

THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

APPEAL SUIT No. 303 of 2011

JUDGMENT: (*Per ASN,J*)

The present appeal is preferred by the plaintiff against the order, dated 04.05.2011, in C.F.R.No.3497 of 2011 in an

un-numbered original suit of 2011 passed by the Additional District Judge-cum-Judge, Family Court, Guntur, rejecting the plaint of the plaintiff under Order VII Rule 11 of the Civil Procedure Code, 1908.

2. The plaintiff filed the suit seeking a declaratory relief that the award passed by the Lok Adalat, dated 01.05.2007, in O.S.No.2116 of 2006 on the file of the II Additional Junior Civil Judge, Guntur, is vitiated by fraud and collusion and does not bind to the extent of her 1/3rd share in the plaint 'A' schedule property, and for a consequential permanent injunction restraining the defendants from executing the award of the Lok Adalat. It is also prayed that the property be divided into three equal shares among the defendants 2 and 3 and the plaintiff and allot one such share to the plaintiff and put her in physical possession thereof and for ascertainment of mesne profits.

3. The Court below, placing reliance on a decision of the Division Bench of this Court in ***Batchu Subbalakshmi and others Vs. Sannidhi Srinivasulu and others***^[1], rejected the plaint holding that once an award was passed and settlement was arrived at between the parties duly signed by them, it binds the parties to the settlement and if any party wants to challenge such an award, the recourse is to file a writ petition under Articles 226 and 227 of the Constitution of India on very limited grounds.

4. Heard Sri Raja Reddy Koneti, learned counsel for the appellant/plaintiff, and Sri G. Pedda Babu, learned counsel for the respondents/defendants.

5. Learned counsel for the appellant would submit that in A.S.No.968 of 2013, considering the decision in ***Batchu Subbalakshmi (supra)*** a Division Bench of this Court held 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. But, the Court below took a view that the only remedy available to the plaintiff is to file a writ petition, but not a separate suit for redressal of her grievance.

6. We would like to refer briefly, what transpired before

filing of the plaint by the plaintiff in C.F.R.No.3497 of 2011 on 29.04.2011, that originally, the plaint in O.S.No.2116 of 2006 was presented on 23.10.2006. During pendency of the said suit, the matter was referred to Lok Adalat for settlement and an award was passed on 01.05.2007, which reads thus:

“The plaintiffs agreed to execute a registered relinquishment deed in favour of the defendants 2 to 4 in respect of the plaint schedule property either after obtaining the permission from the Hon’ble Court on behalf of the minor 3rd plaintiff or after attaining majority of the 3rd plaintiff. The defendants 2 to 4 paid an amount of Rs.500,000/- (Rupees five lakhs only) to the plaintiffs and their father 1st defendant today i.e., 27.04.2007 before the Hon’ble Judge and also agreed to pay Rs.600,000/- (Rupees six lakhs only) with interest @ 8% p.a. to the plaintiffs before the Sub-Registrar at the time of execution of the above said relinquishment deed. The defendants 2 to 4 also agreed to execute the sale deed in favour of the plaintiffs and 1st defendant in respect of the property in D.No.437 of an extent of 148 sq.yards of site bounded by East:School, South:B.Subbarao and joint gally, West:K.Nageswara Rao, North:K.Veeraiah situated at Sitaram Nagar, Guntur, at the same time of execution of the above said relinquishment deed.

If any of either party failed to perform their above said obligation, the other party is having a right to file execution basing on the award. Award is passed accordingly in terms of compromise. Issue certificate for refund of court fee.”

7. The terms of the award would show that the appellant

herein was the 3rd plaintiff in O.S.No.2116 of 2006 and she was 17 years old as on the date of passing of the award. In fact, the parties intended to enter into a compromise. It appears that during her minority, the conditions mentioned in the award were not enforced. Subsequently, when an execution petition was filed in O.S.No.2116 of 2006, the suit in C.F.R.No.3497 of 2011 was filed by the 3rd plaintiff in O.S.No.2116 of 2006 as sole plaintiff seeking the aforesaid reliefs which the Court below has rejected. In fact, the plaint was presented by the appellant/plaintiff within three years from the date of her attaining majority. Thus, the suit was within limitation. Further, under Order XXXII Rule 7 of CPC, the compromise entered into under the award is voidable. Therefore, the Court below ought to have looked at the relevant statutory provisions and ought to have registered the suit and by giving opportunity to both sides proceed further.

8. Thus, the decree passed by the Court below is hereby set aside and the appeal is allowed. The Court below shall number the suit and proceed further, in accordance with law, uninfluenced by any of the observations made in the above.

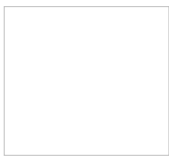
Consequently, miscellaneous petitions if any pending in the appeal suit shall stand dismissed. There shall be no

order as to costs.

V. RAMASUBRAMANIAN, J

**A. SHANKAR
NARAYANA, J.**

4th July, 2016
cbs



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[\[1\]](#) 2010(1) ALD 277 (DB)