

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

FA No. 212 of 2017

(Arising out of judgment/order dated 20.02.2017 in Civil Suit No.09A/2013 of the learned 2nd Additional District Judge, Janjgir-Champa)

- Firatram Sahu S/o Ramsai Sahu, Aged About 64 Years, Kastakar, R/o Kashigarh, Tahsil Jaijaipur, District Janjgir-Champa, Chhattisgarh(Plaintiff)

---- Petitioner

Versus

1. Ashok Kumar Sahu, S/o Shyamlal Sahu, Aged About 45 Years, R/o Adhbar, Tahsil Malkharoda, District Janjgir-Champa, Chhattisgarh
2. Heeralal Sahu, S/o Ramsai Sahu, Aged About 50 Years, Kastkar, R/o Kashigarh, Tahsil Jaijaipur, District Janjgir-Champa, Chhattisgarh
3. Divisional Forest Officer, Janjgir Champa, Forest Division, Jagdalla, Champa, Tahsil Champa, District Janjgir-Champa, Chhattisgarh(Defendants)

---- Respondents

For Appellant Shri Anand Shukla, Advocate

For Respondent No.1 Shri Siddharth Dubey, Advocate

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board

06/10/2017

1. The appellant/plaintiff is aggrieved by the impugned judgment and decree, whereby the trial Court has dismissed his suit for declaration that the compromise decree passed by the

continuous Lok Adalat on 17.03.2007 is null and void as also for declaring the sale transaction dated 24.04.1998 and *Haqnama* dated 07.03.2003 as null and void.

2. Although, the suit has been dismissed after a full blown trial, yet I would not enter into merits of the matter, because in view of the recent law laid down by the Supreme Court in the matter of **Bhargavi Construction and Anr. Vs Kothakapu Muthyam Reddy & Ors** in Civil Appeal No.11345/2017, decided on 07.09.2017, challenge to the award of Lok Adalat can be done only by filing a writ petition under Article 226 and/or 227 of the Constitution of India in the High Court and that too on very limited grounds.

3. The Supreme Court has held thus in paragraphs 27 to 29 and 39 to 41:-

“27. In our considered view, the aforesaid law laid down by this Court is binding on all the Courts in the country by virtue of mandate of Article 141 of the Constitution. This Court, in no uncertain terms, has laid down that challenge to the award of Lok Adalat can be done only by filing a writ petition under Article 226 and/or Article 227 of the Constitution of India in the High Court and that too on very limited grounds.

28. In the light of clear pronouncement of the law by this Court, we are of the opinion that the only remedy available to the aggrieved person(respondents herein/plaintiffs) was to file a writ petition under Article 226 and/or 227 of the Constitution of India in the High Court for challenging the award dated 22.08.2007 passed by the Lok Adalat. It was then for the writ Court to decide as to whether any ground was made out by the writ petitioners for quashing the award and, if so, whether those grounds are sufficient for its quashing.

29. The High Court was, therefore, not right in by passing the law laid down by this Court on the ground that the suit can be filed to challenge the award, if the challenge is founded on the allegations of fraud. In our opinion, it was not correct approach of the High Court to deal with the issue in question to which we do not concur.
 39. As a result, the appeal succeeds and is allowed. Impugned order is set aside and that of the order passed by the Trial Court is restored. As a consequence, the application filed by the appellants (defendants) under Order 7 Rule 11 (d) of the Code is allowed resulting in rejection of the plaint.
 40. We, however, make it clear that the respondents (plaintiffs) would be at liberty to challenge the legality and correctness of the award dated 22.08.2007 passed by the Lok Adalat by filing the writ petition under Article 226 or/and 227 of the Constitution in the High Court in accordance with law.
 41. We also make it clear that we have not examined the merits of case of either parties which is the subject matter of the suit and hence the writ court, in the event of writ petition being filed, would decide the writ petition strictly in accordance with law without being influenced by any of our observations.”
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4. In view of the above, since I am inclined to relegate the appellant to prefer a writ petition instead of allowing him to pursue the first appeal, in which eventually a decree will be passed in terms of the judgment rendered by the Supreme Court in **Bhargavi Construction** (supra), the merit of the matter is not discussed, as it may affect the case of one or the other party before the writ Court.
 5. Accordingly, the first appeal is dismissed for the reason that the suit to challenge the decree passed by the Lok Adalat is not

maintainable, the first appeal is also not maintainable. The appellant would be at liberty to move a duly constituted writ petition under Article 226 and/or 227 of the Constitution of India.

6. On the request of the learned counsel for the appellant, certified copy of the impugned judgment be returned to him after retaining the photocopy of the same.

Sd/-

Judge

Prashant Kumar Mishra

Nirala