

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 7309 OF 2016

Smt. Tulsabai wd/o Ramchandra Chavan
age 80 years, occ. agril & household
r/o 12, Naik Nagar, Shriram Colony
At Post Sailu, Dist. Parbhani

Petitioner

Versus

1. State of Maharashtra
2. Tahsildar
Sailu, Dist. Parbhani
3. Maroti s/o Ramchandra Chavan
age 48 years, occ. agril
r/o Shriram Colony, Sailu
Dist. Parbhani

Respondents

Mr. A.U. Deshmukh, advocate for petitioner.

Mr. C.S. Kulkarni, A.G.P. for respondents 1 and 2.

Mr. S.N. Udhan, advocate holding for Mr. V.D. Salunke, advocate
for respondent no. 3.

CORAM : R.M.BORDE &

K.K. SONAWANE, JJ.

DATE : 7th MARCH, 2018

ORAL JUDGMENT : (PER R. M. BORDE, J.)

1. Rule. Rule made returnable forthwith.
2. Heard finally with the consent of learned counsel for the respective parties.
3. Petitioner, who is the mother of respondent no. 3, is praying for quashment of the decree passed in Lok Adalat on 10.10.2015 by

the Civil Judge, Junior Division & Panal Judge in Regular Civil Suit No. 90/2015.

4. Respondent no.3, who is the son of petitioner, presented suit bearing Regular Civil Suit No. 90/2015 against petitioner claiming declaration in respect of agricultural land admeasuring 1 H 17 R out of gat no. 79. Respondent no. 3 has prayed for issuance of declaration that he is the owner and possessor of the aforesaid property. It is the contention of respondent no.3 in the suit that the suit property belongs to plaintiff and defendant and other brothers. Though there is partition in respect of other properties, the suit property is still mutated in the name of petitioner herein. It is further contended that in the partition effected earlier, the suit property had fallen to the share of plaintiff-respondent no. 3 herein. However, the same remains to be recorded in the name of petitioner herein. Plaintiff-respondent no. 3 herein claims that he had requested the petitioner herein to recognise his rights in relation to the aforesaid property however, she refused to do so and as such he was compelled to present a suit.

5. The suit has been presented by respondent no. 3 - original plaintiff on 06.10.2015. It was registered on the aforesaid date. On perusal of record, it transpires that the trial Court directed issuance of suit summons on the same day i.e. 06.10.2015. The suit summons were made returnable on 06.11.2015. It further appears from record that defendant and plaintiff *suo motu* appeared before the Lok Adalat on 10.10.2015. The draft of compromise was presented which, according to the original plaintiff - respondent no.3 herein, was duly signed by both the

parties and was duly verified. The learned Judge, on being satisfied as regards the correctness of the contents of the compromise, passed decree in the matter in terms of compromise on 10.10.2015. The original defendant - petitioner herein has approached this Court contending that she has been cheated by her advocate as well as respondent no. 3 - original plaintiff and the panel members were mis-represented.

6. According to petitioner, she was not readover the contents of the suit or the compromise terms and her thumb impression was obtained outside the Court. It is her contention that she never admitted correctness of the contents of compromise deed before the Court or Lok Adalat. Petitioner further contends that though respondent no. 3 is her son, he has criminal antecedent and is not keeping harmonious relations with her or other family members. It is the contention of petitioner that respondent no. 3 - original plaintiff was served with externment order issued by the Sub-Divisional Officer, Selu, on 06.12.2001, prohibiting from entering the limits of two districts. However, the externment order was later on set aside by the State Government. Petitioner contends that she has also tendered a complaint to the Superintendent of Police alleging harassment, mental torture and physical assault and threats of murder at the hands of respondent no. 3. Petitioner had sought police protection. Petitioner further contends that compromise entered into before the Lok Adalat is not as per her free will nor the procedure contemplated in the Legal Service Authority Act, 1987 has been followed. Petitioner as such prays for quashment of the settlement reached before the Lok Adalat and consequential decree passed in Regular Civil Suit No. 90/2015.

7. Petitioner had earlier presented a suit praying for setting aside the decree passed by the Lok Adalat. However, since it was noticed that the suit is not entertainable, the same has been withdrawn. In this context, the judgment of the Hon'ble Supreme Court in the matter of **State of Punjab and others Vs. Jalour Singh & others** reported in (2008)2 SCC 660 needs to be referred. The Hon'ble Supreme Court has observed in aforesaid judgment that where an award is made by the Lok Adalat in terms of a settlement arrived at between the parties (which is duly signed by parties and annexed to the award of the Lok Adalat), it becomes final and binding on the parties to the settlement and becomes executable as if it is a decree of a civil court, and no appeal lies against it to any court. If any party wants to challenge such an award based on settlement, it can be done only by filing a petition under Article 226 and/or Article 227 of the Constitution, that too on very limited grounds. Said view has been reiterated in the judgment of the Hon'ble Supreme Court in the matter of **Bharvagi Constructions and others Vs. Kothakapu Muthyam Reddy and others** reported in AIR 2017 SC 4428.

