

**HIGH COURT OF MADHYA PRADESH:**  
**BENCH AT INDORE**  
**M.P.No.571/2017**  
***(Manish Parashar Vs. Pratap & Others)***

**Indore, Dated: 25.06.2018**

Shri Vinay Saraf, learned senior counsel with Shri Anmol Bhatt, Advocate for the petitioner.

None for the respondent Nos.1 to 3.

Shri Rohit Mangal, learned GA on behalf of the State to assist the Court as the issue of payment of court fees is involved in this case.

The plaintiff/petitioner has filed the present petition being aggrieved by the order dated 20.09.2017 by which the learned trial Court has directed to him to pay the ad valorem court fees on the amount of sale consideration mentioned in the sale deed dated 07.05.2016.

The plaintiff files the suit for the relief of declaration, permanent injunction. According to the petitioner, Plot No.149 (New No.165) of Gulmarg Bag Nagar, Ujjain (hereinafter referred as "suit land") was purchased by his father Late Shivnarayan Parashar from Diamond Grah Nirman Sahkari Sanstha Maryadi, Ujjain by registered sale deed dated 24.04.1994. He had expired on 17.08.2010 and after his death the plaintiff, his sister Monika, Megha and mother Smt. Prakash have become joint owner of the said plot.

On 30.05.2016, for the first time, the plaintiff came to know that the defendants have got executed the sale deed dated 07.05.2016 of the said plot in their name. The so called sale deed got executed by impersonating his father who had already expired on 17.08.2010. Hence, the petitioner filed suit

seeking relief of declaration that he is owner and in possession of the suit land as the sale deed was executed between defendant No.1 and defendant Nos.2 and 3 dated 07.05.2016 is a forged and illegal being forged and not binding on the plaintiff. The plaintiff has also sought relief of permanent injunction.

The plaintiff has also filed an application under Order 39 Rule 1 and 2 of the CPC. At the time of registration of the plaint. Learned Trial Court has observed that the sale deed dated 07.05.2016 was executed by Late Shivnarayan Parashar i.e. the father of the plaintiff and being a son, the sale deed is binding on plaintiff, therefore, he is required to pay the ad valorem court fees on the value of property mentioned in the sale deed. Accordingly, the Court has directed the plaintiff to pay the Court fees, hence, the present petition before this Court.

Shri Vinay Saraf, learned senior counsel appearing on behalf of the petitioner submits that the petitioner was not executant of the sale deed and also in possession. He is also seeking declaration that the sale deed is void and not binding on him as forged, therefore, he is not liable to pay ad valorem court fees. The father of the petitioner had died on 17.08.2010 and the so called sale deed is executed in the year 2016 in the name of his father, therefore, apparently the sale deed is forged and in light of the full bench judgment passed in the case of *Sunil Vs. Awadh Narayan and Others*, reported in **2010(4) MPLJ 431**. The plaintiff is not liable to pay the ad valorem court fees, therefore, impugned order is liable to be set aside.

Despite service, no one is appearing on behalf of the

respondent. Even in the plaint, the notices have not been issued to the respondents. Since, the issue of payment of court fees is involved in this case, therefore, by order dated 11.05.2018 this Court has directed Govt. Advocate to address this Court on an issue on payment of court fees.

Shri Rohit Mangal, learned GA for the respondent submits that the petitioner being son of Late Shivnarayan Parashar stepped into the shoe of his father, therefore, he is executant of the sale deed. Since, he is seeking relief of declaration but said relief amounts to setting aside the sale deed, hence, the plaintiff is liable to pay the ad valorem court fees and not the fixed amount of court fees. In support of his contention, he has placed reliance over judgement passed by the apex Court & this Court which are as under:

