

**IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR**

BEFORE

HON'BLE SHRI JUSTICE ANAND PATHAK

MISC. PETITION No. 3884 of 2022

BETWEEN:-

**VIJAY JATAV S/O SHRI RATAN JATAV,
AGED ABOUT 34 YEARS, R/O- SHRIRAM
TALKIES MANDIR KE PASS SHIVPURI
(MADHYA PRADESH)**

.....PETITIONER

(BY SHRI P.C. CHANDIL - ADVOCATE)

AND

- 1. PREM KUSHWAH S/O LATE SHRI
SHRILAL KUSHWAH, AGED ABOUT 37
YEARS, R/O BYEPASS ROAD ANANDPUR
TRUST KE PICHE MANIYAR DISTRICT
SHIVPURI (MADHYA PRADESH)**
- 2. KAILASH KUSHWAH S/O LATE SHRI
SHRILAL KUSHWAH, AGED ABOUT 28
YEARS, R/O- BYEPASS ROAD
ANANDPUR TRUST KE PICHE
MANIYAR SHIVPURI (MADHYA
PRADESH)**
- 3. AKASH KUSHWAH S/O LATE SHRI
SHRILAL KUSHWAH, AGED ABOUT 20
YEARS, R/O- BYEPASS ROAD
ANANDPUR TRUST KE PICHE
MANIYAR SHIVPURI (MADHYA
PRADESH)**
- 4. SMT. VIDHYA D/O LATE SHRI SHRILAL
KUSHWAH W/O LATE SHRI RAM SINGH
KUSHWAH, AGED ABOUT 42 YEARS,
R/O- ASHIRWAD HOSPITAL KE PASS
FATEHPUR ROAD SHIPVURI (MADHYA
PRADESH)**

5. SMT. RANI KUSHWAH D/O LATE SHRI SHRILAL KUSHWAH W/O SHRI DHARMENDRA KUSHWAH, AGED ABOUT 26 YEARS, R/O- KOLARAS DISTRICT SHIVPURI (MADHYA PRADESH)
6. SMT. ABHILASHA KUSHWAH D/O LATE SHRI SHRILAL KUSHWAH W/O SHRI SURENDRA KUSHWAH, AGED ABOUT 24 YEARS, R/O- KOLARAS DISTRICT SHIVPURI (MADHYA PRADESH)
7. SMT. RAMKALI KUSHWAH W/O LATE SHRI SHRILAL KUSHWAH, AGED ABOUT 60 YEARS, R/O- BYE PASS ROAD ANANDPUR TRUST KE PICHE MANIYAR DISTRICT SHIVPURI (MADHYA PRADESH)
8. RADHESHYAM OJHA S/O SHRI RAM SINGH OJHA, AGED ABOUT 31 YEARS, R/O- VIJAYPURAM COLONY SHIVPURI (MADHYA PRADESH)
9. STATE OF MADHYA PRADESH THROUGH COLLECTOR DISTRICT SHIVPURI (MADHYA PRADESH)

.....RESPONDENTS

(BY SHRI SAMEER KUMAR SHRIVASTAVA – ADVOCATE FOR RESPONDENTS NO.1 TO 8)

(BY SHRI NEELESH SINGH TOMAR – GOVERNMENT ADVOCATE FOR RESPONDENT NO.9/STATE)

Reserved on : 14/12/2023

Pronounced on : 21/02/2024

This petition having been heard and reserved for order coming on for pronouncement this day, this Court passed the following:

ORDER

With consent heard finally.

1. The present petition under Article 227 of the Constitution has been

preferred by the petitioner taking exception to the order dated 28.10.2021 (Annexure P/1) passed by Trial Court (4th Civil Judge Junior Division, Shivpuri), whereby application preferred by the petitioner as defendant under Order VII Rule 11 of the CPC read with Section 151 of the CPC has been rejected.

