

**Devasharay Singh Vs. Saroj Kumar Alias Saroj Singh**

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**SooperKanoon Citation :** [sooperkanoon.com/125488](http://sooperkanoon.com/125488)

**Court :** Patna

**Decided On :** Feb-05-2008

**Judge :** S.N. Hussain, J.

**Appellant :** Devasharay Singh

**Respondent :** Saroj Kumar Alias Saroj Singh

**Disposition :** Petition allowed

**Prior history :** S.N. Hussain, J. 1. Heard learned counsel for the petitioner. No one appears for the opposite parties, although notices had been sent and valldly served upon them and vakalatnama had also been filed on behalf of one of the opposite parties. 2. This civil revision has been filed by the plaintiff-petitioner against order dated 18-7-2006 by which learned Subordinate Judge 3rd Nawada, directed the plaintiff to deposit ad valorem court-fee on the valuation of the suit, namely Title Suit No. 55 of 2

**Judgement :**

**S.N. Hussain, J.**

1. Heard learned counsel for the petitioner. No one appears for the opposite parties, although notices had been sent and valldly served upon them and vakalatnama had also been filed on behalf of one of the opposite parties.

2. This civil revision has been filed by the plaintiff-petitioner against order dated 18-7-2006 by which learned Subordinate Judge 3rd Nawada, directed the plaintiff to deposit ad valorem court-fee on the valuation of the suit, namely Title Suit No. 55 of 2005.

3. The said suit was filed by the plaintiff-petitioner only for a declaration of his title over the suit land and for holding that the sale deed No. 4359 dated 25-4-2005 executed by Vijay Kumar Singh (defendant No. 2) in favour of Saroj Kumar (defendant No. 1) is fraudulent, forged, inoperative, showy, without consideration, void ab initio and not binding on the plaintiff. The valuation of the suit given in the plaint was 35,000.00 and in view of the nature of the relief fixed court-fee Rs. 250 was paid. According to the said valuation the suit was filed before the learned Subordinate Judge. However, subsequently the valuation of the suit was enhanced to Rs. 60,000.00 at the instance of the plaintiff as the defendant objected that the valuation of the sale deed was Rs. 60,000.00.

4. It transpires that the defendants filed a petition that the plaintiff should have paid ad valorem court-fees in the suit and not merely declaratory court-fees, whereafter by order dated 4-7-2006 the learned Subordinate Judge 3rd, Nawada directed the Sheristedar to submit his report with respect to the claim of the parties and the issues involved. The said order has been challenged by the plaintiff-petitioner in this Court vide C.R. No. 1365 of 2006. It transpires that the Sheristedar submitted his report on 4-7-2006 and merely on that basis the learned Subordinate Judge, 3rd Nawada by his impugned order dated 18-7-2006 directed the plaintiff to deposit ad valorem court-fees on the valuation of the suit Rs. 60,000.00 and as per the calculation the ad valorem court-fees came to Rs. 3,880.00 out of which Rs. 250.00 had already been paid and hence the plaintiff-petitioner was directed to pay Rs. 3630.00 within a specific period. This order has been challenged by the plaintiff-petitioner in the instant case claiming that he has not sought any relief for cancellation of the deed in question rather he has only claimed that the said deed be merely declared void ab initio and not binding on the plaintiff.

5. The law is well settled in this regard as against a deed of transfer two sorts of reliefs can be sought, the first is a declaration that a deed may be cancelled or

avoided, whereas the other is a declaration that a deed is void, ab initio having no legal consequence and not binding on the plaintiff. In the Instant case, the claim of the plaintiff is that he has got title and possession over the suit properties and that the sale deed in question was void ab Initio and not binding upon him but he has not sought any relief that the sale deed be cancelled or avoided. This distinction has been completely overlooked by the learned Court below who has merely relied upon the report of the Sheristedar although it is completely against the specific proposition of law. If the plaintiff seeks a relief for cancellation of a deed he has to pay ad valorem court-fee as per the valuation of the deed, but if he seeks a relief for declaring the deed to be void ab initio and not binding upon him a fixed declaratory court-fee would be sufficient. This view finds support from a plethora of decisions of the Hon'ble Apex Court and this Court including the case of Mostt. Sohagwati Devi v. Mostt. Lakhpatia Devi reported in 1975 PLJR 349 and also in case of Kamaldeo Prasad Singh v. Smt. Ram Shawarl Devi reported in 2006 (4) PLJR 443.

6. No doubt, had the plaintiff claimed the relief that the sale deed in question be cancelled or avoided, the plaintiff was bound to pay ad valorem court-fee. But since he has merely sought a relief that the sale deed be declared void ab initio and not binding upon the plaintiff he was required to pay merely the fixed court-fees which he has already done.

7. In the said circumstances by directing the plaintiff to deposit the ad valorem court-fees, the learned Court below has clearly committed an illegality and a jurisdictional error.

8. Accordingly, the impugned order of the learned Court below, namely learned Subordinate Judge, 3rd Nawada, dated 18-7-2006 passed in Title suit No. 55 of 2005 is hereby set aside and this civil revision is allowed.