

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.303 of 2017**

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Sarda Singh & Anr

.... Petitioner/s

Versus

Mohan Singh & Ors

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Chandra Kant

For the Respondent/s : Mr.

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**CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER**

2 20-02-2017 Heard the learned counsel, Mr. Chandra Kant for the

petitioners.

Perused the impugned order dated 28.11.2016 passed by
learned Sub Judge III, Siwan in Title Suit No.214 of 2001
whereby the learned court below refused to grant permission to
compare the thumb impression on the Mahada(agreement).

It appears that plaintiffs-respondents filed suit for
specific performance of contract on the basis of Mahada i.e.
agreement to sale said to have been executed by defendants 2nd set.
Pursuant to the aforesaid decree, the sale deed was registered by
the court in favour of the plaintiffs-respondents in the year 2006.
Prior to that, the present petitioners had purchased the property
from defendants 2nd set. It appears that Order IX Rule 13
proceeding is initiated but subsequently the defendants 2nd set left
the pairvi. The petitioners filed application before the court below



in the present suit filed by the plaintiffs-respondents for comparison of the signature of the defendants 2nd set on the Mahada i.e. agreement to sale on the basis of which the ex parte judgment and decree was passed. By the impugned order, the court below has rejected this on the ground that the ex parte judgment and decree passed in the suit for specific performance of contract is not under challenge and it has attained finality.

The learned counsel, Mr. Chandra Kant for the petitioners relying on the decision of the Supreme Court in AIR 1994 Supreme Court 853(S. P. Chengalvaraya Naidu (dead) by L.Rs., v. Jagannath (dead) by L.Rs. and others.) = (1994) 1 Supreme Court Cases 1 and submitted that ex parte judgment and decree was obtained fraudulently by the plaintiff and the ex parte judgment and decree which was obtained fraudulently is a nullity, therefore, the same can be challenged in a collateral proceeding.

From perusal of the decision relied upon by the learned counsel for the petitioner, it appears that the facts in that case were entirely different facts.

It may be mentioned here that the defendant has not challenged the judgment and decree passed ex parte in the suit for specific performance on the ground of fraud. It is their defence only. The judgment and decree is of the year 1994.



In the case of **Md. Noorul Hoda v. Bibi Raifunnisa and others, (1996) 7 Supreme Court Cases 767** has held that “when the plaintiff seeks to establish his title to the property which cannot be established without avoiding the decree or an instrument that stands as an insurmountable obstacle in his way which otherwise binds him, though not a party, the plaintiff necessarily has to seek a declaration and have that decree, instrument or contract cancelled or set aside or rescinded.”

In the present case, the defendant is not seeking any relief either to set aside the decree or any declaration with respect to that. Section 61 of the Specific Relief Act specifically regulates the suit of this nature.

The Hon’ble Supreme Court in the case of **Inderjit Singh Grewal v. State of Punjab & Anr., 2012(1) BLJ 42 (SC)** has held relying on the decision of the Supreme Court, AIR 2004 Supreme Court 1377, (2006) 7 Supreme Court Cases 470, (2009) 6 Supreme Court Cases 194 as follows:

“It is well settled principle of law that even a void order is required to be set aside by a competent Court of law, inasmuch as an order may be void in respect of one person but may be valid in respect of another. A void order is necessarily not non-est. An order cannot be declared to be void in collateral proceedings and that too in the absence of the authorities who are the authors thereof.”



The Hon'ble Supreme Court in **Sultan Sadik v. Sanjay Raj Subba and others, AIR 2004 Supreme Court 1377** has held that there cannot be any doubt that even if an order is void or voidable, the same requires to be set aside by the competent court.

In view of the above facts and circumstances of the case, in the present case filed by the plaintiffs-respondents, the void or voidability of the decree in favour of the plaintiffs-respondents which is of the year 1994 cannot be enquired into particularly when neither the defendants 2nd set against whom the decree has been passed nor the purchaser from the defendants 2nd set i.e. the petitioners have challenged on this ground the said judgment and decree.

Thus, I find no reason to interfere with the impugned order in exercise of supervisory jurisdiction. Accordingly, this civil miscellaneous application is dismissed.

(Mungeshwar Sahoo, J)

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