

**WP-92-2014**

*(TARUN MALKAPURKAR THRU. POWER OF ATTORNEY HOLDER SMT. MANORAMA KOSHTI*

*(MALKAPURKAR) Vs JITENDRA AGRAWAL AND 6 ORS.)*

**29-08-2016**

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Shri Arjun Agarwal, learned counsel for the petitioner.  
Ms. Anita Gaud, learned counsel for the respondent  
No.2.

Shri Durgesh Sharma, learned Counsel for the  
respondent Nos. 1,3 and 5.

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**ORDER**  
(Passed on /08/2016)

**Per Vivek Rusia.J.**

With the consent of both the parties heard finally.

**1.** The petitioner being a plaintiff filed this petition being aggrieved by order dated 18.12.2013 passed by the 4<sup>th</sup> Civil Judge class-I, Indore, by which application under Order 7 Rule 11 of CPC has been allowed and a plaintiff was directed to value the suit and pay court fees accordingly.

**2.** According to the petitioner, he purchased an agricultural land by way of registered sale-deed dated 13.02.2003 and his name was recorded in the revenue records. It is alleged that the respondent No.1 prepared forged power of attorney dated 17.11.2008 and on the basis of same, transferred certain land owned by plaintiff

by registered sale-deed dated 26.04.2009 in favour of respondent No.2. Thereafter, the plaintiff filed the suit seeking relief of declaration that the power of attorney dated 17.10.2008 is forged, null and void and the sale-deed was executed on the basis of said power of attorney is not binding upon the petitioner. After notice, the defendant/respondent appeared in the Court and filed an application under Order 7 Rule 11 and prayed that the plaintiff is required to pay ad-valorem court fees. The said application was allowed vide order dated 21.04.2011 with the direction to the plaintiff to value the suit as per value of land mentioned in the sale-deed.

**3.** Being aggrieved by the said order, the petitioner filed a writ petition i.e. W.P. No.3917/2011 before this Court. This Court by order dated 27.01.2012 disposed of the writ petition with the observation that the trial Court has only directed to value the suit in accordance with the market value of land in sale deed, but did not directed for payment of ad-valorem court fees.

**4.** In view of the aforesaid order of the High Court, the petitioner moved an application for amendment and the same was allowed and the petitioner has valued the suit according to the value mentioned in the sale-deed. Vide order dated 26.09.2012 the suit was returned to the plaintiff for presenting before the competent Court.

Accordingly, the suit was presented before the 4<sup>th</sup> Civil Judge, Class-1, Indore. After notice, again the respondent/defendant appeared with an application

under Order 7 Rule 11 of CPC. That the petitioner/plaintiff is required to pay the ad-valorem court fees. The petitioner/plaintiff filed the reply that issue has already been decided by the High Court hence the application is liable to be rejected. Vide the impugned order dated 18.12.2013, the trial Court allowed the application and directed the petitioner to pay the ad-valorem court fees because the petitioner is seeking relief of possession. Hence, the present petition before this Court by the plaintiff.

5. Shri Arjun Agrawal, learned counsel appearing on behalf of the petitioner submits that the learned trial Court has given a wrong interpretation to the earlier order dated 21.04.2011 in which there was no issue regarding the relief of possession. The issue of valuation of payment of court fees has already been settled by the order of this Court dated 02.05.2011 in W.P. No.3917/2011. He has further been submitted that the land in dispute is an agricultural land, therefore, he is required to value the suit and pay court fees on the basis of 20 times of the land revenue under Section 7(v)(a) of the Court Fees Act, 1870. In support of his contention, he has placed reliance over the judgment of this Court in the matter of ***Narayanprasad Vs. Jagdish and Others***, reported in **2011(2) MPHT 67**. He stated that since the sale deed as well as power of attorney has been obtained by way of forgery, therefore, he cannot be treated as a party to the sale deed and require to pay ad-valorem

court fees in support of his contention he has further placed reliance upon the judgment of this Court in the matter of **Santosh Kumar Chopra & Ors. Vs. State of M.P. & Ors.**, reported in **ILR (2012) MP 1852**.

