the Plaintiff had challenged the agreement as a forged document, he was not required to pay ad valorem Court fee on the whole amount in view of the decision rendered by a Single Bench of this Court in Smt. Shahista Qureshi Vs. State of M.P. and Others, .

Aggrieved by the aforesaid order, Defendants filed a writ petition under Article 226 of the Constitution of India.

(iii) Before this Division Bench, an argument was advanced that Section 7(iv)(c) of the Court Fees Act, 1870 (in short "Court Fees Act") provides to obtain a declaratory decree or order where a consequential relief is prayed and Section 7(iv)(d) provides for Court-fee for a relief of injunction. The Petitioners also invited attention of the Court to Article 17, Schedule II of the Court Fees Act which provides in clause (iii) for fixed Court-fee to obtain a declaratory decree where no consequential relief is prayed. Referring aforesaid provision, it was stated by the Defendants/Petitioners that where consequential relief is prayed, the provisions of Section 7(iv)(c) and (d) would apply and ad valorem Court-fee is payable on the plaint.

(iv) Per contra, Respondent/Plaintiff supported the order on the basis of the reasoning given by the Trial Court that the agreement was sought to be declared as void, so no ad valorem Court fee was required and fixed Court fee was rightly paid by the Plaintiff.

The Trial Court rejected the application by holding that the suit was properly valued and the fixed Court fee was rightly paid.

(B) (i) In Writ Petition No. 7582/2005, Plaintiff's Chhotelal, Buddhsen and Ramnaresh filed a suit against their real brother Bala Prasad in respect of suit lands claiming as an ancestral property. A partition among the brothers took place in the year 1983 and as per partition, mutation in revenue record was carried out recording name of each share holders as per partition. At the time of the partition, mother of parties Mst. Hansi was alive who was entitled for 1/5th

share but it was resolved by all the four brothers that she would be maintained severally and jointly by all the brothers and therefore, she was not allotted any share in the ancestral land. After partition, all the brothers were in exclusive possession of their share. They had also developed their land according to their choice. The Plaintiffs pleaded that by taking undue advantage of his position, Defendant No. 1 Bala Prasad shrewdly got a sale deed executed and registered dated 6- 8-1988 in respect of 1/5th share of the suit land from mother Mst. Hansi. This sale deed would adversely affect the interest and right of the Plaintiffs, therefore, they filed a suit for declaration of title simplicitor in respect of the suit land. For the purpose of jurisdiction, the suit was valued for Rs. 46,500/- , according to the sale consideration and a fixed Court fee was paid as per Article 17(iii) of Schedule II of the Court Fees Act. No. consequential relief was sought in the plaint.

Respondent/Defendant Bala Prasad and his sons jointly filed their written statement denying all the facts in the plaint. They also raised an objection in respect of non-payment of adequate Court fee.

(ii) On the basis of pleadings of both parties, the Trial Court framed 5 issues out of which Issue No. 3 was framed as a preliminary issue in respect of Court fee. The issue was heard and decided by the Trial Court by order dated 2-7-2005. Before the Trial Court, the Plaintiffs alleged that they were not parties to the sale-deed, so they are not liable for payment of Court-fee as per valuation in the sale deed, while the objection of the Defendants was that Smt. Hansi got 1/5th share in the land at the time of the partition which she had sold in favour of the Defendants. The suit is not merely for declaration but in fact it is for cancellation of the sale deed executed by Mst. Hansi, so ad valorem Court-fee was payable.

The Trial Court decided the aforesaid issue against the Plaintiffs by sustaining the objection raised by the Defendants and directed the Plaintiffs to pay ad valorem Court fee. This order was challenged by the Plaintiffs before the Division Bench by filing a writ petition under Article 227 of the Constitution of India.

The Petitioners/Plaintiffs of W.P. No. 7582/05 reiterated their contention before the Division Bench that as the Plaintiffs were not party to the sale-deed and mother Mst. Hansi was not given any share in the property, so sale deed against the interest of Plaintiffs was void and no ad valorem Court fee was payable, while Defendants/Respondents supported the order on the same analogy which prevailed the Trial Court to decide the issue against the Plaintiffs.

So far as question No. 2, in respect of the decision rendered in Narayan Singh (supra), is concerned, the Division Bench has referred the matter to examine correctness of the decision by the Full Bench.

