

*** THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN**
AND
THE HON'BLE SRI JUSTICE S. RAVI KUMAR

+ APPEAL SUIT No.968 of 2013

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% Dated 25-06-2015

Kothakapu Muthyam Reddy and others

.... Appellants

Vs.

\$ Bhargavi Constructions, rep., by its Managing partner Sri V.
Ramachandra Rao and others

.... Respondents

! Counsel for the appellants: Sri K. Chidambaram, Advocate appeared
on behalf of Sri M. Rajender Reddy, Counsel for the appellant

^ Counsel for respondent: Sri H. Venugopal

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> HEAD NOTE:

? Citations:

- 1) 2010 (1) ALD 277 (DB)
- 2) 2014 (2) ALD 676 (DB)
- 3) (2007) 4 SCC 221
- 4) (2008) 2 SCC 660
- 5) (2005) 6 SCC 478
- 6) 2012 (6) ALD 58 (SC)
- 7) 2012 (4) ALD 27 (DB)
- 8) 2010 (3) ALD 330 (DB)
- 9) AIR 1969 SC 78 = (1968) 3 SCR 662
- 10) AIR 1940 Privy Council 105
- 11) AIR 1997 SC 1125
- 12) (1956) 1 All ER 341
- 13) (1994) 1 SCC 1
- 14) (2000) 3 SCC 581
- 15) (1996) 5 SCC 550
- 16) (2001 (6) ALD 582 (FB)
- 17) (1993) 2 SCC 567
- 18) (2011) 12 SCC 18
- 19) (1992) 1 SCC 534
- 20) (1994) 1 SCC 502
- 21) (2006) 5 SCC 558
- 22) (2004) 8 SCC 588
- 23) (1976) 1 SCC 747
- 24) AIR 1941 P.C. 93
- 25) (2005) 11 SCC 314
- 26) (2005) 10 SCC 465
- 27) (2005) 11 SCC 209
- 27) (2011) 1 SCC 167

**THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN
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JUDGMENT: (Per Hon'ble Sri Justice Ramesh Ranganathan)

The appellants herein are the plaintiffs in O.S. No.107 of 2010. They sought a decree in their favour, and against the defendants, to declare para 18 of the compromise recorded in O.S. No.481 of 2007 before the Lok Adalat dated 22.08.2007, in so far as it related to land admeasuring Ac.9.29 gts of land in Sy. Nos.271, 272 and 273 shown to have created rights in favour of defendant No.31 i.e., M/s. Bhargavi Constructions represented by Sri V. Ramachandra Rao, as nonest in law for having been obtained by fraud and collusion, by playing fraud upon the plaintiffs; and for grant of a permanent injunction restraining the defendants, especially defendant No.31, their agents, servants, employees etc., from interfering with the peaceful possession and enjoyment of the plaintiffs in respect of the suit schedule A, B and C properties.

In this plaint filed in O.S. No.107 of 2010, the appellants stated that the 1st plaintiff had purchased land admeasuring Ac.25.00 cts in Sy. Nos.262, 274 under registered sale deed dated 06.07.1974 from Sri Jamaluddin and others; the first plaintiff also purchased Ac.6.10 gts from Sri Jamaluddin in the year 1975, which was confirmed by a deed of confirmation dated 24.04.1985; Sri Mohd. Kareemuddin had obtained a loan from Sri K. Mutyam Reddy, and had mortgaged the land admeasuring Ac.6.10 guntas, in the year 1982, by executing the mortgage deed; in addition thereto, land admeasuring Ac.12.20 gts was also in possession of the plaintiffs since June, 1993; between themselves, the plaintiffs were in peaceful possession and enjoyment of a total extent of Ac.50.00 gts of land in Sy. Nos.262 to 274 in Poppulaguda village, Rajendranagar Mandal,

Ranga Reddy District; as Sri Md. Khairuddin, Ajeemuddin and Kareemuddin, were interfering, the 1st plaintiff filed the injunction suit in O.S. No.333 of 1992 which was decreed in his favour; as the patta was not mutated in his name, the 1st plaintiff filed O.S. No.259 of 1994 against Sri Jamaladdin and others for declaration of his title and for perpetual injunction; on O.S. No.259 of 1994 being dismissed on 05.04.2004, the 1st plaintiff filed A.S. No.2323 of 2005; during the pendency of the said appeal, the 1st defendant filed O.S. No.481 of 2007 for specific performance of the agreement of sale dated 28.12.1995 in respect of agricultural land admeasuring Ac.51.29 gts in Sy. No.262 to 274 of Poppulaguda village, Rajendranagar Mandal, Ranga Reddy District; the plaintiffs, in the present Suit, were arrayed as defendants 22 to 25 therein; however, on the intervention of mediators, a compromise was arrived at; under the terms of the settlement, the plaintiffs were to relinquish Ac.41.34 gts, and the 1st plaintiff would be left with Ac.9.29 gts; from out of the total extent of Ac.41.34 gts, it was agreed that Ac.10.20 gts of land would be transferred in the name of Sri Ratangapani Reddy i.e., the son-in-law of the first plaintiff; the remaining land was to be given to the 1st plaintiff; an area of land, admeasuring Ac.6.25 gts, had been acquired for the outer ring road; the schedule of payment of money was also incorporated, in the compromise, only to the extent of Ac.25.00 gts; the defendants surreptitiously added therein that the plaintiffs had given up their rights in respect of land admeasuring Ac.9.29 gts in favour of M/s. Bhargavi Constructions, represented by Sri V. Ramachandra Rao, who were not parties to O.S. No.481 of 2007; no compromise could be recorded with persons who were not parties to the suit; immediately after the compromise was recorded in the Lok Adalat, a sale deed was executed on the same day in favour of M/s. Grandbay Estate Developers Ltd and Venezia Estate Developers Ltd., vide document No.8379 of 2007 dated 22.08.2007 in respect of land admeasuring Ac.14.02 gts in Sy. Nos.263 to 270; another agreement of sale with irrevocable GPA dated 22.08.2007 was entered into with Sri K. Ratangapani Reddy in respect of land admeasuring Ac.10.20 gts in Sy. Nos.272/1 and 273/1; execution of these

