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HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (227) No.508 of 2014**

- Suryakant Naidu S/o Late C.K. Naidu Aged About 58 Years R/o Swasthya Colony Katghora P.S. Teh Katghora Civil & Revenue Distt. Korba C.G.

---- Petitioner

Versus

1. Amit Kumar, adopted son of Pramod Naidu Aged About 21 Years R/o Mohline Bhata Katghora, Tehsil & P.S. Katghora Distt. Korba C.G. (Plaintiff No.1)
2. Rahul Kumar Adopted S/o Pramod Naidu Aged About 19 Years R/o Mohline Bhata Katghora, Tehsil & P.S. Katghora Distt. Korba C.G. (Plaintiff No.2)
3. Pramod Naidu S/o Late C.K. Naidu Aged About 43 Years R/o Mohline Bhata Katghora, Tehsil & P.S. Katghora Distt. Korba C.G. (Defendant No.3)

---- Respondents

For petitioner	:	Shri SV Purohit, Advocate.
For respondents 1 to 3	:	Shri SRJ Jaiswal, Advocate.

Hon'ble Shri Justice Chandra Bhushan Bajpai**Order On Board****03.5.2016**

Heard.

2. Facts in brief required for the adjudication of the instant writ petition are that Civil Suit No.61A/11 filed before the Civil Judge Class-II Khatgora, District Korba (CG) by respondents 1 & 2 against respondent No.3 for declaration that they are the adopted sons of present respondent No.3. The trial Court vide judgment and decree dated 30.10.2012 held that since the plaintiffs failed to prove that they are the adopted sons of defendant, hence, dismissed the suit filed by the plaintiffs. Against the said judgment and decree, both the plaintiffs preferred appeal from the original

decree under the provision of section 96 of the Code of Civil Procedure, 1908 (for short 'the Code;'). The appellate Court for the reasons best known to the presiding officer, registered the said appeal filed under the provision of Section 96 of the code as Misc. Civil Appeal and registered the same as Misc. Civil Appeal No.09/12. The said appeal was disposed of in a hearing of Lok Adalat constituted under the law on 20.01.2013 wherein the aforementioned appellants and the respondent had filed a joint application for compromise. The said Lok Adalat accepted the said joint compromise application and disposed of the matter finally under Section 21 of the Legal Services Act 1987 and declared the appellants as adopted sons of respondent. The present petitioner, who is the real brother of present respondent No.3 though not a party before for the trial Court and the appellate Court, had filed the instant petition invoking the constitutional jurisdiction of this Court for the superintendence over the Courts below and in brief had taken the plea that while passing impugned order dated 20.01.2013 the Lok Adalat has committed error of law by violating Sections 9 & 10 of the Hindu Adoption and Maintenance Act 1956. Since present respondent No.3 is the real younger brother of the present petitionere, the element of division of ancestral property is also involved hence, it is prayed on behalf of the petitioner that by invoking the authority under Section 227 of the Constitution of India, the impugned order passed by Lok Adalat may be quashed.

3. On behalf of the respondents i.e. parties before the Court below, written response has been filed jointly wherein it is submitted that the petitioner is not a party in the said litigation either before the trial Court or before the appellate Court, he has no locus to file the petition and the award passed by the Lok Adalat is final, binding to the parties, hence, the petition may be dismissed.

4. Heard counsel for the petitioner who entirely supported the ground taken in the instant petition and briefly submitted that though he was not a party before the Court below, this Court may invoke jurisdiction for superintendence of the court below and to correct the wrong committed by the Lok Adalat as the mandatory provisions of Sections 9 & 10 of the Act 1956 were not complied also the other conditions for the valid adoption are not complied with. The division and other benefits regarding ancestral property of the family is involved. The Court below can issue appropriate directions by quashment of the impugned order as the same is final under the provisions of Section 21 of the Act of 1987, but this Court has jurisdiction to correct the wrong committed by the Lok Adalat.

5. Learned counsel for the respondents supported th ground taken in the written response/objection and submitted that the petitioner has no locus, he was not a party, there is no any ancestral property which may effect the right of the petitioner and also award passed by the trial court is final and it cannot be

interfered, hence, it is submitted that the instant petition may be dismissed as no maintainable. Learned counsel for the respondent placed reliance in **(2005) 6 SCC 478, P.T. Thomas Vs. Thomas Job**, wherein the Hon'ble Apex Court held that in a Lok Adalat award being passed with the consent of the parties, no appeal shall lie from the award of the Lok Adalat as provided under Section 96(3) of the Code and the same cannot be challenged under any of the remedies available under the law including by invoking Article 227 of the Constitution.

