
(2016) 08 CHH CK 0010
In the Chhattisgarh High Court
Case No : Writ Petition 227 No. 229 of 2016

Tarun Chandrakar S/o Late Babulal Chandrakar	APPELLANT
Vs	
Smt. Kumari Bai W/o Late Devilal Kurmi	RESPONDENT

Date of Decision : 29-08-2016

Acts Referred:

Court Fees Act, 1870 — Section 5

Citation : (2017) 170 AIC 301 : (2016) AIR(Chhattisgarh) 195 : (2017) 1 CivCC 664 : (2017) 1 CivilLJ 458 : (2017) 2 ICC 77

Hon'ble Judges : Prashant Kumar Mishra, J.

Bench : Single Bench

Advocate : Shri S.M. Ali, Panel Lawyer, for the Respondent/State; Shri B.P. Singh, Advocate, for the Petitioner; Shri P.P. Sahu, Advocate, for the Respondents Nos. 1, 3 and 6

Final Decision : Disposed Off

Judgement

Prashant Kumar Mishra, J. - The petitioner/plaintiff is aggrieved by the order passed by the trial Court, which has directed the petitioner to pay ad valorem Court fees on the prayer made by him for declaring the sale deed dated 26-3-2012 executed by the respondents No. 1 to 5 in favour of the respondent No.6 as null & void and not benefiting the respondent No. 6.

2. Admittedly, the petitioner is not the executant of the sale deed, therefore, he is not required to seek a relief of cancellation of sale deed and he can seek relief only to the extent that the sale deed is null & void and, as such, in view of the law laid down by the Supreme Court in Suhrid Singh @ Sardool Singh v. Randhir Singh & Ors., AIR 2010 SC 2807, the petitioner/plaintiff is not required to pay ad valorem Court fees.

3. At this juncture, Shri Sahu, learned counsel appearing for the respondents No. 1, 3 & 6, would submit that if that be so, the plaintiff is also required to value the suit for the purposes of jurisdiction in accordance with the relief of declaration and not on the basis of the value of the sale deed. He would submit that on

proper application of the judgment rendered by the Supreme Court in *Suhrid Singh @ Sardool Singh* (supra), a suit of such nature preferred by the plaintiff where he is not an executant of the sale deed has to be valued similarly for the purposes of pecuniary jurisdiction. The plaintiff cannot choose to avoid the payment of Court fees and at the same time institute a suit before higher Court, which has no jurisdiction in the matter. To buttress his contention, Shri Sahu would refer to the decision rendered by the Supreme Court in *S. Rm. Ar. S. Sp. Sathappa Chettiar v. S. Rm. Ar. Rm. Ramanathan Chettiar*, AIR 1958 SC 245.

4. In *Suhrid Singh @ Sardool Singh* (supra), the Supreme Court has held thus at para 6 :

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 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. It is, thus, apparent that in all such suits the plaintiff shall state the value of the suit, which means the value for seeking relief of declaration that the sale deed is null & void and not operative for the benefit of the respondent No.6. If the relief is only to the above extent and not for cancellation of sale deed, the plaintiff being not executant thereto, he is only required to value the suit for declaration and not on the basis of value mentioned in the sale deed.

6. In *S. Rm. Ar. S. Sp. Sathappa Chettiar* (supra) the Supreme Court held thus at

para 15 :

15. What would be the value for the purpose of jurisdiction in such suits is another question which often arises for decision. This question has to be decided by reading Section 7 (iv) of the Act along with Section 8 of the Suits Valuation Act. This latter section provides that, where in any suits other than those referred to in Court Fees Act, 1870 Section 7, para. 5, 6 and 9 and para. 10 clause (d), court fees are payable ad valorem under the Act, the value determinable for the computation of court fees and the value for the purposes of jurisdiction shall be the same. In other words, so far as suits falling under Section 7 sub-section (iv) of the Act are concerned, Section 8 of the Suits Valuation Act provides that the value as determinable for the computation of court fees and the value for the purposes of jurisdiction shall be the same. There can be little doubt that the effect of the provisions of Section 8 is to make the value for the purpose of jurisdiction dependent upon the value as determinable for computation of court fees and that is natural enough. The computation of court fees in suits falling under Section 7 (iv) of the Act depends upon the valuation that the plaintiff makes in respect of his claim. Once the plaintiff exercises his option and values his claim for the purpose of court fees, that determines the value for jurisdiction. The value for court fees and the value for jurisdiction must no doubt be the same in such cases; but it is the value for court fees stated by the plaintiff that is of primary importance. It is from this value that the value for jurisdiction must be determined. The result is that it is the amount at which the plaintiff has valued the relief sought for the purposes of court fees that determines the value for jurisdiction in the suit and not vice versa. Incidentally we may point out that according to the appellant it was really not necessary in the present case to mention Rs. 15,00,000 as the valuation for the purposes of jurisdiction since on plaints filed on the Original Side of the Madras High Court prior to 1953 there was no need to make any jurisdictional valuation.

(Emphasis added)

7. In view of the above, while setting aside the order passed by the trial Court directing the plaintiff to make payment of ad valorem Court fees, the petitioner is also directed to amend para 8 of the plaint for the purposes of valuation as well as jurisdiction and not on the basis of value mentioned in the sale deed.

8. On such amendment being made, the trial Court shall send the matter to the Court having jurisdiction over the matter.

9. Accordingly, the writ petition is disposed of in the above stated terms.

10. There shall be no order as to costs.