documents went on till late in the night; while they received money as stated in the compromise, averments relating to the remaining extent of land admeasuring Ac.9.29 gts were surreptitiously included therein as if the plaintiffs had given up their rights in favour of M/s. Bhargavi Constructions represented by Sri V. Ramachandra Rao, which was never the terms of compromise; if there was any such understanding, the document would have been executed on the same day; no such document was executed on that date; the aforesaid documents were executed not only by the plaintiffs, but by the other defendants also; the plaintiffs are illiterate, and are not well versed with court proceedings; as per the representation made by Sri S. Narayana Reddy, Sri D.S. Karunakar Reddy, the matter was referred to the Lok Adalat; a compromise memo was filed before the Lok Adalat and the signatures of the plaintiffs herein, ie the defendants in O.S.No.481 of 2007, were obtained therein; the proceedings of the Lok Adalat basically state that the compromise arrived at is in respect of the suit schedule property; an award was passed by the Lok Adalat, Ranga Reddy District dated 22.08.2007, and terms of the compromise were signed by the parties; even after the compromise, the 1st plaintiff and his family members continue to be in occupation, possession and enjoyment of the property admeasuring Ac.9.29 gts till date; O.S.No.643 of 2007 was filed by M/s. Bhargavi Constructions on the file of the Additional Junior Civil Judge, Ranga Reddy District which was later renumbered as O.S. No.42 of 2009; and, in para 18 of the compromise, the following lines were added:

“That in view of the compromise, similarly the plaintiff and defendants 1 to 32 are relinquishing all their rights and interest of whatsoever nature in respect of Ac.41.34 gts in favour of defendant No.33 including the right of receiving compensation for any acquisition in respect thereof **and also withdrawing the right, interest and claim whatsoever in the remaining land admeasuring AC.9.29 gts in Sy. Nos.271, 272 and 273 (part) owned and possessed by M/s. Bhargavi constructions represented by Sri V. Ramachandra Rao, the G.P.A. holder of defendants 10 to 19, Sri V. Ramachandra Rao and Sri V.K. Vishwanatham. Thus, the plaintiff and the defendants 1 to 32 have no right, title or claim whatsoever in future in respect of total suit schedule land admeasuring Ac.51.29 gts in Sy. Nos.262 to 274 situated at Poppalaguda vilale, Rajendranagar Mandal, R.R. District**”. (emphasis supplied)

The appellants-plaintiffs further stated that the decree, obtained by surreptitious means before the Lok Adalat by the defendants, did not

create any interest in favour of defendant Nos.31 and 32; there was no question of the plaintiffs relinquishing their rights in respect of Ac.9.25 guntas of land; there was, in fact, no relinquishment; this is also apparent as O.S.No.42 of 2009, filed by M/s. Bhargavi Constructions, is still pending before the Court of the Junior Civil Judge, Ranga Reddy District; the plaintiffs realised the ill-intentions of defendant Nos. 31 and 32 only in the last week of October, 2009 when persons, claiming on behalf of M/s. Bhargavi Constructions, tried to illegally trespass into the plaint schedule property; when they were questioned by the plaintiffs, they referred to the decree passed in O.S. No.481 of 2007; on a careful examination of the decree, they were shocked to find that surreptitious insertions were made in para 18 of the compromise; in the circumstances, an out and out fraud was placed upon the plaintiffs while obtaining their signatures on the said compromise; even otherwise the said compromise, including the contents of para 18 especially in the highlighted portion, could not have been recorded and could not be given effect to as it is beyond the scope of the compromise, as contemplated under Order 23 Rule 3 CPC, even after its amendment; it is apparent from the rough sketch plan with respect to Ac.9.29 gts, that the entire extent of land is not a contiguous piece of land, as the three portions are separately shown; the action of defendant Nos.31 and 32, (ie M/s.Bhargavi Constructions and Sri V. Ramachandra Rao) in collusion with the other defendants, is fraudulent; it has given a cause of action to the plaintiffs to seek redressal; the compromise was recorded before the Court on 22.08.2007; the plaintiffs have initiated the present action, in the nature of a suit for declaration, within three years of realising the fraud played upon them; the plaintiffs actually came to know of the said fraud only in the last week of October, 2009; and, even otherwise, the suit is filed within three years from 22.08.2007.

In their written statement defendant Nos.31 and 32, after referring to Sections 21 and 22-E of the Legal Services Authorities Act (hereinafter called the "Act"), state that the only remedy, that too only on very limited grounds, is to challenge the award either under Article 226 or 227 of the Constitution of India; O.S.No.107 of 2010 was barred by Sections 21 and

22-E of the Act, and, as such, it is liable to be rejected.

