

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (227) No. 486 of 2016**

In Reference of Court on its own Motion Asha Ram S/o Bhookhsai, Aged About 65 Years R/o Village Krantiprakashpur, Thana and Tahsil Ambikapur, District Surguja, (Chhattisgarh)

---- Petitioner**Versus**

1. State of Chhattisgarh Through Collector, Surguja, District Surguja at Ambikapur (Chhattisgarh)
2. Advocate Anul Abedin, R/o District and Sessions Court, Ambikapur, District Surguja, (Chhattisgarh)
3. Smt. Anishun Nisha, Wd/o Samashuddin Aabedin, Occupation Housewife, R/o Near Gaddipara School, Thana and Tahsil Ambikapur, District Surguja, (Chhattisgarh)
4. Smt. Thuraki, D/o Kabra, Aged About 75 Years Caste Turiya (Basod), R/o Krantiprakashpur, E Thana and Tahsil Ambikapur, District Surguja, (Chhattisgarh)
5. Thunu, S/o Kabra, Aged About 70 Years Caste Turiya (Basod), R/o Krantiprakashpur, E Thana and Tahsil Ambikapur, District Surguja, (Chhattisgarh)

Respondents

For Petitioner	:	None
For Amicus Curiae	:	Shri Abhishek Sinha, Advocate
For State/Respondent No.1	:	Ms. Madhunisha Singh, Panel Lawyer
For Respondents 2 and 3	:	Dr. N.K. Shukla, Senior Advocate with Shri Manoj Paranjpe, Advocate
For Respondents 4 and 5	:	None

Hon'ble Shri Deepak Gupta, Chief Justice**Order on Board****21/10/2016**

1. This petition under Article 227 of the Constitution of India was registered on the basis of a letter written to me by one Shri Asha Ram. On 12.8.2016 the following order was passed by this Court:-

“A letter was received by me on the administrative side from one Shri Asha Ram. In this letter, a complaint has been made that Shri Anul Abedin, Advocate, District and Sessions Court, Ambikapur, District Surguja has misrepresented certain facts before the Lok-Adalat and on the basis of misrepresentation of the facts a decree has been obtained by him in favour of his mother Smt. Anishun Nisha.

A report was called for from the District Judge concerned and records of the case were called for.

From the records, it appears that Civil Suit No.26-A of 2008 was filed by one Smt. Thurki aged about 75 years for injunction and possession over the land of Late Bhuksai. Claim of Defendant/Complainant Asha Ram is that Bhuksai was issue-less and adopted him as his son and had registered the said land in his favour. Therefore, the contest was between Smt. Thurki and Asha Ram.

On 2.10.2011, a Mega Lok-Adalat was held in the premises of the District and Sessions Court, Ambikapur in which no Counsel appeared for Smt. Thurki. Asha Ram appeared along with his Counsel Shri Anul Abedin, Advocate and a written complaint was filed before the Lok-Adalat. Surprisingly, even though Counsel for Smt. Thurki was not present, both the parties were identified by Shri Anul Abedin, Advocate. Even more surprising is the fact that in this compromise application and statement, it has been recorded that deceased Bhuksai had sold the land to Smt. Anishun Nisha, who was not even a party to the suit. According to Complainant Asha Ram, his Lawyer has got his signatures on a document without explaining what it was and as per the complaint Smt. Anishun Nisha is the mother of Shri Anul Abedin, Advocate.

Prima facie, it appears that the decree has been obtained by fraud. When Smt. Anishun Nisha was not even a party to the suit, how could a decree be passed in her favour. On the basis of this decree, Smt. Anishun Nisha has applied before the Tahsildar, Ambikapur for recording her name in the revenue records.

I am of the view that this is a case which should be dealt with in exercise of power under Article 227 of the Constitution of India. Therefore, I summoned the record of the civil suit disposed of by the Lok-Adalat. The record of the civil suit is now available.

Notice be issued to all the five Respondents herein including both the parties to the decree.

The notice to Respondents Shri Anul Abedin, Advocate and Smt. Anishun Nisha, who is stated to be the mother of Shri Anul Abedin, Advocate be issued to show cause why the judgment and decree passed by the Lok-Adalat be not set aside and why a criminal proceeding be not initiated against them.”

2. Now reply has been filed by Respondents 2 and 3 and in reply, it is stated that Bhooksai, predecessor in interest of complainant Asha Ram had sold the property comprising Khasra No. 420 measuring 0.206 hectare in favour