6. For appreciation of the arguments advanced on behalf of the parties, I have perused the material ground taken in the instant petition and written response/reply filed on behalf of the respondent.

7. For relevance, Article 227 of the Constitution of India, Section 21 of the Legal Services Authorities Act, 1987, Sections 9, 10 & 11 of the Hindu Adoptions & Maintenance Act, 1956 and Section 96 of the Code are reproduced as follows:

“Article 227 . Power of superintendence over all courts by the High Court. - (1). Every High Court shall have superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction.

(2) Without prejudice to the generality of the foregoing provisions, the High Court may-

(a) call for returns from such courts;

(b) make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts; and

(c) prescribe forms in which books, entries and accounts shall be kept by the officers of any such courts.

(3) The High Court may also settle tables of fees to be allowed to the sheriff and all clerks and officers of such

courts and to attorneys, advocates and pleaders practicing therein:

Provided that any rules made, forms prescribed or tables settled under clause (2) or clause (3) shall not be inconsistent with the provision of any law for the time being in force, and shall require the previous approval of the Governor.

(4) Nothing in this article shall be deemed to confer on a High Court powers of superintendence over any court or tribunal constituted by or under any law relating to the Armed Forces.

Section 21 of the Legal Services Authorities Act, 1987. Award of Lok Adalat – (1) 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 and where a compromise or settlement has been arrived at, by a Lok Adalat in a case referred to it under sub-section (1) of the Section 20, the court-fee paid in such case shall be refunded in the manner provided under the Court fees Act, 1870.

(2) Every award made by a Lok Adalat shall be final and binding on all the parties to the dispute, and no appeal shall lie to any court against the award.

Sections 9, 10 and 11 of the Hindu Adoptions and Maintenance Act, 1956:-

9 Persons capable of giving in adoption

(1) No person except the father or mother the guardian of a child shall have the capacity to give the child in adoption.

(2) Subject to the provision of [1](#)[sub-section (3) and sub-section (4)], the father, if alive, shall alone have the right to give in adoption, but such right shall not be exercised save with the consent of the mother unless the mother has completely and finally renounced the world or has ceased to be a Hindu has been declared by a court of competent jurisdiction to be of unsound mind.

(3) The mother may give the child in adoption if the father is dead or has completely and finally renounced the world or has ceased to be a Hindu or has been declared by a court of competent jurisdiction to be of unsound mind.

[1](#)[(4) Where both the father and mother are dead or have completely and finally renounced the world or have abandoned the child or have been declared by a court of competent jurisdiction to be of unsound mind or where the parentage of the child is not known, the guardian of the child may give the child in adoption with the previous permission of the court to any person including the guardian himself.]

(5) Before granting permission to a guardian under sub-section (4), the court shall be satisfied that the adoption will be for the welfare of the child, due

consideration being for this purpose given to the wishes of the child having regard to the age and understanding of the child and that the applicant for permission has not received or agreed to receive and that no person has made or given or agreed to make or give to the applicant any payment or reward in consideration of the adoption except such as the court may sanction.

Explanation: For the purposes of this section-

- (i) the expression "father" and "mother" do not include an adoptive father and an adoptive mother; [2](#)[***]
- [3](#)[(ia) "guardian" means a person having the care of the person of a child or of both his person and property and includes-
 - (a) a guardian appointed by the will of the child's father or mother; and
 - (b) a guardian appointed or declared by a court: and]
 - (ii) "court" means the city civil court or a district court within the local limits of whose jurisdiction the child to be adopted ordinarily resides.

10 Persons who may be adopted

No person shall be capable of being taken in adoption unless the following conditions are fulfilled, namely:-

- (i) he or she is Hindu;
- (ii) he or she has not already been adopted;
- (iii) he or she has not been married, unless there is a custom or usage applicable to the parties which permits persons who are married being taken in adoption;
- (iv) he or she has not completed the age of fifteen years, unless there is a custom or usage applicable to the parties which permits persons who have completed the age of fifteen years being taken in adoption.

11 Other conditions for a valid adoption

In every adoption, the following conditions must be complied with:

- (i) if the adoption is of a son, the adoptive father or mother by whom adoption is made must not have a Hindu son, son's son or son's son's son (whether by legitimate blood relationship or by adoption) living at the time of adoption;
- (ii) if the adoption is of a daughter, the adoptive father or mother by whom the adoption is made must not have a Hindu daughter or son's daughter (whether by legitimate blood relationship or by adoption) living at the time of adoption;
- (iii) if the adoption is by a male and the person to be adopted is a female, the adoptive father is at least twenty one years older than the person to be adopted;

(iv) if the adoption is by a female and the person to be adopted is a male, the adoptive mother is at least twenty-one years older than the person to be adopted;

(v) the same child may not be adopted simultaneously by two or more person;

(vi) the child to be adopted must be actually given and taken in adoption by the parents or guardian concerned or under their authority with intent to transfer the child from the family of its birth [1](#)[or in case of an abandoned child or child whose parentage is not known, from the place or family where it has been brought up] to the family of its adoption:

PROVIDED that the performance of datta homam shall not be essential to the validity of adoption.