Defendant Nos.31 and 32, in O.S. No.107 of 2010, filed I.A. No.894 of 2010 under Order VII Rule 11 CPC requesting the Court below to reject the plaint in O.S. No.107 of 2010 as barred under Sections 21 and 22-E of the Act. In the affidavit, filed in support of I.A. No.894 of 2010, defendant Nos.31 and 32 stated that the petition was being filed to reject the plaint filed by the plaintiffs in O.S. No.107 of 2010, as barred under Sections 21 and 22-E of the Act; the plaintiffs had filed the suit for a declaration that a part of the Award passed in O.S. No.481 of 2007 by the Lok Adalat, Ranga Reddy District dated 22.08.2007, in respect of the land admeasuring Ac.9.29 gts in Sy. Nos.271, 272 and 273 creating rights in favour of D-31 and D-32, was nonest in law and had been obtained by fraud and collusion; they had, consequently, sought permanent injunction restraining D-31 and D-32 from interfering with the peaceful possession and enjoyment of the suit schedule property; along with the plaint, the plaintiffs had filed a copy the plaint in O.S. No.481 of 2007, and a copy of the award passed by the Lok Adalat dated 22.08.2007; it is evident from the award passed by the Lok Adalat under Section 21 of the Act and from para 1 of the compromise petition, that the plaintiffs and defendant Nos.11 to 30 were parties to O.S. No.481 of 2007; defendant Nos.31 and 32 later got themselves impleaded in the suit; and the allegations that, under the settlement, it was made known to the plaintiffs that, from out of the total extent of Ac.51.29 gts belonging to them, the plaintiffs had to relinquish their rights in respect of Ac.41.34 gts, and they would be left with Ac.9.29 gts is not borne by the award.

After referring to the history of the litigation, it is stated that the matter was referred to, and the compromise memo was filed before, the Lok Adalat; a copy of the award passed by the Lok Adalat dated 22.08.2007, along with Form No.V of the compromise signed by the parties were filed as document Nos.2 and 3; it is evident from the award that the suit filed by the 5th respondent, against the plaintiffs and defendant Nos.1 to 30, was on the basis of the agreement of sale dated 28.12.1995 in

respect of the suit schedule property totalling admeasuring Ac.51.29 gts in Sy. Nos.262 to 274 of Poppalaguda village, Rajendranagar Mandal, R.R. District, and was referred to the Lok Adalat for settlement; the plaintiffs and defendant Nos.1 to 33 were present in person; defendant Nos.10 to 19 were represented by their G.P.A. holder Sri V. Ramachandra Rao, and their identity was established; the parties had filed the detailed terms of compromise running into 19 paras which are admitted to be truly and correctly recorded; in terms of the compromise, the plaintiffs and defendant Nos.1 to 32 had relinquished their rights in respect of land admeasuring Ac.41.34 gts under the suit schedule property in favour of D-33, including the right of receiving compensation for any acquisition in respect thereof; they had also withdrawn their right, interest and claim of whatsoever nature in the remaining extent of land of Ac.9.29 gts out of the suit schedule property which was owned and possessed by M/s. Bhargavi Constructions represented by Sri V. Ramachandra Rao who was the GPA holder of D-10 to D-19; an award was passed accordingly; the plaintiffs were very much present, and had put their signatures to the said award; clause 5 of the terms of compromise stipulated that the compromise would be binding on the plaintiff and defendant Nos.1 to 32, and all their legal heirs, representatives or their nominees or any person claiming through them in respect of the land to an extent of Ac.41.34 gts; the remaining land, of an extent of Ac.9.29 gts, was owned and possessed by M/s. Bhargavi Constructions represented by Sri V. Ramachandra Rao and Sri V.K. Viswanatham; neither the plaintiffs nor defendant Nos.1 to 33 had anything to do with the said property; it is evident from Clause 8, that the amount paid by defendant No.33 was towards full and final settlement of all the rights, claims and interest of defendant Nos.1 to 32 over the suit schedule property, and plaintiffs and defendant Nos.1 to 32 could not, henceforth, have any further right whatsoever over the schedule property; it is evident from clause 17 that all parties had represented and stated that the memorandum was being executed on the respective representations made by each of the parties, and that each party has made such representations in a wilful and deliberate manner knowing fully well that such representations would be acted upon by the other in entering into this

memorandum of compromise; from clause 18, it is evident that, in view of the compromise, the plaintiffs and defendant Nos.1 to 32 had relinquished all their rights and interest of whatsoever nature in respect of Ac.41.34 gts, and had withdrawn their right, interest and claims in the remaining land admeasuring Ac.9.29 gts; thus the plaintiffs and defendant Nos.1 to 32 had no right, title or claim in future in respect of the total suit schedule land admeasuring Ac.51.29 gts in Sy. Nos.262 to 274 situated at Poppalguda village, Rajendranagar Mandal, R.R. District; an award was passed by the Lok Adalat in respect of the entire land of an extent of Ac.51.29 gts; the plaintiffs and defendant Nos.1 to 35 had categorically stated that they had no right or interest of whatsoever nature in respect of the total suit schedule property of Ac.51.29 gts; the very claim of the plaintiffs, that they were illiterate and were not put on notice, is false; it is incorrect to state that no compromise can be entered into with persons who are not parties to the suit; the plaintiffs, along with other parties, had relinquished all their rights, title and interest, and had withdrawn all their claims against the other respondents; the award was passed under Section 21 of the Act, and there was a bar for filing of the present suit; the Supreme Court and the High Court, in a catena of decisions, have held that the only remedy, that too on very limited grounds, is to challenge the award either under Article 226 or 227 of the Constitution of India; the suit, filed by the plaintiffs, is barred by Sections 21 and 22-E of the Act; and the plaint was, therefore, liable to be rejected. Defendant Nos.31 and 32 requested the Court below to reject the plaint in O.S. No.107 of 2010 as barred by Sections 21 and 22-E of the Act.

