

**IN THE HIGH COURT OF MADHYA PRADESH  
AT GWALIOR  
BEFORE  
HON'BLE SHRI JUSTICE MILIND RAMESH PHADKE**

**Misc. Petition No.655 of 2021**

**RAJESH KUMAR (DELETED) THROUGH LRS (A) SMT LALLI AND OTHERS**

**Vs.**

**MANGAL SINGH (DELETED) THROUGH LRS BHAGWAN SINGH AND OTHERS**

**APPEARANCE**

*Shri Parth Dixit - Advocate for the petitioners.*

*None for respondents.*

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<i>Reserved on</i>	<i>:</i>	<b>09/04/2025</b>
<i>Delivered on</i>	<i>:</i>	<b>17/4/2025</b>

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*This petition having been heard and reserved for orders, coming on for pronouncement this day, the **Hon'ble Shri Justice Milind Ramesh Phadke** pronounced/passed the following:*

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**ORDER**

By way of instant petition, under Article 227 of the Constitution of India, the petitioner is challenging the order dated 12.03.2020 passed by Civil Judge, Class I, Gohad, District Bhind in Case No.29 of 2020 (RCSA) by which an application preferred by the present petitioners/defendants under Order 7 Rule 11 of the Code of Civil Procedure, 1908 was rejected.

2. Vide said application, the petitioners/defendants had sought rejection of the plaint on the ground that despite the sale deed dated 11.12.2019 having been challenged and relief of declaring it to be null and void and not binding on the respondents/plaintiffs had been sought,

the Court-fees *ad valorem* had not been paid on the sale consideration on the said sale deed.

3. Learned Trial Court after considering the matter held that since an allegation of fraud has been levelled by the plaintiffs to the effect that on the pretext of treatment of his eyes thump impression of the original plaintiff/respondent was forcibly taken over the said sale deed which was without any consideration, therefore, the Court-fees *ad valorem* was not required to be paid.

4. Learned counsel for the petitioners, while placing reliance upon the judgment of the Apex Court in the matter of **Suhrid Singh @ Sardool Singh vs Randhir Singh & Others** reported in (2010) 12 SCC 112, has argued that in the aforesaid judgment, the Apex Court has specifically held that where the executant of a sale deed seeks annulment thereof, such executant has to actually seek cancellation of the sale-deed, and in such a situation, Court-fees *ad valorem* would be required to be paid, calculated on the amount of sale consideration shown to have been paid, in the sale deed. On the other hand, if a non-executant of a sale-deed seeks annulment thereof, she/he simply is required to file a suit seeking a declaration to that effect, on which a fixed court fee in terms of Article 17 (iii) of the 2nd Schedule to the Court Fee Act, 1870, needs to be paid, hence, the sale deed having been shown to be executed by the respondent/plaintiff himself despite of the allegation that the said sale deed was got executed by means of fraud played upon him was required to pay Court-fees *ad valorem*.

5. None for the respondents.

6. Heard counsel for the petitioner and perused the record.

7. Learned Trial Court on the basis of decision of this Court in the

matter of **Smt. Leenmat vs. Purushottam** reported in **1985 M.P.L.J. 748** had given a finding that since the declaration of sale deed dated 11.12.2019 to be null and void has been sought on the basis of committal of fraud by the defendants and not binding on the respondents/plaintiffs, therefore, as per the provisions of Section 7(iv) of the Court-fees Act, 1870, he is not required to pay *ad valorem* Court fees since the plaintiff is not seeking cancellation of the said sale deed and accordingly, had rejected the application under Order 7 Rule 11 of CPC, in this context, the facts of judgment of **Smt. Leenmat vs. Purushottam** (*supra*) and the analogy laid thereupon is required to be seen.

8. Therein, the plaintiffs had filed a suit for declaration and title of the disputed property and had paid Court fees of Rs.30/- for the relief of declaration and the requisite Court-fees for relief of possession. The case therein contained in the plaint was that the land originally belonged to one Jagannath who died on 22.05.1981. Being a widow and daughter of the deceased Jagannath, the applicants-plaintiffs claimed to succeed to the aforesaid land alleging that Jagannath was ailing since last several years and was otherwise old, infirm and illiterate person and the non-applicant's mother acting on behalf of the applicants got a sale-deed executed regarding the suit land and house from deceased Jagannath for a sum of Rs.32,000/- after making a fraudulent representation that such a course of action was required to properly manage the property. It was further alleged that the said Jagannath was not paid any consideration for the aforesaid sale and later on, when the deceased Jagannath learnt of the fraudulent activity, he requested the non-applicants' parents to get the sale-deed cancelled, thus alleging the

sale deed being effected by fraud and misrepresentation, a relief of declaring the said sale deed to be void was prayed and therein, the applicants did not seek any relief of cancellation of sale-deeds.