**6. Per contra, Ms. Anita Gaud and Shri Durgesh**, appearing on behalf of respondents argued in support of the impugned order and submitted that the High Court in its order dated 27.01.2012 has also considered the issue of possession and held that the petitioner is seeking decree of possession, therefore, he has to put valuation of the suit property and pay ad-valorem court fees, even though, he is not a party to the transaction.

**---ORDER---**

7. That the petitioner has filed the suit alleging that the defendant No.1 has forged his signature and prepared the power of attorney dated 24.06.2009 and thereafter, sold his land to the defendant No.2 and on the basis of the so called forged power of attorney, he has sought the relief, that power of attorney as well as sale deed be declared as void. The defendant filed first application under Order 7 Rule 11 of the CPC, which was decided vide order dated 21.04.2011. Operative part of the order is reproduced below:

**â[]vfHkys[k ij vk;s mHk;i{k ds fyf[kr  
rdZ ,oa izLrqr U;k; n`"VkUrks dk  
voyksdu fd;k x;k gS ftlls okn ds  
ewY;kadu gsrq okni= ds vfHkopu ns[ks  
tkus gksrs gS ftlds laca/k izLrqr okn ds  
vfHkopuks dk voyksdu djus ls ;g izdV  
gksrk gS fd izLrqr okn vke eq[R;kjys[k  
fnukad 17&10&08 rFkk ml ds vk/kkj ij**

*fu"ikfnr iathd`r i= fnukWa 24&06&09  
dks voS/k ,oa 'kwU; gksdj oknh ij  
c/kaudkj d ugh gksus laca/kh lgk;rk dk  
gSA okni= ds vfHkopuksa ls ;g Hkh  
izdV gksrk gS fd izLrqr okn dCts dh  
lgk;rk gsrq Hkh izLrqr fd;k x;k gS  
vFkkZr IEifRr ij oknhs dk vkf/kiR; Hkh  
ugha gSA ekuuh; U;k;n`"VkUr lqgfjrflax  
mQZ lqjnqyflag fo:) j.k/khj flag ,oa vU;  
,0vkbZ0vkj0&2010&,l0lh0&2807 ds  
isjsxzkQ&6 esa Li"V fd;k x;k gS fd ;fn  
dksbZ O;fDr u dsoy fodz; i= voS/k  
?kksf"kr djkus dh ?kks"k.kk cfYd dCts  
ds ikfj.kkfed lgk;rk Hkh pkgrk gS ogk ij  
mls /kkjk &74 ^^ lh^^ U;k;ky; 'kqYd  
vf/kfu;e ds vuqlkj ewY;kuqlkj U;k;ky; ns;  
gksxkA izLrqr izdj.k esa fodz; i= dks  
Hkh 'kwU; ?kks"k.kk djkus dh lgk;rk  
pkgh xbZ gS ftlls oknh dks tcfd izLrqr  
okn Lo;a oknhs }kjk fu"ikfnr  
eq[R;kjukek ds vk/kkj ij fookfnr fodz;i=  
fu"ikfnr djuk crkrs gq, izLrqr fd;k x;k  
gSA oknhs dks fodz;i= ds fodz;  
ewY;kuqlkj gh oknhs dks okn U;k;ky; ds  
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esa djuk gksxk] tSlk fd oknh us ugha  
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dh vksj izLrqr vkosnu i= varxZr vkns'k 7  
fu;e 11 lh0ih0lh0 Lohdkj fd;k tkrk gS  
rFkk oknh dks vknsf'kr fd;k tkrk gS fd  
og fodz; i= ds ewY;kuqlkj okn dk  
ewY;kdau djs vkSj mlds vuqlkj ns;  
U;k;ky; 'kqYd vnk djsA â□□*

8. The learned Civil Judge, Class-II, Indore has allowed the application on the ground that the petitioner is not only claiming that the sale deed be declared as void but also seeking consequential relief of possession, therefore, the plaintiff is liable to pay ad-valorem court fees. In addition to this, the trial Court has also held that

the plaintiff is seeking the relief that the sale deed be declared void, therefore, he has to value the suit on the basis of valuation of the sale deed. This order was challenged by the petitioner before the High Court. The High Court, vide order dated 27.01.2012 dismissed the Writ Petition No.3917/2011. The High Court has observed that the petitioner is praying for decree of possession also and has to value the suit accordingly.