*Israt Jahan Vs. Rajia Begum, reported in 2010(1) MPLJ 50, Suhrid Singh @ Sardool Singh Vs. Randhir Singh & Others, reported in (2010) 12 SCC 112, Sunil Vs. Awadh Narayan & Others, reported in 2010(4) MPLJ 431, Ambika Prasad & Others Vs. Shri Ram Shirmani @ Chandrika, reported in 2011(3) MPLJ 184, J.Vasanthi & Others Vs. N.Ramani Kanthammal (Dead) Represented By Legal Representatives and Others, reported in (2017) 11 SCC 852 & Nainsukh Kishandas & Others Vs. Smt. Manish Choudhari & Others, reported in 1998(2) MPLJ 79.*

The petitioner filed suit seeking relief of declaration that the sale deed dated 07.05.2016 be declared void, illegal and not binding on him on the ground of forgery. According to the plaintiff his father had expired on 17.08.2010 & the copy of death certificate is filed as Annexure P/2 in this petition. In the

sale deed dated 07.05.2016 the name of the seller is mentioned as Shivnarayan Parashar i.e. the father of the petitioner, therefore, prima-facie it is establish that the sale deed was not executed by the father of the plaintiff during his life time and the ground of forgery is prima-facie established. The full bench of this Court in case of *Sunil Vs. Awadh Narayan* (Supra) has specifically held that the plaintiff even if he is party to the instrument is not required to pay the ad valorem court fees as he had made an allegation that instrument is void on the ground that the document was forged one and it it does not bear signature of executant. Para 16 is reproduced below:

*“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.*

*Order accordingly. ”*

Shri Rohit Mangal, learned Government Advocate as well as learned Civil Judge have placed reliance over the judgement passed by the Division Bench of this Court in case of *Israt Jahan Vs. Rajia Begum, reported in 2010(1) MPLJ 50*. The aforesaid case was decided on 25.08.2009 i.e. prior to the judgement passed by the full bench on 08.09.2010, therefore, the judgement of full bench is binding on this Court.

Shri Mangal has further placed reliance over the judgement of this Court passed in the case of *Ambika Prasad & Others Vs. Shri Ram Shirmani @ Chandrika, reported in 2011(3) MPLJ 184* in which the Division Bench has held that the plaintiff who was executant of the sale deed filed suits seeking cancellation of the sale deed on the ground of forgery and misrepresentation then the Court has held that he is liable to pay the ad valorem court fees. Facts of the case reveals that the plaintiff did not deny the fact that the sale deed bears his thumb impression but contending that the thumb impression was obtained by misrepresenting. On this admission of his thumb impression, the Court held that the plaintiff is liable to pay the court fees but in the present case it is prima-facie established that the father of the plaintiff was not alive at the time of execution to the sale deed, therefore, his signature appears to be fabricated & a case of impersonation.

Shri Mangal has further placed reliance over the judgment passed by the apex Court in case of *J.Vasanthi & Others Vs. N.Ramani Kanthammal (Dead) Represented By Legal Representatives and Others, reported in (2017) 11 SCC 852*. In this case also, the plaintiff himself was executant of the sale deed and was seeking the relief that the documents be declared as null and void, which amounts to seeking relief of cancellation of the document. The Apex Court has considered the Section 40 of the Tamil Nadu Court Fees and Suit Valuation Act, 1955 and held that the plaintiff is liable to pay the ad valorem court fees. The Apex Court has observed that the valuation of the suit and payment of court fees shall depend upon the special provision in a state.

In the present case the facts are very peculiar in which the father of the plaintiff is an executant of sale deed executed on 07.05.2016 but he said to have expired in the year 2010. In these facts and circumstances the plaintiff is seeking the relief of declaration that the sale deed is void, therefore, keeping in view the peculiar facts of the case the plaintiff is not liable to pay the ad valorem court fees at present. Impugned order is set aside. Trial Court is directed to register the case and proceed in accordance with law. However, if at the time of passing the decree, the trial Court comes to the conclusion that the allegations made in the plaint have not been established or proved by the plaintiff then the trial Court shall recover the ad valorem court fees from the plaintiff.

Petition is accordingly **allowed**.

**(VIVEK RUSIA)**  
**Judge**

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