9. An objection was taken by non-applicants defendants that the suit was not properly valued for Court-fees inasmuch as no Court-fees had been paid for the relief of cancellation of sale deed, with a further submission that the plaint has been very cleverly worded so that though the main relief is the relief of cancellation of sale deed, it seeks only the relief of declaration.

10. The learned trial Court upheld the objections and directed the plaintiff therein to pay *ad valorem* Court-fees, thus, the matter went in the way.

11. Learned Coordinate Bench while referring to one of the Full Bench decisions of this Court passed in the matter of **Santoshchandra v. Smt. Gyansundarbai** reported in **1970 M.P.L.J. 363** and in the matter of **Partap Kunji v. Puniya Bat** reported in **1976 M.P.L.J. 627** found that Jagannath Sahu was an old, sick and illiterate person and taking advantage of the same, defendants' mothers in collusion with their husbands, represented to late Jagannath Sahu that it was necessary to execute a document for proper management of the agriculture field and therefore fraudulently got the present sale deed executed fraudulently, thus, held that the fraudulent misrepresentation would be not merely as to the contents of the document, but also its character and in such circumstances, the Supreme Court in the matter of **Ningwwav. Byrappa Hirekurahar** reported in **AIR 1968 SC 956** held the alleged sale deed to be wholly void and not voidable and in that circumstance, concluded that it was not necessary for the applicants to seek relief of

setting aside the sale deed and was not required to pay *ad valorem* Court-fees.

**12.** The fact of the aforesaid case reveals that the sale deed was executed by late Jagannath and the suit was filed by his widow and daughter alleging that since fraud was played upon their husband/father, the document is void and after analyzing it, it was concluded that they are not required to seek cancellation of sale deed and therefore, would not be liable to pay *ad valorem* Court-fees. To this extent, this Court is in conformity with the law laid down by the Coordinate Bench but herein case, the facts are somewhat different, as herein case, the executant of the sale deed is the plaintiff himself and is seeking a declaration of the sale deed to be null and void and not binding upon him since was got executed by means of fraud and misrepresentation.

**13.** The Apex Court in the matter of **Suhrid Singh @ Sardool Singh vs Randhir Singh (*supra*)** in para 7 has held as under:

*“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."*

**14.** The Apex Court in categorical terms had laid down two situations; one where the executant of the deed wants to get it annulled and second, a case where non-executant seeks annulment of a deed. In the first case, if the executant wants to get the deed annuled, he has to seek cancellation of the deed and if the non-executant seeks annulment of a deed, he has just to seek a declaration that the deed is invalid, or non-est, or illegal and that it is not binding on him.

**15.** The aforesaid fact had been demonstrated by means of illustration by the Apex Court and held that in the cases where executant wants to get the deed annulled, then he has to pay *ad-valorem* Court-fees as provided under Section 7(iv)(c) of the Act and if the non-executant wants to get the same relief, then he has to merely pay a fixed court fee

under Article 17(iii) of Second Schedule of the Act. To this extent, the position is very much clear.

**16.** Now, the question arises that when the plaintiff had pleaded fraud, whether the very sale deed can be said to be void and would entail that the plaintiff would not be required to pay *ad-valorem* Court-fees.

**17.** This Court having regard to the allegations of fraud pleaded having been perpetuated finds that it would be very easy for the plaintiffs challenging or seeking cancellation of the sale deed by pleading fraud and thereby avoid payment of *ad-valorem* Court fees. However, it cannot be loss sight of that in some cases, the allegation may actually eventually be found to be true upon evidence led to that effect before the trial Court and in such a case, naturally, the plaintiff would be entitled to recover her/his costs from the defendant concerned. However, at a stage when the contention is only an allegation that is still to be proved, it cannot be held that on a prayer made for the cancellation of a sale deed by a person shown to be the executant thereof, in person, he/she would be exempted from affixing Court-fees *ad valorem*.

**18.** Since in the present case, the respondent/plaintiff apart from declaration has also sought a consequential relief of injunction, as per Clause (c)(iv) of Section 7 of the Court Fees Act, 1870, he is required to pay the *ad-valorem* Court fees on the valuation of the suit.

**19.** Consequently, this petition is **allowed** and the impugned order herein is **set aside**, with a direction to the trial Court concerned to proceed with the matter only after the respondent/plaintiff affixes Court-fees *ad valorem* as per the consideration shown to be paid in the sale deed in question.

20. It is made clear that this Court has not given any finding so far fraud having been pleaded against the present petitioners, which would be considered by the trial Court wholly on the basis of the evidence led before it.

21. With the aforesaid observation, the present petition is **disposed of.**

**(Milind Ramesh Phadke)**  
**Judge**