

**IN THE HIGH COURT OF MADHYA PRADESH  
AT JABALPUR**

**BEFORE**

**HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA**

**ON THE 28<sup>th</sup> OF JUNE, 2023**

**MISC. PETITION No. 5418 of 2019**

**BETWEEN:-**

1. GYANCHANDRA S/O LATE SHRICHAND GUPTA, AGED ABOUT 48 YEARS, OCCUPATION: BUSINESS, R/O GRAM SAKARIYA, TAH. RAGHURAJNAGAR, DISTT. SATNA (MADHYA PRADESH)
  
2. CHANDRAKANT, S/O LATE SHRICHAND GUPTA, AGED ABOUT 42 YEARS, OCCUPATION: BUSINESS, R/O GRAM SAKARIYA, TAH. RAGHURAJNAGAR, DISTT. SATNA (MADHYA PRADESH)
  
3. KRISHNACHAND, S/O LATE SHRICHAND GUPTA, AGED ABOUT 33 YEARS, OCCUPATION: BUSINESS, R/O GRAM SAKARIYA, TAH. RAGHURAJNAGAR, DISTT. SATNA (MADHYA PRADESH)
  
4. SMT. SHEELDEVI W/O LATE SHRICHAND GUPTA OCCUPATION: BUSINESS, R/O GRAM SAKARIYA, TAH. RAGHURAJNAGAR, DISTT. SATNA (MADHYA PRADESH)

**.....PETITIONERS**

***(BY SHRI AKHILESH JAIN- ADVOCATE)***

**AND**

1. RAMCHANDRA S/O SHRI SWAMIDEEN GUPTA, R/O GRAM SAKARIYA TAH. RAGHURAJNAGAR, DISTT. SATNA

(MADHYA PRADESH)

2. THE ADDITIONAL COMMISSIONER, REWA  
DIVISION, (LINK COURT AT SATNA) REWA  
(MADHYA PRADESH)

.....RESPONDENTS

(SHRI KAUSTUBH SHANKER JHA- ADVOCATE FOR RESPONDENT NO. 1)

-----  
*This petition coming on for admission this day, the court passed the following:*

**ORDER**

This petition under Article 227 of the Constitution of India has been filed against the order dated 31.08.2019 passed by Additional Commissioner, Rewa, Division Rewa, Link Court Satna in Case No. 217/Appeal/2007-08.

2. Since the controversy revolves in a very narrow campus, therefore, it is not necessary to deal with the facts of the case in detail.
3. It appears that one *Panch Faisla* was passed thereby dividing the shares of the predecessor of the parties. No application was filed for making it a Rule of Court. It is submitted that after 3 years of passing of the *Panch Faisla*, an application was filed under Section 14 of the Arbitration Act. During the pendency of the said application, the Tehsildar passed an order under Section 178 of the MPLR Code and on the basis of the *Panch Faisla* partition was done.
4. Subsequent thereto, various litigations took place and ultimately, the *Panch Faisla* was not made a Rule of Court on the ground of

limitation and secondly, the writ petition filed by the *Panchas* against the order by which application for making the *Panch Faisla* as Rule of Court was dismissed as barred by time, was held to be not maintainable.

5. It is submitted by the counsel for the petitioners that the petitioners have moved an application for mutation of their name by ignoring the *Panch Faisla* and after various rounds of litigations, the Commissioner, Rewa, Division Rewa, Link Court Satna by the impugned order has held that the *Panch Faisla* cannot be treated as a waste piece of paper and thus, has rejected the application of mutation.

6. Challenging the order passed by the Additional Commissioner, Rewa, Division Rewa, Link Court Satna, it is submitted by the counsel for the petitioners that where the Arbitration award/ the *Panch Faisla* was not made a Rule of Court, then the same cannot be relied upon for any purpose and it would not create any right in favour of the parties to the Arbitration.

7. *Per contra*, the counsel for the respondents has relied upon the judgment passed by the Supreme Court in the case of **Vasudev Dhanjibhai Modi Vs. Rajabhai Abdul Rehman and Others**, reported in **AIR 1970 Supreme Court 1475**.