The operative part of the order is reproduced as under:

**â□□From perusal of the record it appears that for the purposes of possession the suit was valued at Rs.1,000/- and for the purposes of permanent injunction and mandatory injunction again the suit was valued at Rs.1,000/- and Rs.1,000/-, totalling Rs.3,000/- and the Court fees of Rs.662/- was paid. From the record it is evident that sale deed of which cancellation is sought is dated 24.06.2009 is valued at Rs.5.00 lac. On what basis the suit was valued at Rs.1,000/- is not clear from the record. From the impugned order, it appears that learned Court below has nowhere stated that appellant has to pay the ad-valorem court fees, on the contrary the learned Court below has stated that since the appellant is praying for a declaration to the effect that the sale deed be declared as void and also praying for a decree of possession. Even if for the sake of arguments it is assumed that petitioner is not party to the transaction, then too the petitioner has to put valuation of the suit property as appellant is praying for a decree of possession. In view of this,**

***this Court is of the view that learned Court below has committed no error in passing the impugned order. Accordingly the petition fails and is dismissed.***

9. Thereafter, the petitioner has made amendment in the plaint and valued the suit for Rs.5,30,002/- and presented before the competent Court. It is not disputed that the petitioner has claimed the relief of possession and means profit. The relief No.18(1) is reproduced as under:

***(1)½ oknh ds i{k esa ,oa izfroknhx.k ds fo:/n bl vk'k; dh vkns'kkRed fu"ks/kkKk dk t;i= ikfjr fd;s tkus dh d`ik gksos dh izfroknhx.k oknxzLr laifRr dk vkf/kiR; oknh dks iznku djsA***

10. That the plaintiff has now valued the suit properly, but did not pay the ad-valorem court fees, therefore, the defendant rightly filed an application under Order 7 Rule 11 of CPC, that the plaintiff is required to pay the ad-valorem court fees. Vide order dated 18.12.2013, learned Civil Judge has held that the plaintiff is claiming relief of possession, therefore, he is liable to pay the ad-valorem court fees. This issue has already been decided by the order dated 21.04.2011 in W.P.No.3917/2011. That the Hon'ble Supreme Court also in case of ***Suhrid Singh @ Sardool Singh Vs. Randhir Singh and Others***, reported in ***AIR 2010 SC 2807 (Supra)*** has considered the scope of section 7(4)(c) of the Court Fees Act and held that if the relief of possession is sought, the court

fees shall be computable under Section 7(4)(c) of the Act.

Para 6 of the said judgment is reproduced as under:

**¶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](#).***

**11.** That the apex Court has held that if the 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 ad-valorem court fees as provided under Section 7(4)(c) of the Act, therefore, in view of the above, the trial Court has not committed any error by directing the plaintiff to pay the ad-valorem court fees on the basis of the relief claimed for possession.

**12.** Even, the scope of Article 227 of Constitution of India in exercising jurisdiction is very limited in respect of interfering with the order of sub-ordinate Court. Hon'ble Supreme Court in the case of ***Shalini Shyam Shetty and another Vs. Rajendra Shankar Patil reported in (2010) 8 SCC 329***, wherein it has held that

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***â□□The scope of interference under Article 227 of the Constitution is***

*limited. If order is shown to be passed by a Court having no jurisdiction, it suffers from manifest procedural impropriety or perversity, interference can be made. Interference is made to ensure that Courts below act within the bounds of their authority. Another view is possible, is not a ground for interference. Interference can be made sparingly for the said purpose and not for correcting error of facts and law in a routine manner.*

**13.** In view of the aforesaid observations, I do not find any illegality or error committed by the trial Court. Accordingly, present writ petition is **dismissed**.

(VIVEK RUSIA)  
JUDGE