Before proceeding further, we would like to refer the decision the Division Bench in Narayan Singh, W.P. No. 11583 of 2008, decided on 6-11-2008, as it is not a reported judgment which is reproduced thus:

An application under Order 7 Rule 11, CPC was filed by the Petitioner for rejecting the plaint on the ground that the sale-deed has been assailed, thus on the basis of valuation of the house, ad valorem Court fee should have been paid. The Trial Court has rejected the application vide impugned order dated 2-9-2008.

The Plaintiffs have come up with the averment that the sale deed in question is illegal and void, it is a forged document and it was without consideration. Plaintiffs are in possession of the land. For declaratory relief the fixed Court fee has been paid.

The Trial Court has held that the averments made to the plaint with respect to payability of the Court fee are relevant. The plea taken in the written statement cannot be taken into consideration. The averment made in the plaint which is material with respect to payment of the Court fee. Relying upon the decisions in Rohan Ram v. Dashmath Bai 1982 WN 464 and Bisahin v. Mehtar 1983 MPLJ 31, it has been held that in such circumstances ad valorem Court-fee is not payable.

Shri Sourabh Bhushan Shrivastava, learned Counsel appearing on behalf of the Petitioners has submitted that as the Plaintiff's are the parties to the sale deed ad valorem Court fee should have been ordered to be paid, thus, the plaint is liable to be rejected under Order 7 Rule 11, Code of Civil Procedure. He has placed reliance on the decision of the Punjab & Haryana High Court in Himanshu Vs. Smt. Kailash Rani and Another, .

After hearing learned Counsel for the Petitioner, considering that fact and circumstances of the instant case and averments made in the plaint, it is apparent that the Plaintiffs have come up with the case that the document is a forgery, it does not bear signature of Sitaram. Sitaram was not party to the sale deed. Plaintiffs have claimed their possession over the suit land. Suit is for permanent injunction and for declaration. Thus, in our opinion, the Court fee paid is proper. When document is alleged to be illegal and void and executant was not party to the document, it is not necessary to make the payment of ad valorem Court fee, is the settled view of this Court in various decisions. In Pratap and Anr. v. Punia Bai and Ors. 1976 J LJ 703, it has been held that in case document is voidable it is necessary to make the payment of Court fee, if it is wholly void and material declaration that it is so is sufficient. In the instant case, as per the averments made in the plaint document is shown to be void, not voidable. Consequently, we hold that adequate Court fee has been paid. Facts of Himanshu Vs. Smt. Kailash Rani and Another, , were different. Writ Petition is without merits. Same is dismissed.

The first question which arises for consideration of this Bench is whether ad valorem Court fee is not payable when the Plaintiff makes an allegation that the instrument is void and hence not binding upon him.

The Full Bench in Santoshchandra and Ors. v. Smt. Gyansundarbai 1970 MPLJ 363, expressed the view thus:

14. Thus, all these cases lay down the proposition that where it is necessary for a Plaintiff to avoid an agreement or a decree or a liability imposed, it is necessary for him to avoid that and unless he seeks the relief of having that decree, agreement, document or liability set aside, he is not entitled to a declaration simplicitor. In such cases the question of Court fees has to be determined u/s 7(iv)(c) of the Act. However, where a Plaintiff is not a party to such a decree, agreement, instrument or liability, and he cannot be deemed to be a representative in interest of the person who is bound by that decree, agreement, instrument or liability, he can sue for a declaration simplicitor, provided he is also in possession of the property. The matter may be different if he is not in possession of the property. In that event, the proviso to Section 42 of the Specific Relief Act might be a bar to the tenability of a suit framed for the relief of declaration simplicitor. But, that would be a different aspect. All the same, if the Plaintiff is not bound by that decree or agreement or liability and if he is not required to have it set aside, he can claim to pay Court fee under any of the clauses of Article 17, Schedule II of the Court Fee Act.

The Full Bench in Santoshchandra (supra), considering the controversy held that where it is necessary for a Plaintiff to avoid an agreement or a decree or a liability imposed, it is necessary for him to avoid that and unless he seeks the relief of having that decree, agreement, document or liability set aside, he is not entitled to a declaration simplicitor. In such cases, the question of Court fees has to be determined u/s 7(iv)(c) of the Act. The Full Bench further held that where a Plaintiff is not a party to such a decree, agreement, instrument or liability and he cannot be deemed to be a representative in interest of the person who is bound by that decree, agreement, instrument or liability, he can sue for a declaration simplicitor, provided he is also in possession of the property. The matter may be different if he is not in possession of the property. In that event, the proviso to Section 42 of the Specific Relief Act might be a bar to the tenability of a suit framed for the relief of declaration simplicitor. But, that would be a different aspect. All the same, if the Plaintiff is not bound by that decree or agreement or liability and if he is not required to have it set aside, he can claim a declaration and to pay Court fee under any of the clauses of Article 17, Schedule II of the Court Fee Act.