8. The compromise to be recorded before the Lok Adalat and the consequential decree shall have to be drawn in exercise of the procedure prescribed under Legal Services Authorities Act, 1987. In the matter of **B.P. Moideen Segvamandir and another Vs. A.M. Kutty Hassan** reported in (2009) 2 Supreme Court Cases 198 the Hon'ble Supreme Court has clarified as regards the duty of the Court with reference to Lok Adalats. In paragraph no. 15 of the judgment it is observed thus :

15. We may now turn to the role of courts with reference to Lok Adalats. Lok Adalat is an alternative dispute resolution mechanism. Having regard to Section 89 of the Code of Civil Procedure, it is the duty of court to ensure that parties have recourse to the alternative dispute resolution (for short "ADR") processes and to encourage litigants to settle their disputes in an amicable manner. But there should be no pressure, force, coercion or threat to the litigants to settle disputes against their wishes. Judges also require some training in selecting and referring cases to Lok Adalats or other ADR processes.

9. Section 19(1) of the Legal Services Authorities Act, 1987 provides 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, Taluk 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. Sub-section (5) of section 19 provides that a Lok Adalat shall have jurisdiction to determine and to arrive at a compromise or 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. Proviso to sub-section (5) provides that the Lok Adalat shall have no jurisdiction in respect of any case or matter relating to an offence not compoundable under any law. Section 20 of the Act relates to cognizance of cases by Lok Adalats. Sub-section (1) of section 20 provides thus :

20. Cognizance of cases by Lok Adalats -

(1) Where in any case referred to in clause (i) of sub-section (5) of section 19, -

(i) (a) the parties thereof agree; or
(b) one of the parties thereof makes an application to the Court, for referring the case to the Lok Adalat for settlement and if such Court is prima facie satisfied that there are chances of such settlement; or

(ii) the Court is satisfied that the matter is an appropriate one to be taken cognizance of by the Lok Adalat, the Court shall refer the case to the Lok Adalat:

Provided that no case shall be referred to the Lok Adalat under sub-clause (b) of clause (i) or clause (ii) by such Court except after giving a reasonable opportunity of being heard to the parties.

10. On reading section 20(1) of the Act, the essentials for making reference to Lok Adalat are i) agreement of the parties or one of the parties and ii) making an application to the Court for referring the case to Lok Adalat for settlement and prima facie satisfaction of the Court that there are chances of such settlement. The Court shall refer the case to Lok Adalat only after the Court prima facie satisfies that the matter is appropriate one to be taken cognizance of by the Lok Adalat. In the instant matter, on perusal of the record it does not appear that firstly there was any request made by both the parties or any of the parties by tendering an application to the Court to place the matter before Lok Adalat for settlement. There also does not appear any material to indicate that the Court was satisfied that there are chances of settlement of the matter. There is also no order passed by the Court directing

reference of the case for consideration of the Lok Adalat. Thus, all the essential ingredients for making reference of the matter to Lok Adalat are absent.

11. In the instant matter, it does appear that respondent no. 3 who is the son of petitioner, presented suit claiming declaration that he is the owner and possessor of the suit property. Suit was presented on 06.10.2015. The Court proceeded to register the suit on the same day and directed issuance of suit summons returnable on 06.11.2015. It also further appears that the defendant - petitioner herein was brought before the Court on 10.10.2015 i.e. within four days from the date of registration of the suit. The terms of settlement appears to have been tendered directly before the Lok Adalat. On perusal of the order passed by the trial Court below Exh. 1 on 10.10.2015, it appears that plaintiff and defendant alongwith their respective counsel were present before the Lok Adalat. They filed compromise deed Exh. 13, docket sheet Exh. 14 and compromise memo exh. 15 and submitted that the case is settled in terms of compromise deed Exh. 13 in between them and that they do not want to proceed with the suit further. It is further recorded that the Court has readover the contents of the compromise deed Exh. 13 to both the parties and they have admitted the same and as such the suit is disposed of accordingly. It would be interesting to read what are the terms of settlement arrived at between the parties. Plaintiff appears to have admitted ownership and possession of defendant over land admeasuring 1 H 79 R out of gat no. 79. The whole claim raised by plaintiff appears to have been admitted by defendant. While recording verification, the learned Civil Judge, who was the presiding over as the Member

of Lok Adalat has recorded that "defendant admits that defendant has share of 1H 70 R in gat no. 79 situate at village Pimpari". The terms of compromise appear to have been signed by both the parties and their respective counsel. The terms of compromise do not stipulate that the defendant has admitted ownership and possession of plaintiff over the suit land however, there is reference to defendant in that regard also. A reasonable inference therefore shall have to be drawn that neither the Court nor the parties have applied their mind and the settlement was got hurriedly executed in hasty manner.

12. Since we have recorded finding that there is no observance of the mandatory procedure provided under section 20(1) of the Act, it may not be necessary to consider the truthfulness or otherwise of the allegations levelled by petitioner against respondent no. 3. The decree passed by the trial court consequent upon the settlement reached between the parties before the Lok Adalat is bad for multiple reasons i.e. i) There was no valid reference by the Court before the Lok Adalat; ii) Petitioner-original defendant alleges that the compromise is as a result of coercion and mis-representation; iii) the terms of compromise have also been incorrectly recorded; iv) it is provided in the terms of compromise that defendant has share of 1 H 70 R in the suit property. If the terms of compromise duly signed by both the parties are considered, the consequent decree passed upon the terms of settlement appears to be contradictory and bad in law.

13. For the reasons aforesaid, writ petition deserves to be allowed and the same is accordingly allowed. Decree passed in

Regular Civil Suit No. 90/2015 in furtherance of the alleged settlement before the Lok Adalat on 10.10.2015 is quashed and set aside. The trial Court shall proceed to decide the suit in accordance with provisions of law. Rule is accordingly made absolute. No costs.

K. K. SONAWANE
JUDGE

R.M.BORDE
JUDGE

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