8. Heard learned counsel for the parties.

9. Before entering into the controversy, this Court would like to consider the effect of order of partition passed by the Tehsildar. Undisputedly, an order of partition was passed and the same has not been challenged.

10. It is the contention of the counsel for the petitioners that since the order of partition was passed on the basis of the *Panch Faisla* and as the said *Panch Faisla* has not been made a Rule of Court, therefore, it should not have been relied upon and thus, the order of partition passed by the Tehsildar is a void order, therefore, that will not frustrate the application filed by the petitioners for mutation of their names on the basis of joint sale deed by which the property in dispute was purchased by their predecessors.

11. Heard the learned counsel for the petitioners.

12. The moot question for consideration is as to whether any void order is liable to be set aside or anybody can avoid the said order by claiming that it is void in nature.

13. The Supreme court in the case of **M. Meenakshi v. Metadin Agarwal**, reported in **(2006) 7 SCC 470** has held as under :

“17. The competent authority under the 1976 Act was not impleaded as a party in the suit. The orders passed by the competent authority therein could not have been the subject-matter thereof. The plaintiff although being a person aggrieved could have questioned the validity of the said orders, did not chose to do so. Even if the orders passed by the competent authorities were bad in law, they were required to be set aside in an appropriate proceeding. They were not the subject-matter of the said suit and the validity or otherwise of the said proceeding could not have been gone into therein and in any event for the first time in the letters patent appeal.”

(Underline supplied)

14. The Supreme Court in the case of **Anita International v. Tungabadra Sugar Works Mazdoor Sangh**, reported in **(2016) 9 SCC 44** has held as under :

“54. We are also of the considered view, as held by the Court in *Krishnadevi Malchand Kamathia case*, that it is not open either to parties to a lis or to any third parties to determine at their own that an order passed by a court is valid or void. A party to the lis or a third party who considers an order passed by a court as void or non est, must approach a court of competent jurisdiction to have the said order set aside on such grounds as may be available in law. However, till an order passed by a competent court is set aside as was also held by this Court in *Official Liquidator and Jehal Tanti cases*, the same would have the force of law, and any act/action carried out in violation thereof would be liable to be set aside. We endorse the opinion expressed by this Court in *Jehal Tanti case*. In the above case, an earlier order of a court was found to be without jurisdiction after six years. In other words, an order passed by a court having no jurisdiction had subsisted for six years. This Court held that the said order could not have been violated while it subsisted. And further that the violation of the order before it is set aside is liable to entail punishment for its disobedience. For us to conclude otherwise may have disastrous consequences. In the above situation, every cantankerous and quarrelsome litigant would be entitled to canvass that in his wisdom the judicial order detrimental to his interests was void, voidable, or patently erroneous. And based on such plea, to avoid or disregard or even disobey the same. This course can never be permitted.”

15. The Supreme Court in the case of **Krishnadevi Malchand Kamathia v. Bombay Environmental Action Group**, reported in **(2011) 3 SCC 363** has held as under :

“16. It is a settled legal proposition that even if an order is void, it requires to be so declared by a competent forum and it is not permissible for any person to ignore the same merely because in his opinion the order is void. In *State of Kerala v. M.K. Kunhikannan Nambiar Manjeri Manikoth Naduvil, Tayabbhai M. Bagasarwalla v. Hind Rubber Industries (P) Ltd., M. Meenakshi v. Metadin Agarwal and Sneha Gupta v. Devi Sarup*, this Court held that whether an order is valid or void, cannot be determined by the parties. For setting aside such an order, even if void, the party has to approach the appropriate forum.”

16. Thus, it is clear that even if an order is void, then it is required to be challenged. The order of partition has created certain rights to hold a particular share in the property. Unless and until, the order is challenged, the petitioners cannot get their names mutated in respect of the entire property which was jointly purchased by the predecessor of the parties. In absence, of any challenge to the order of partition passed by the Tehsildar, this Court is of the considered opinion that it would be a futile attempt on the part of the Court to verify as to whether the *Panch Faisla* can be said to be binding on the parties or it will be a waste piece of paper.

17. Under these circumstances, this Court is of the considered opinion that no case is made out warranting interference.

18. The petition fails and is hereby **dismissed**.

(G.S. AHLUWALIA)  
JUDGE