2. Precisely stated facts of the case are that Late Shrilal was father of the respondents No.1 to 6 and husband of respondent No.7 and was the *Bhumiswami* of the suit land bearing Survey No.319 ad-measuring 0.209 hectare, Survey No.355 ad-measuring 0.31 hectare, Survey No.359 ad-measuring 0.167 hectare and Survey No.356 ad-measuring 1.098 hectare situate at Maniyar, Tahsil and District Shivpuri. Late Shrilal sold this land to the present petitioner Vijay Jatav (who is defendant in civil suit) vide two registered sale deeds, one sale deed dated 12.11.2018 for consideration of Rs.34,25,000/- and another to the respondent No.8 Radheshyam Ojha for consideration of Rs.30,000/-

3. After death of Late Shrilal , plaintiffs (who are respondents No.1 to 7 herein), filed a civil suit for declaration and injunction against the petitioner as well as respondent No.8 and sought declaration that the sale deeds be declared null and void on the ground that same were executed by playing fraud with Late Shrilal. As alleged, after getting sale deeds executed, they mischievously murdered Shrilal because thereafter whereabouts of Late Shrilal were never found and therefore, criminal case was registered against the petitioner.

4. Plaintiffs valued the suit Rs.1000/- and paid the court fee Rs.620/-, therefore, petitioner filed an application under Order VII Rule 11 of the CPC with the allegation that valuations to the sale deeds challenged in the suit are of Rs.64,25,000/-, therefore, suit is to be valued accordingly and

ad-valorem court fee is to be paid. Petitioner also raised the point regarding pecuniary jurisdiction of the Court to try the suit.

5. Respondents opposed the prayer and submitted that they were not the party to the sale deeds and they never executed the same, therefore, fix court fee is required to be paid rather than *ad-valorem* court fee.

6. After hearing the rival submissions, Trial Court rejected the application preferred by the petitioner/defendants. Therefore, defendant has preferred this petition under Article 227 of the Constitution challenging the said order.

7. It is the submission of learned counsel for the petitioner that since plaintiffs are sons of Late Shrilal and after his death, they stepped into the shoes of Late Shrilal, therefore, they have to pay *ad-valorem* court fee. Plaintiffs have not claimed in the plaint that suit property in question is the coparcenary property, therefore, they are required to pay *ad-valorem* court fee. Plaintiffs are bound by the acts of their father, therefore, even if the plaintiffs are not signatory over the sale deeds, even then also, plaintiffs are required to pay *ad-valorem* court fee.

8. It is further submitted that since the plaintiffs have birth right in the property and they are claiming their shares in the property by way of challenging the sale deeds executed by their father, therefore, plaintiffs are required to pay *ad-valorem* court fee.

9. Learned counsel for the petitioner relied upon the judgments in the cases of **Israt Jahan Vs. Rajia Begum and others** reported in **2010 (1) M.P.L.J. 50**, **Ram Niwas and others Vs. Somraj and others** reported in **2019 (2) MPRN 100** in support of his submission.

10. Per contra, learned counsel for the respondents vehemently opposed the prayer and submitted that admittedly the plaintiffs are not the party to the sale deeds in question, therefore, plaintiffs cannot be forced to pay *ad-*

valorem court fee as they are third party to the transaction.

11. It is alleged by the respondents No. 1 to 7/plaintiffs that defendant who has filed this petition is alleged to have caused murder of father of the plaintiffs and in that criminal case, petitioner/defendant was even arrested and by virtue of the order dated 02.08.2022 passed in MCRC No.33967/2022, petitioner has been released on bail. Therefore, as per respondents, at the one hand petitioner has committed murder of father of plaintiffs while causing execution of sale deeds fraudulently and now pressurizing plaintiffs to pay *ad-valorem* court fee so as to deny them access to justice. Learned counsel for the respondents relied upon the judgments rendered by Apex Court in the case of **Suhrid Singh @ Sardool Singh Vs. Randhir Singh and others** reported in **(2010) 12 SCC 112**, **Sunil Radhelia and others Vs. Avadh Narayan and others** reported in **2011 (1) JLJ 71 (Full Bench)**, **Gomatiprasad and another Vs. Mahesh Singh and others** reported in **2017 (3) M.P.L.J. 203**, **Ambika Prasad and others Vs. Shri Ram Shiromani @ Chandrika Prasad Dwivedi and another** reported in **2011 (3) MPLJ 184** in support of his submission.

12. It is further submitted that defendant is having no right to challenge the decision of the Court deciding on the question of payment of court fee because the question of court fee is always between plaintiffs and the State. He relied upon the judgment rendered by the Apex Court in the case of **Sri Rathnavarmaraja Vs. Smt. Vimla** reported in **AIR 1961 SC 1299** and **Haricharan and others Vs. M. Ojha and others** reported in **2001 (1) JLJ 122**.