In the counter filed thereto by the appellants-plaintiffs, it is stated that the application, filed to reject the plaint under Sections 21 and 22-E of the Act was not maintainable in law or on the facts of the case; the contents of para 4 of the affidavit was incorrect and false; the allegation, that Ac.9.29 gts were not to be left with the plaintiffs in the suit, was incorrect; the plaint details the manner in which fraud was played on the plaintiffs, while obtaining their consent for the said compromise and getting the award passed surreptitiously in respect of Ac.9.29 gts portion of the suit

schedule property; while affixing of signatures on the compromise memo was not disputed by the plaintiffs, the manner in which the compromise was drafted, and the award was obtained, was a fraudulent act as explained in detail in the plaint; the allegation that Ac.9.29 gts of land was owned and possessed by M/s.Bhargavi Constructions represented by Sri V. Ramachandra Rao, the alleged GPA holder of defendant Nos.1 to 19, is incorrect and false; the contention that, from clause 8, it is evident that the amount paid by defendant No.33 is towards full and final settlement of all rights, claim, interest of defendant Nos.1 to 32 over the entire suit schedule property is false; if it was so, such a surreptitious insertion would not have been made in the clauses of the compromise memo; the interpretation sought to be given to clause 17 of the memorandum of compromise is incorrect and false; the plaintiffs never agreed to forego their rights in respect of Ac.9.29 gts of land as alleged; the plaintiffs specifically alleged fraud, and had explained that, admittedly, M/s.Bhargavi Constructions was not a party to the suit and, as such, it was not open to them to claim that there was any inter-parties compromise arrived at between the parties as explained in detail in the plaint; the award passed by the Lok Adalat was obtained by misrepresentation by D-31 and D-32 in collusion with the defendants, and was against the basic principles of Order 23 Rule 3 CPC as well as the provisions of the Act; fraud is always an exception to all such circumstances; fraud is an act of deliberate deception with the design of securing something by taking an unfair advantage over another; any judgment or decree, obtained by playing fraud, is a nullity and nonest in the eye of law; such a judgment/decree by the first court, or by the highest court, has to be treated as a nullity by every court whether superior or inferior; the principle of finality of litigation cannot be pressed to the extent of such an absurdity that it becomes an engine of fraud in the hands of dishonest litigants; the controversy in this respect has also been set at rest by the Division bench of the High Court which held that a suit would always be maintainable, when the award is obtained by fraud or misrepresentation or collusion to defeat the rights of private parties; and the petition as filed is not maintainable in law, and must be dismissed with exemplary costs.

By its order in I.A. No.894/2010 in O.S.No.107/2010 dated 24-07-2013, the Court below rejected the plaint and dismissed O.S.No.107/2010 as not maintainable under Section 9 CPC, Order VII Rule 11 CPC and Sections 21 & 22-E of the Act. The reasons for rejection of the plaint, as recorded by the Court below in the order under challenge in this Appeal, are that the parties had approached the Civil Court by filing a separate suit questioning the award passed by the Lok Adalat; in view of the Judgment of the Division Bench, in **Batchu Subba Lakshmi v. Sannidhi Srinivasulu**^[1], a suit for declaration, questioning a part of the Award passed by the Lok Adalat, was not maintainable; the suit claim was not enforceable before a Court of law; the plaintiffs could not challenge the award passed by the Lok Adalat before the Civil Court by filing a separate suit; their remedy was only by way of a Writ Petition before the High Court pleading fraud, misrepresentation and undue influence etc. by invoking Articles 226 or 227 of the Constitution of India; considering the legal position on the factual matrix, it was clear that the suit filed by the plaintiffs, seeking to declare the award passed in O.S.No.481/2007 as non-est, was not maintainable; the plaintiffs' suit was barred by law; Section 9 CPC enables a Civil Court to take cognizance of all civil disputes except those disputes, which are expressly or impliedly barred by law; in the present case, the Act is a special law; it prohibits any suit or appeal against the award passed by the Lok Adalat, basing on a compromise arrived at between the parties; and the suit was not maintainable under Section 9 CPC, and under Order VII Rule 11 CPC r/w Sections 21 & 22-E of the Act. Aggrieved by the said order, the plaintiffs in O.S.No.107/2010 have preferred this appeal.

Sri K. Chidambaram, learned counsel for the appellants, would place reliance on **Vadiga Amose v. Vadiga Anjaneyulu**^[2] in support of his submission that the remedy, under Article 226 of the Constitution of India, is barred; a writ petition does not lie against the award passed by the Lok Adalat; and the appellants' remedy is only to file a suit to declare that the award is vitiated by fraud. He would rely on **A.V. Papayya Sastry v.**

Govt. of A.P. ^[3] in support of his submission that, where a decree has been obtained by fraud, a suit can be filed to declare it to be a nullity. He would further submit that, under Order VII Rule 11 (d) CPC, it is only when the suit appears, in the statement in the plaint, to be barred by any law, can the plaint be rejected; there is no express bar in the Act precluding the appellants from filing a suit to declare the award passed by the Lok Adalat a nullity on the ground that it is vitiated by fraud; and, even if the appellants are held entitled to invoke the extra-ordinary jurisdiction of this Court under Article 226 of the Constitution of India, it is open to them to also file a suit in view of Section 9 CPC, more so in the absence of any specific statutory provision barring them from invoking the jurisdiction of the Civil Court.

