

IN THE HIGH COURT OF MADHYA PRADESH AT
JABALPUR
(Single Bench of Justice S.K.Seth)

W.P. No.11729 of 2011

Smt. Geeta Omre

vs.

Smt. Chandrakanta Rai and another.

Shri Pranay Verma, Advocate for petitioner.
Shri Mohd. Ali, Advocate for respondent
No.1.

O R D E R

(Passed on 2nd January, 2017)

1. This petition under Article 227 of the Constitution of India is directed against the order dated 30.8.2010 passed by the trial Judge in a Civil Suit No.1-A/2010.
2. By the order impugned, trial Judge has rejected the objection of the petitioner with regard to non-payment of ad-valorem court-fee on the plaint.
3. Respondent/plaintiff (mother of the petitioner) out of love and affection executed two gift deeds of even date 13.10.2009 in respect of house and land appurtenant thereto, to the petitioner by a gift deed dated 13.10.2009 and handed over possession of the gift and handed over possession of the gifted properties to the petitioner. The gift deed was duly accepted by the petitioner.

4. After some time, plaintiff filed a suit for declaration that the gift deeds executed by her in favour of the petitioner were null and void and *non-est* and not binding on the plaintiff. While contesting the suit on merit, petitioner also raised objection regarding the under valuation of the relief claimed in the suit and non-payment of requisite court fee thereon.

5. Learned trial Judge after hearing arguments, over-ruled the objection by the order impugned, hence this petition.

6. We have heard rival submissions at length and perused the material of record.

7. Shri Verma, appearing for petitioner submitted that the gift deed was executed by the mother voluntarily, without any consideration in respect of a immovable properties and as such upon acceptance of the gift deed, the title in respect of immovable property stood conveyed the petitioner. Therefore, plaintiff has to pay requisite court fee. On the other hand, Shri Ali submitted that suit is under values and proper court fee has been paid to avoid the gift deeds. He further submitted that order impugned does call for any interference by this Court under Article 227.

8. After careful consideration of submissions, I find force in the contention of Shri Verma in view of the decision of the Supreme Court reported in **AIR 2010 SC 2807**, wherein, the Supreme Court has held as under:-

"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 fixed court-fee of Rs.19.50 under Article 7(iii) of Second Schedule of the Court Fee 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.

9. From perusal of the material available on record, it is also clear that at the time of the gift made by the mother of the daughter, she

has parted the possession of the property.

10. In view of the forgoing discussion, the order impugned is unsustainable in law and therefore, is liable to be set aside.

11. The trial Court is directed to consider and decide the objection raised by the petitioner/defendant regarding the payment of Court Fee afresh in accordance with law.

Accordingly, petition is disposed of.

(S.K. Seth)
JUDGE

Irfan