of Anishun Nisha (Respondent No.3 herein) vide registered sale-deed dated 8.3.1976. It is also claimed that in other proceedings before the Revenue Court Complainant Asha Ram claimed title of property of deceased Bhookhsai on the basis of adoption deed/will but he did not claim any title over property comprised in Khasra No. 420. It is however not denied that Smt. Thuraki and Thunu had filed a suit against Asha Ram for declaration claiming title over all the properties of Bhookhsai including Khasra No. 420. This suit was initially registered as Civil Suit No. 148A/2006 and thereafter as Civil Suit No. 26-A of 2008. In this suit, Shri Anul Abedin, Advocate practicing at Ambikapur put in appearance on behalf and in his written statement, it was mentioned that Asha Ram is owner of all the properties of Bhookhsai except Khasra No. 420. In para-12 of the written statement filed by Complainant Asha Ram, it is allegedly stated that he is in possession of all these lands except Khasra No. 420. As far as ownership is concerned, the written statement is ambivalent and could be interpreted both ways. What is indeed surprising is that Shri Anul Abedin appeared as counsel for Asha Ram knowing fully well that his mother was claiming to be owner of land comprising Khasra No. 420. Asha Ram is an illiterate person and written statement has been prepared by his counsel and I am clearly of the view that it was the duty of the counsel to inform Asha Ram that Smt. Anishun Nisha is his mother and that he could not appear in the case because there would be a conflict of interest. Even if there would be no conflict of interest assuming that Asha Ram did not deny the title of Respondent No.3, there would be conflict of interest at least with the plaintiffs. What is even more shocking is that the counsel did not even think it proper to bring to the notice of the Court that his mother is the owner of Khasra No. 420.

3. In view of the order which I propose to pass, I do not want to say much more on the matter but the conduct of the counsel leaves much to be desired. A counsel is an officer of the Court and his duty lies not only to the client but also to the Court. If there is any chance of any conflict of interest then it is the duty of the counsel not only to inform the party but also the Court about this. A counsel cannot play hide and seek with the Court. If the counsel, who is respondent No.2 in this case, had been fair to the Court, he should have informed the Court that his mother claims to be the owner of Khasra No. 420 and in that eventuality his mother should have been impleaded as a party because the land comprising Khasra No. 420 was definitely subject matter of dispute in the civil suit. A counsel could not have two roles, one as son and one as counsel appearing for one of the parties.
4. This Court is not going into the merits of the allegations. This Court is only concerned with the manner in which the case has been conducted. Asha Ram is virtually an illiterate person. He cannot read and write. This Court can also take judicial notice of the fact that in India most litigants sign whatever documents their counsel ask them to sign. That may or may not have happened but there is a doubt cast with regard to manner in which Advocate Anul Abedin has conducted the case. If he had been fair to the Court, at least he should have informed the Court that his mother claims title over Khasra No. 420. This was done only at the stage when the matter was taken to Lok Adalat, but even at that time, the Lok Adalat was not informed that Respondent No.3 is mother of the counsel.
5. In this view of the matter, I am clearly of the view that the complainant Asha Ram has been deprived of proper legal assistance. The manner in which the Lok Adalat has passed the order is also totally illegal. Two

opposite parties cannot be permitted to be identified by the counsel for the other side. Plaintiffs Thuraki and Thunu, who are also illiterate persons, were identified before the Lok Adalat by Anul Abedin, who was counsel of Asha Ram. Lok Adalats are not to be conducted only to dispose of the case, but it must be ensured that justice is also done. In case, there are minors, uneducated persons or disabled persons, greater duty is cast upon the Lok Adalats to ensure that not only the case is disposed of but before disposing of the case it is ensured that the parties are aware about what is happening. Another shocking aspect is that virtually Respondent No.3 was held to be owner of Khasra No. 420 without any decision being given in this regard. The Lok Adalat totally exceeded its jurisdiction in virtually making/passing decree in favour of a person who was not a party.

6. In view of the above discussion, I am clearly of the view that the judgment and decree passed by the Lok Adalat is totally illegal and, therefore, in exercise of powers vested in this Court under Article 227 of the Constitution, the same is set aside. Not only the judgment and decree is set aside, but also all the entire proceedings from the stage of filing of written statement by Asha Ram, recording of evidence, if any, are held to be null and void and *non est*. The case is remanded to the trial Court. Since Asha Ram was being represented by Advocate Anul Abedin, who had no business of representing Asha Ram legally, ethically, or morally, it is further ordered that the learned trial Court shall permit Asha Ram to file fresh written statement without even asking him to amend the written statement because the written statement earlier filed is virtually *non est* and thereafter the matter shall be contested and decided on merits. Respondent No. 3, if she so desires, may get herself impleaded in the suit

since she is aware that both the plaintiffs and Asha Ram claim title over the land bearing Khasra No. 420.

7. After the case is remanded, it is directed that the trial Court shall ensure that notices are issued to the parties and in case Asha Ram so desires, he shall be granted proper legal assistance by appointing a Legal Aid counsel. The trial Court shall ensure that a competent Senior Counsel practicing in Ambikapur having practice of not less than 20 years on the civil side is requested to appear for Asha Ram and conduct the case on his behalf. As far as Advocate Anul Abedin is concerned, he has appeared before this Court in person and tendered unqualified apology. Therefore, I have been persuaded by learned Senior Counsel Shri Shukla not to take any further action against him. This Court places on record appreciation for valuable assistance rendered by Shri Abhishek Sinha, Advocate as Amicus Curaie. The writ petition is disposed of in the aforesaid terms.

Sd/-

(Deepak Gupta)
CHIEF JUSTICE