On the other hand, Sri H. Venugopal, learned counsel appearing on behalf of the respondents, would submit that Sections 21 & 22-E of the Act give a finality to the award passed by the Lok Adalat; while a third party, who is not a party to the Award, may possibly be entitled to file a suit, the appellants herein were parties to the compromise; they signed the compromise petitions; consequently, the award passed by the Lok Adalat binds them as it is deemed to have attained finality; in the absence of a statutory remedy of appeal, the only remedy which the appellants have is to invoke the extra-ordinary jurisdiction of this Court under Article 226 of the Constitution of India; the remedy of a Suit is impliedly barred under Section 21, and is explicitly barred under Section 22-E of the Act; the allegations of fraud, made by the plaintiffs in O.S.No.107/2010, are false; such allegations have been made only to harass the respondents, and to force them to undergo the needless ordeal of a civil litigation which would spread over several years; and no interference is called for as the plaint has, rightly, been rejected by the Court below exercising its powers under Order VII Rule 11 (d) CPC. Learned Counsel would rely on **State of Punjab v. Jalour Singh** ^[4], **P.T. Thomas v. Thomas** ^[5], **Bar Council of India v. Union of India** ^[6], **Sri Durga Malleswara Educational Society, Vijayawada, Krishna District v. District Legal Services**

Authoirty (Lok Adalath), Vijayawada, Krishna District^[7], Sanjay Kumar v. Secretary, City Civil Court Legal Services Authoirty, Hyderabad^[8] and Batchu Subba Lakshmi¹.

The point for consideration in this appeal is whether a party, to an award passed by the Lok Adalat, is barred by the provisions of the Act and Section 9 CPC, from invoking the jurisdiction of the Civil Court seeking to have the award declared as a nullity on the ground that it was obtained by misrepresentation and/or fraud?

Order 7 Rule 11 CPC relates to rejection of plaint and, under clause (d) thereof, a plaint shall be rejected where the suit appears, from the statement in the plaint, to be barred by any law. Section 9 of the Civil Procedure Code confers jurisdiction on a Civil Court to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred. A civil suit does not lie if the orders of the authorities are declared to be final or there is an express prohibition in the particular Act. (**Dhulabhai v. State of M.P.**,^[9]). Exclusion of the jurisdiction of the Civil Court is not to be readily inferred. Such exclusion must either be explicitly expressed or clearly implied. Even if the jurisdiction is so excluded, the Civil Courts have jurisdiction to examine cases where the provisions of the Act have not been complied with, or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure. (**Secretary of State v. Mask & Co**^[10]; **Dhulabhai**⁹). It is only if a suit is explicitly or impliedly barred by any law, can a plaint be rejected under Order 7 Rule 11(d) CPC.

Let us now examine whether a suit filed to declare an award of the Lok Adalat a nullity, on the ground that it was obtained by fraud, is either explicitly or implicitly barred under the Act. Section 2(d) of the Act defines Lok Adalat to mean a Lok Adalat organised under Chapter VI. Section 19, under Chapter VI of the Act, relates to organisation of Lok Adalats. Section 19(1) stipulates that every State Authority or District Authority or the

Supreme Court Legal Services Committee or every High Court Legal Services Committee or, as the case may be, the Taluq Legal Services Committee may organise Lok Adalats at such intervals and places, and for exercising such jurisdiction and for such areas, as it thinks fit. Section 19(5) stipulates that a Lok Adalat shall have jurisdiction to determine and to arrive at a settlement between the parties to a dispute in respect of (i) any case pending before or (ii) any matter which is falling within the jurisdiction of, and is not brought before, any court for which the Lok Adalat is organised. Section 21 of the Act relates to the award of the Lok Adalat and, under sub-section (1) thereof, every award of the Lok Adalat shall be deemed to be a decree of a Civil Court or, as the case may be, an order of any other Court. Section 21(2) stipulates that every award made by a Lok Adalat shall be final and binding on all the parties to the disputes, and no appeal shall lie to any Court against the award.

Chapter VI-A of the Act relates to pre-litigation conciliation and settlement. Section 22A(a) thereunder stipulates that in this Chapter and for the purposes of Sections 22 and 23, unless the context otherwise requires, a Permanent Lok Adalat shall mean a Permanent Lok Adalat established under sub-section (1) of Section 22-B. Section 22B(1) stipulates that, notwithstanding anything contained in Section 19, the Central Authority or, as the case may be, every State Authority shall, by notification, establish Permanent Lok Adalats at such places and for exercising such jurisdiction in respect of one or more public utility services and for such areas as may be specified. Section 22A(b) defines “**public utility services**” to mean any of (i) transport service for the carriage of passengers or goods by air, road or water; or (ii) postal, telegraph or telephone service; or (iii) supply of power, light or water to the public by any establishment; or (iv) system of public conservancy or sanitation; or (v) service in hospital or dispensary; or (vi) insurance service, and includes any service which the Central Government, or the State Government as the case may be, in the public interest may, by notification, declare to be a public utility service for the purposes of this Chapter. It is only in respect of one or more public utility services can a Permanent Lok Adalat be

established under Section 22B of Chapter VI-A of the Act.