13. Heard the learned counsel for the parties and perused the documents appended thereto.

14. This is a case where plaintiffs have filed suit for declaration and

permanent injunction in respect of sale deeds executed allegedly by the father of plaintiffs namely Late Shrilal in favour of defendants No.1 and 2 Vijay Jatav and Radheshyam Ojha respectively. Plaint allegations contained the pleadings that suit property was ancestral land and raised allegations of fraud. Admittedly executant of sale deeds was Late Shrilal, not the present plaintiffs and raised the specific allegations that Late Shrilal has no authority to execute the sale deed in respect of the ancestral property, therefore, they sought declaration. Such declaration is not required to be fastened with the liability of payment of *ad-valorem* court fee. Apex Court has very succinctly laid down separate categories and in very clear terms held that once an executant of a deed challenges the same then *ad-valorem* court fee is required to be paid but not in the case of challenge being made at the instance of a non-executant of a deed.

15. Relevant discussion in Para 7 of **Suhrid Singh @ Sardool Singh (supra)** is reproduced for clarity 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."

16. Full Bench of this Court in the case of **Sunil Radhelia (supra)** further clarified while relying upon many judgments passed by the Apex Court as well as earlier Full Bench and Division Bench of this Court and summed up the conclusion as under:-

"16. 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."

17. Interestingly, in the case of **Sunil Radhelia (supra)**, Full Bench of this Court even gone to the extent that where the plaintiff, a party to the instrument is required to pay *ad-valorem* court fee if an allegation is made that the instrument is void and while answering the question, Full Bench of this Court held in following manner:-

"15. 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 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 averment 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 fee 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.”

18. Similarly this Court in the case of **Gomatiprasad and another (supra)** has considered all the relevant judgments and thereafter came to the conclusion in following manner:-

“19. Once the petitioners/plaintiffs were not party to the sale deed and once respondent No.4 has not disposed of the properties as Karta (manager) of the joint Hindu family then certainly rigors of Section 7(iv)(c) are not attracted and petitioners cannot be fastened with the liability of Ad-Valorem Court Fee on the basis of tangential pleadings/recital.”

19. In view of the above, it is clear that plaintiffs were not executant of the sale deeds and were not privy to the transaction in any manner then they are not required to pay *ad-valorem* court fee.

20. The Apex Court in the case of **Sri Rathnavarmaraja (supra)** has held that payment of court fee is always between the plaintiffs and State and defendant has no scope for challenging the order whereby application for payment of *ad-valorem* court fee filed by the defendant is rejected.

Relevant discussion in Para 3 is reproduced as under:-

“3. But this section only enables the defendant to raise a contention as to the proper court-fee payable on a plaint and to assist the court in arriving at a just decision on that question. Our attention has not been invited to any provision of the Madras Court fee Act or any other statute which enables the defendant to move the High Court in revision against the decision of the court of first instance on the matter of court fee payable in a plaint. The Act, it is true by S.19 provides that for the purpose of deciding whether the subject-matter of the suit or other proceeding has been properly valued or whether the fee paid is sufficient, the Court may hold such enquiry as it considers proper and issue a commission to any other person directing him to make such local or other investigation as may be necessary and report thereon. The anxiety of the Legislature to collect court fee due from the litigant is manifest from the detailed provisions made in Ch. III of the Act, but those provisions do not arm the defendant with a weapon of technicality to obstruct the progress of the suit by approaching the High Court in revision against an order determining the court fee payable. In our view, the High Court grievously erred in entertaining revision applications on questions of court fee at the instance of the defendant, when no question of jurisdiction was involved.”

21. Coordinate Bench of this Court in the case of **Haricharan and others (supra)** reiterated the legal position that no scope of defendant to challenge the rejection of application under Order VII Rule 11 of the CPC for payment of *ad-valorem* court fee exists and said cannot be challenged

in revisional jurisdiction.

22. Considering the above enunciation of law, it appears that defendant has very little scope to challenge such applications which are being rejected at the instance of defendants for payment of *ad-valorem* court fee by the plaintiffs because there is no jurisdictional error or material irregularities in exercise of jurisdiction is apparently available on record. Therefore, on this count also, petition *lacks* merit. Hence, this petition is hereby **dismissed**.

(ANAND PATHAK)
JUDGE

Rashid