The Full Bench also referred a Special Bench judgment of this Court on difference of opinion between two learned Judges of this Court in Baldeo Singh v. Gopal Singh 1967 MPLJ 242, wherein the Special Bench considering the question held that the Court fee is payable on the plaint as it was framed and not on a plaint as it ought to have been framed. The question of Court fees is distinct and separate from the question of the maintainability of the suit. In that case the suit was filed by a minor for declaration that sale deed executed by his brother as Karta of Joint Hindu Family was void for want of legal necessity. An alternative plea was raised that the sale deed was void to the extent of Plaintiff's share. The Special Bench held that where the Plaintiff sues for a declaration simplicitor that a sale deed executed by his elder brother is not binding on him without further seeking

any consequential relief, the fact that his claim would be incompetent, because of his failure to seek further consequential relief which he was able to claim does not affect the question of Court fee and he will be liable to pay Court fee under Article 17(iii) of Schedule II of the Court Fees Act and not u/s 7(iv)(c)". The Special Bench further held that the declaration asked for by the Plaintiff in such a case must not be mere garb for the real, substantial or consequential relief intended to be claimed. If it be so, it is competent for the Court to look to the substance of the relief claimed apart from the form and require him to pay the Court fee which he would be bound to pay in case he had not resorted to a device in concealing the relief he really wanted. Where the Plaintiff is not bound either by a deed or a decree to which he is co-nominee, not a party or privy because of its being void on the allegations made by him, then his claim for declaration with reference to his title to the property, alleged to be in his possession, will not be taken to involve a claim for a consequential relief. The Special Bench held that the Court fee payable was under Article 17(iii) of Schedule II of the Court Fees Act and not u/s 7(iv)(c).

The Apex Court considering the difference between void and voidable transaction in *Ningawwa Vs. Byrappa and Others*, , held that a contract or other transaction induced or tainted by fraud is not void, but only voidable at the option of the party defrauded. Until it is avoided the transaction is valid, so that third parties without notice of the fraud may in the meantime acquire rights and interest in the matter which they may enforce against the party defrauded. The legal position may be different if there is a fraudulent misrepresentation as to the contents of the document or as to its character. With reference to the former the transaction is void, while in the case of the latter, it is merely voidable.

The Apex Court considering the distinction and meaning of void and voidable in *Government of Orissa Vs. Ashok Transport Agency and Others*, , held that the expression "void" has several facets. One type of void acts, transactions, decree are those which are wholly without jurisdiction, ab initio void and for avoiding the same, no declaration is necessary. Law does not take any notice of the same and it can be disregarded in collateral proceeding or otherwise. The other type of void act, e.g., may be transaction against a minor without being represented by a next friend. Such a transaction is a good transaction against the whole world. So far as the minor is concerned, if he decides to avoid the same and succeeds in avoiding it by taking recourse to appropriate proceeding the transaction becomes void from the very beginning. Another type of void act may be one which is not a nullity but for avoiding the same, a declaration has to be made. Voidable act is that which is a good act unless avoided, e.g., if a suit is filed for a 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. If it is proved that the document is forged and fabricated and a declaration to that effect is given, a transaction becomes void from the very beginning. There may be a voidable transaction which is required to be set aside and the same is avoided from the day it is so set aside and not

any day prior to it. In cases, where legal effect of a document cannot be taken away without setting aside the same, it cannot be treated to be void but would be obviously voidable.

The Apex Court in Prem Singh and Others Vs. Birbal and Others, , considering the question held that when a document is void ab initio, a decree for setting aside the same would not be necessary as the same is non est in the eye of the law and it would be nullity.

A similar view has been taken by the Apex Court in Ranganayakamma and Another Vs. K.S. Prakash (D) by L.Rs. and Others, , wherein the Apex Court held that voidable transaction are required to be avoided while void transaction are not required to be avoided. When a contract is said to be voidable by reason of any coercion, misrepresentation or fraud particulars thereof are required to be pleaded. That void document is not required to be avoided whereas voidable document must be. The position may have been different in respect of orders, judgments and decrees of the Courts.