Section 22E(1), in Chapter VI-A of the Act, stipulates that every award, made by the Permanent Lok Adalat under this Act, shall, on merits or in terms of a settlement agreement, be final and binding on all the parties thereto and on persons claiming under them. Section 22E(2) stipulates that every award of the Permanent Lok Adalat shall be deemed to be a decree of a Civil Court. Section 22E(4) provides that every award, made by the Permanent Lok Adalat, shall be final and shall not be called in question in any original suit, application or execution proceeding. Section 22E(4) prohibits an award made by a Permanent Lok Adalat to be called in question in any original suit also.

Section 22-E(1) of the Act makes every award of the Permanent Lok Adalat either on merits, or in terms of a settlement, final and binding on all the parties thereto and on persons claiming under them. No appeal is provided from the award passed by the Permanent Lok Adalat as it is important that such dispute is brought to an end at the earliest, and is not prolonged unnecessarily. There is no inherent right of appeal. Appeal is always a creature of statute. If at all a party to the dispute has a grievance against the award of the Permanent Lok Adalat, he can always approach the High Court under its supervisory and extraordinary jurisdiction under Articles 226 and 227 of the Constitution of India. (**Bar Council of India**⁶).

The award, in the present case, neither relates to a public utility service nor was it passed by a Permanent Lok Adalat, Section 22E(4) of the Act, which prohibits such an award from being called in question in any original suit, has therefore no application. The award, which was subjected to challenge in O.S. No.107 of 2010, was passed by the Lok Adalat organised under Section 19 of Chapter VI of the Act. Unlike Section 22-E(4) which prohibits an award passed by a permanent Lok Adalat to be called in question in an original suit, Section 21(2) of the Act only prohibits an appeal being filed against an award passed by the Lok Adalat. It cannot, therefore, be said that the remedy of a Civil Court is explicitly barred.

Before examining the question whether the remedy of a Civil Suit is impliedly barred under the Act, it must be borne in mind that the award of the Lok Adalat is an administrative act of incorporating the terms of a compromise or settlement agreed by the parties in its presence. The Lok Adalat does not adjudicate a dispute. When an award is passed by the Lok Adalat in terms of the settlement arrived between the parties, and is duly signed by them, it is binding on the parties to the settlement and is executable as if it is a decree of the Civil Court. (**Jalour Singh⁴; Sanjay Kumar⁸; Batchu Subba Lakshmi¹**).

The Lok Adalat passes the award with the consent of the parties. There is, therefore, no need either to reconsider or review the matter again and again as the award passed by the Lok Adalat is final. Even under Section 96(3) CPC “no appeal shall lie from a decree passed by the court with the consent of parties”. The award of the Lok Adalat is an order by the Lok Adalat with the consent of the parties. It is deemed to be a decree of the Civil Court and, therefore, no appeal lies from the award of the Lok Adalat. (**P.T. Thomas⁵**). In stipulating that the award is enforceable as a decree, and in giving it finality, the endeavour is only to see that the disputes are narrowed down and the settlement is made final so that the parties are not again driven to further litigation. Though the award of a Lok Adalat is not a result of a contest on merits, it is equal to and on par with a decree on compromise. It will have the same binding effect, and be conclusive. Just as the decree passed on a compromise cannot be challenged in a regular appeal, the award of the Lok Adalat, being akin thereto, cannot be challenged by any of the regular remedies available under law. (**P.T. Thomas⁵**). No appeal would lie against the award of Lok Adalat and, if any party wants to challenge such an award, it can be by way of a petition under Article 226 or 227 of the Constitution. (**Jalour Singh⁴; Sanjay Kumar⁸; Batchu Subba Lakshmi¹**).

The award passed by the Lok Adalat in a pending litigation, or in a pre-litigation case, is not, ordinarily, amenable to judicial review. But when

an award of the Lok Adalat is obtained by misrepresentation, fraud or without due compliance with the provisions of the Act and that it was not preceded by a compromise/settlement, it can be challenged in a Writ Petition. (**Sri Durga Malleswari Educational Society**⁷). The challenge to the award of the Lok Adalat, in proceeding under Article 226 of the Constitution of India, can be entertained only at the behest of parties to the settlement/ compromise before the Lok Adalat, and not by anyone else. (**Sanjay Kumar**⁸). The parties to the compromise or settlement, which is the basis for the award of a Lok Adalat, are entitled to challenge the award. Ordinarily, a third party cannot challenge the award in a writ petition, even if such an award causes prejudice. The remedy of such party would be to institute a separate suit within the period of limitation prescribed under law for necessary redressal, and seek an appropriate decree. As a Civil Court can even declare that an earlier decree of the Court is not binding on the party before it, there can be no objection for a third party to institute a suit in a Civil Court seeking a declaration that the award of Lok Adalat is not binding on him. There may, however, be extraordinary cases where a third party is meted with injustice at the behest of two or more conniving and colluding parties who may have obtained an award of the Lok Adalat by fraud or misrepresentation only to defeat the rights of a third party. In such cases, such a third party may maintain a Writ Petition. In such cases, there should be prima facie evidence of fraud or misrepresentation or collusion in obtaining the award of the Lok Adalat. Even if such allegations are made, and the question involves complicated questions of fact requiring voluminous evidence, the third party should be left to seek the remedy in a Civil Court, rather than invoking the extraordinary jurisdiction of the High Court under Article 226 of Constitution. (**Batchu Subba Lakshmi**¹).