8. Procedural part regarding first appeal is provided in the Order 41 of the Code.

9. A perusal of the judgment and decree dated 30.10.2012, it appears that the trial Court had disposed of the Civil Suit pending for declaration. After perusal of the memorandum of appeal, it appears that the first appeal has been preferred under the relevant provision of Section 96 of the Code. On entire perusal of the Order 43 of the Code, this Court fails to understand as to why the so filed first appeal was registered as misc. civil appeal which is patently illegal on the face of the record. The appellate court ought to have registered the same as regular appeal under the provisions of Section 96 read with Order 41 of the Code.

10. So far as the mandatory provisions of the Act 1956 are concerned, the trial Court elaborately appreciated the mandatory provision of Sections 9 and 10 of the Act 1956 and held that as the provisions of Sections 9 & 10 of the Act 1956 were not complied with whereby father or mother or guardian of the child are the only person capable give adoption and in the present

case nothing is shown that they permitted and agreed for such adoption. Moreover as both the of the plaintiffs were above the age of 15 years, the entire provisions of Section 10 of the Act 1956 has been violated. The Lok Adalat cannot pass award contrary to the provisions of law. There is nothing to show in the order dated 20.01.2013 as to how the Lok Adalat despite the aforementioned mandatory provisions overlooked and passed the award. Since this Court under the provisions of Article 227 of the Constitution having jurisdiction to superintendence over the Court subordinate cannot keep quite if any illegality committed by the subordinate Court is visible from the face of the record. The case law cited on behalf of the respondents is not applicable as it was on different facts. In the present petition, this Court is of the considered view that as the said Lok Adalat committed illegality while passing impugned order which is against the mandatory provision of law and though as per Section 21 of the Act 1987 award of Lok Adalat is final and binding on all the parties to the dispute and no appeal shall lie on any courts against the award, this Court for the moment is hearing the matter under the authority of Article 227 of the Constitution and this article certainly gives ample authority to this Court to correct any illegality committed by the subordinate Court on the face of the record. In the considered view of this Court, the case law cited on behalf of the respondents is not of any help to the respondents.

11. So far as the locus of the present petitioner is concerned, he was not a party before the trial Court and also before the appellate Court. He has not filed the instant petition as public interest litigation, he is the brother of respondent No.3 and being the real brother interest in the property of any nature may be involved. Even for the sake of arguments, if no any question of division of ancestral property is involved as the petitioner is approached to this Court, drawn attention of this Court for the wrong committed the subordinate court, this Court should be in favour of the petitioner as he is cooperating with the proper judicial functioning of a subordinate Court. In the considered view of this Court, though directly the petitioner has no locus, there is remote and some circumstances regarding any interest in any sort of property of ancestral and also this Court has jurisdiction to correct any wrong committed by the Court below, the instant petition is maintainable on the above two corners.

12. To part with, it is proved and shown before this Court that the impugned order dated 20.01.2013 is illegal, bad in law without any authority as granted under the provisions of law and the same cannot be allowed to be continued.

13. Consequently, the instant writ petition under Article 227 of the Constitution is hereby allowed. Impugned order dated 20.01.2013 passed by the Lok Adalat in Misc Civil Appeal No.09/12 is hereby quashed. The appellate Court is directed to restore the said matter and register the same as a regular first

appeal under the provisions of Section 96 read with Order 41 of the Code and to dispose of the matter in accordance with law after providing notice to the parties concerned as per the provisions of law. The petitioner may pray before the appellate Court for impleading him as a party, if he so advised. If any such application is filed, the same may be disposed of in accordance with law.

14. The Registrar General is directed to circular a copy of this Court to all the Subordinate Court working in the State for future guidance. The Registrar General is further directed to transmit a copy of the order to the then Additional District Judge/presiding Officer, Lok Adalat if he is still in service for not to repeat this glaring mistake again in rest of his career. The parties may file a copy of the order before the appellate Court for compliance and for further proceedings after registration of the same as regular first appeal and to proceed in accordance with law.

15. Registrar (Judl.) is directed to transmit a copy of this order to the Court below i.e. Additional District Judge, Katghora. Distt. Korba (CG) as per distribution memo prevailing for compliance and further proceedings in the matter.

Certified copy as per rules.

Sd/-
(Chandra Bhushan Bajpai)
JUDGE