

(1977) 12 AHC CK 0044
In the Allahabad High Court
Case No : Civil Revision No. 1389 of 1974

Havaladar Singh and Others

APPELLANT

Vs

Aditya Singh and Another

RESPONDENT

Date of Decision : 16-12-1977

Acts Referred:

Contract Act, 1872 — Section 19

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 5(2)

Citation : AIR 1978 All 266 : (1978) AWC 344

Hon'ble Judges : K.N. Seth, J

Bench : Single Bench

Advocate : Sankatha Rai, for the Appellant; R.N. Singh, for the Respondent

Final Decision : Dismissed

Judgement

K.N. Seth, J.—The plaintiffs-opposite parties filed a suit for cancellation of the sale deed dated 8-12-1969 on the allegation that it had been obtained by practicing fraud, According to the plaintiffs they intended to execute a sale deed covering some land in favour of Bechan Nai of their village. The defendants by practicing fraud got a sale deed executed in their favour covering certain other land. During the pendency of this suit the village in question came under consolidation operations. The defendants moved an application u/s 5 of the U. P. Consolidation of Holdings Act for abating the suit. The trial Court took the view that Section 5 of the Consolidation of Holdings Act was attracted and consequently the suit was abated, The learned Additional District Judge allowed the revision filed by the plaintiffs taking the view that the sale deed sought to be cancelled was a voidable document and the civil Court alone had jurisdiction to grant the declaration prayed for by the plaintiffs.

2. The learned counsel for the applicants contended that the sale deed involved in the suit was a void and not a voidable document and the suit should have been abated. It is no longer in dispute, in view of a decision of a Full Bench of this Court in Ram Nath v. Smt. Munna (1976 RD 220) that a suit for cancellation

of a voidable sale deed relating to agricultural land pending in civil court will not abate u/s 5 (2) of the U. P. Consolidation of Holdings Act, but the suit would abate if it is for cancellation of a void sale deed. The question for consideration in the present case is whether the sale deed in question is a voidable document or is altogether void. The learned counsel contended that on the allegations in the plaint the executant of the sale deed never applied their mind to execute a deed of sale in favour of -the defendants and it must be held that the document was altogether void. Reliance was placed on *Ningawwa v. Byrappa Shiddappa Hirekurabar* (AIR 1968 SC 956). This case instead of supporting the applicants goes against them. The Supreme Court laid down the law thus (at p. 958):--

"It is well established that a contract or other transaction induced or tainted by fraud is not void, but only voidable at the option of the party defrauded. Until it is avoided, the transaction is valid, so that third parties without notice of the fraud may in the meantime acquire rights and interests in the matter which they may enforce against the party defrauded."

3. The learned counsel for the applicants referred to the distinction pointed out by the Supreme Court between the contents of the document and the character of the document and urged that in the present case fraud was alleged with regard to the character of the document and on the principle laid down by the Supreme Court and the sale deed involved in the present case would be a void document. The argument is untenable. In the case before the Supreme Court it was alleged that plots Nos. 91 and 92 were fraudulently got included in the gift deed although the donor never intended to transfer those plots. The Supreme Court held the document to be voidable and not void. In the present case also the plaintiffs came forward with the case that they did intend to execute a sale deed but that was to be in favour of Bechan of his village in respect of certain piece of land but the defendants by practicing fraud got certain other plots mentioned in the document and in place of Bechan they got their own names entered as transferees. The fraudulent misrepresentation was not with regard to the character of the document but with regard to its contents. The plaintiffs did not deny their signature on the document. Such a document could not be treated to be a void document. It would have its legal effect unless it is avoided at the instance of the party defrauded. In my opinion, the court below rightly took the view that the suit of the present nature would not abate u/s 5(2) of the U. P. Consolidation of Holdings Act.

4. There is no merit in the revision. It is accordingly dismissed. The parties shall bear their own costs.