In **Vadiga Amose**², the petitioner, on coming to know of the filing of a suit and settlement of the same in the Lok Adalat, obtained a certified copy of the Lok Adalat award. He contended that respondents 1 to 4 had, together, colluded and initiated the civil suit by playing fraud against the

Court; they had obtained the award behind his back suppressing the partition deed; and the Lok Adalat award was non-est in the eye of law, and it was liable to be set aside. It is in this context that the Division Bench of this Court held that an award passed under Section 21 of the Act is deemed to be a decree of the Civil Court; a decree, obtained by playing fraud on the Court, can be challenged by a third party to the suit by filing a suit for declaration; and, in order to avoid multiplicity of proceedings and to put an end to the litigation once and for all, the best course open to the petitioner was to approach jurisdictional Civil Court for redressal. As the appellants herein, are parties to the award passed by the Lok Adalat, reliance placed by Sri K. Chidambaram, Learned Counsel, on **Vadiga Amose**², to contend that the appellants cannot invoke the jurisdiction of this Court, under Article 226 of the Constitution of India, is misplaced.

Judicial review is available to test the validity of awards passed by the Lok Adalat on limited grounds, one of which is when a party alleges that there was no settlement enabling an award being passed. If it is shown that there is no settlement or compromise, or that settlement or compromise itself is vitiated by fraud or misrepresentation, it would be a fit case for interference. Except the remedy of challenging the Lok Adalat award on limited grounds, no other authority or Court can question the award of Lok Adalat which shall be treated as final and binding. (**Sanjay Kumar**⁸; **Sri Durga Malleswari Educational Society**⁷). In the absence of a statutory remedy of an appeal, an award can be subjected to challenge in writ proceedings invoking the extra-ordinary jurisdiction of this Court under Article 226 of the Constitution of India. As the jurisdiction, which this Court exercises under Article 226 of the Constitution of India is extra-ordinary, and as the power of judicial review under Article 226 is part of the basic structure of the Constitution (**L. Chandra Kumar v. Union of India**^[11]), it cannot be circumscribed or negated by legislation – plenary or subordinate. Availability of the remedy, of invoking the extra-ordinary jurisdiction of the High Court under Article 226 of the Constitution of India, would not per se disable a person aggrieved from invoking the jurisdiction

of the Civil Court.

While a person, aggrieved by an award passed by the Lok Adalat, can challenge its validity in proceedings under Article 226 of the Constitution of India, the question which necessitates examination is whether such a person is barred from filing a suit when it is his specific case that the award has been obtained by fraud. As Section 21(2) of the Act give finality to an award passed by the Lok Adalat, and the remedy of an appeal is explicitly barred, ordinarily the remedy of a Civil Suit is not available to the parties to the award passed by the Lok Adalat. As noted hereinabove, even if the jurisdiction of the Civil Court is impliedly excluded, the Civil Court has jurisdiction to examine cases where the provisions of the Act have not been complied with, or the statutory Tribunal has not complied with the fundamental principles of judicial procedure.

An action, to set aside a judgment, cannot be brought on the ground that it has been decided wrongly, namely, that, on merits, the decision was one which should not have been rendered. But it can be set aside, if the court was imposed upon or tricked into giving the judgment. (**A.V. Papayya Sastry**³). If any judgment or order is obtained by fraud, it cannot be said to be a judgment or order in law. (**A.V. Papayya Sastry**³). No judgment of a court can be allowed to stand if it has been obtained by fraud. (**Lazarus Estates Ltd. v. Beasley**^[12]; **A.V. Papayya Sastry**³). Fraud and justice never dwell together (fraus et jus nunquam cohabitant); or fraud and deceit ought to benefit none (fraus et dolus nemini patrocinari debent). (**A.V. Papayya Sastry**³). Fraud may be defined as an act of deliberate deception with the design of securing some unfair or undeserved benefit by taking undue advantage of another. In fraud one gains at the loss of another. Even most solemn proceedings stand vitiated if they are actuated by fraud. Fraud is thus an extrinsic collateral act which vitiates all judicial acts, whether in rem or in personam. The principle of “finality of litigation” cannot be stretched to the extent of an absurdity that it can be utilised as an engine of oppression by dishonest and fraudulent litigants. (**A.V. Papayya Sastry**³).

Fraud avoids all judicial acts, ecclesiastical or temporal. A judgment, decree or order obtained by playing fraud on the Court, Tribunal or authority is a nullity and non-est in the eye of the law. It can be challenged in any court, at any time, in appeal, revision, writ or even in collateral proceedings. (**A.V. Papayya Sastry**³; **S.P. Chengalvaraya Naidu v. Jagannath**^[13]). Once it is established that the order was obtained by a successful party by practising or playing fraud, it is vitiated. Such an order cannot be held legal, valid or in consonance with the law. It is non-existent and non-est and cannot be allowed to stand. A judgment, decree or order obtained by fraud has to be treated as a nullity, whether by the court of first instance or by the final court. And it has to be treated as non est by every court, superior or inferior. (**United India Insurance Co. Ltd. v. Rajendra Singh**^[14]). In the case of fraud on a party to the suit or proceedings, the Court may direct the affected party to file a separate suit for setting aside the decree obtained by fraud. (**Indian Bank v. Satyam Fibres (India) (P) Ltd.**^[15]).