The Apex Court considering similar question in Sneh Gupta Vs. Devi Sarup and Others, , held that if an order is void or voidable, the same must be set aside. Thus, the compromise/consent decree, which is as good as a contested decree even if void was required to be set aside. If the compromise has been accepted in absence of all the parties, the same would be void and the decree based thereupon must be set aside. The compromise may be void or voidable but it is required to be set aside by filing a suit within the period of limitation. A consent/compromise decree must be set aside if it has been passed in violation of law. For the said purpose, the provisions contained in the Limitation Act, 1963 would be applicable.

A Division Bench of this Court in Manzoor Ahmed v. Jaggi Bair and Ors. 2009 (4) MPLJ 182, considering the question held that the question of payment of ad valorem Court fee depends upon the averments made in the plaint. The Court has to find out whether transaction is alleged to be void or voidable. It depends upon the averments made, in each case, in the plaint whether ad valorem Court fee is payable or not. The Court is to find out whether transaction is alleged to be void or voidable. In case of void document, it is not necessary to seek the relief of cancellation of the document. In that case, Plaintiff filed a suit for declaration of title and confirmation of possession. She had not claimed the relief for possession, so it was held that ad valorem Court fee was not required to be paid. The averments made in the plaint had indicated that the document in question was shown to be void not voidable, so ad valorem Court fees was not required. In case the document is voidable at the instance of executant, ad valorem Court fee is required to be paid but not in the case of void document. In such case, injunction which was prayed, flows from the relief of declaration.

Now in the light of aforesaid settled position by the Apex Court and Full Bench of this Court, the first question referred by the Division Bench may be examined.

When the Plaintiff makes an allegation that the instrument is void and hence not binding upon him, and if a declaration simplicitor is prayed then he is not required to pay ad valorem Court fee and a fixed Court fee under Article 17, Schedule II of the Court Fees Act will be payable. This position is well settled by the Apex Court in *Ningawwa* (supra) and continued till the decision in *Sneh Gupta* (supra). The void document which is not binding upon the Plaintiff needs to be avoided and in this regard a declaration is sufficient. The Full Bench of this Court in *Santoshchandra* (supra), has clarified the position and we respectfully agree with the law laid down by the Full Bench in *Santoshchandra* (supra).

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.

Now second question may be seen in respect of the judgment rendered in *Narayan Singh* (supra). In *Narayan Singh* (supra), the Plaintiffs had filed suit with the averment that the sale deed in question was illegal and void. It was a forged document and also without consideration. The Plaintiffs were in possession of the land, a relief for declaration was prayed and a fixed Court fee was paid. The Defendants moved an application under Order 7 Rule 11 of CPC for rejecting the plaint on the ground that though the Plaintiffs had assailed the sale deed but had not paid ad valorem Court fee which ought to have been paid.

The Trial Court had rejected the application which order was assailed before the Division Bench. The Division Bench held that the case of the Plaintiffs was that the document was a forged one and it does not bear the signature of Sitaram though Sitaram was party to the sale deed. Plaintiffs had claimed their possession over the suit land. The suit was for permanent injunction and declaration. When the document was alleged to be illegal, void and executant had not signed the document, it was not necessary for them to make payment of ad valorem Court fee. The document in the plaint was shown to be void and not voidable, so ad valorem Court fee was not required and a fixed Court fee was found to be adequate.

The Division Bench further held that if the document, as per averments made in the plaint, is pleaded to be a void document so it is not necessary for the Plaintiffs to avoid document by claiming relief to set aside and a fixed Court fee under Article 17(iii) of Schedule II of the Court Fees Act was sufficient. In the light of the discussion, while deciding the question No. 1, we have also held so and accordingly we find that the law laid down by the Division Bench in *Narayan Singh* (supra), has been correctly laid down.

To sum up, the questions referred to this Court are answered thus:

(1) Ad valorem Court fee is not payable when the Plaintiff makes an allegation that the instrument is void and hence not binding upon him.

(2) The decision rendered in Narayan Singh (supra), lays down the law correctly that the Plaintiff a party to the instrument is not required to pay ad valorem Court fee as he had made an allegation that the instrument was void on the ground that the document was forged one and it does not bear the signature of the executant.

Now matter be placed before the Division Bench for deciding the case in accordance with law.