An award passed by the Lok Adalat is, under Section 21(1) of the Act, deemed to be a decree of a Civil Court. If a Civil Suit can be filed to set aside a decree obtained by fraud, we see no reason why a Civil Suit cannot be filed to set aside an award of the Lok Adalat, if such an award has been obtained by fraud. As the appellant has specifically pleaded, in the suit filed by him, that the award of the Lok Adalat is vitiated by fraud, the Court below erred in rejecting his plaint, under Order 7 Rule 11 CPC, on the ground that a civil suit does not lie against an award passed by the Lok Adalat. The point for consideration is answered holding that the remedy of a Civil Suit is not barred where the jurisdiction of the Civil Court is invoked by a party to the compromise, or the award of Lok Adalat, alleging that the said compromise or award was obtained by misrepresentation or fraud.

Though an award of the Lok Adalat can be subjected to challenge

in a Civil Court if it is vitiated by fraud, it must be borne in mind that allegations of fraud are easier made than established. Fraud can either be proved by established facts or an inference can be drawn from admitted and/or undisputed facts. (**A.P. Scheduled Tribes Employees Association v. Aditya Pratap Bhanj Dev**^[16]). The law requires strict proof of fraud. (**State of Maharashtra v. Budhikota Subba Rao (Dr.)**^[17]; **Saradamani Kandappan v. S. Rajalakshmi**^[18]). Fraud is essentially a question of fact, the burden to prove which is upon him who alleges it. (**Shrisht Dhawan v. Shaw Bros**^[19]). Mere allegations or averments of facts do not make a strong prima facie case of fraud. The material and evidence has to show it. A finding as to fraud cannot be based on suspicion and conjecture and must be established beyond reasonable doubt. (**Svenska Handelsbanken v. Indian Charge Chrome**^[20]). Ordinarily, the burden to prove fraud would be on the party who asserts the affirmative of the issue and it rests, after evidence is gone into, upon the party against whom, at the time the question arises, judgment would be given if no further evidence were to be adduced by either side. (**Anil Rishi v. Gurbaksh Singh**^[21]). The degree of proof required in such cases is extremely high. (**A.C. Ananthaswamy v. Boraiah**^[22]).

Fraud must be established beyond reasonable doubt. However suspicious may be the circumstances, however strange the coincidences, and however grave the doubt, suspicion alone can never take the place of proof. (**Union of India v. Chaturbhai M. Patel & Co.**,^[23]; **A.L.N. Narayanan Chettyar v. Official Assignee, High Court, Rangoon**^[24]). The basic principles of the rules of evidence require a party alleging fraud to give particulars of the fraud. In the absence of such particulars, no inference can be drawn of fraud merely on the basis of presumptions. A heavy duty lies upon the party who alleges fraud and the level of proof required, for proving fraud, is extremely high. (**Sangramsingh P.**

Gaekwad v. Shantadevi P. Gaekwad^[25]; **Chief Engineer, M.S.E.B. v. Suresh Raghunath Bhokare**^[26]; **Maharashtra Power Development Corpn. Ltd. v. Dabhol Power Co.**^[27]; and **Alva Aluminium Ltd. v. Gabriel India Ltd.**^[28]). It is only if fraud is established can the civil Court, on its jurisdiction being invoked, interfere and set aside the award of the Lok Adalat.

Sri H. Venugopal, Learned Counsel for the respondent, would submit that the allegations in the plaint do not make out a case of fraud. The Court below had rejected the plaint solely on the ground that a civil suit cannot be filed, and the plaintiff's remedy is only to invoke the jurisdiction of this Court under Article 226 of the Constitution of India. Whether or not the appellant is justified in his claim, that the award of the Lok Adalat is vitiated by fraud, are matters to be examined by the Court below. As the power to reject a plaint under Order 7 Rule 11(d) is to be exercised by the civil court only if the suit appears, from the statement in the plaint, to be barred by law, the court below erred in rejecting the plaint on the ground that a civil suit is not maintainable. The order under appeal is set aside. We make it clear that we have not expressed any opinion on the truth or otherwise of the appellant's claim that the award of the Lok Adalat is vitiated by fraud. The Court below shall adjudicate the suit on its merits, and in accordance with law.

The order, under challenge in this appeal, is set aside and the appeal is allowed with costs. Miscellaneous petitions pending, if any, shall also stand disposed of.

RAMESH RANGANATHAN, J

S.RAVI KUMAR, J

Date: 25.06.2015.

Note: L.R. copy to be marked.
B/o
CS/MRKR

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- [1] 2010 (1) ALD 277 (DB)
- [2] 2014 (2) ALD 676 (DB)
- [3] (2007) 4 SCC 221
- [4] (2008) 2 SCC 660
- [5] (2005) 6 SCC 478
- [6] 2012 (6) ALD 58 (SC)
- [7] 2012 (4) ALD 27 (DB)
- [8] 2010 (3) ALD 330 (DB)
- [9] AIR 1969 SC 78 = (1968) 3 SCR 662
- [10] AIR 1940 Privy Council 105
- [11] AIR 1997 SC 1125
- [12] (1956) 1 All ER 341
- [13] (1994) 1 SCC 1
- [14] (2000) 3 SCC 581
- [15] (1996) 5 SCC 550
- [16] (2001 (6) ALD 582 (FB)
- [17] (1993) 2 SCC 567
- [18] (2011) 12 SCC 18
- [19] (1992) 1 SCC 534
- [20] (1994) 1 SCC 502
- [21] (2006) 5 SCC 558
- [22] (2004) 8 SCC 588
- [23] (1976) 1 SCC 747
- [24] AIR 1941 P.C. 93
- [25] (2005) 11 SCC 314
- [26] (2005) 10 SCC 465
- [27] (2005) 11 SCC 209
- [28] (2011) 1 SCC 167