



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 25.01.2018

DELIEVRED ON : 28.03.2018

CORAM:

THE HONOURABLE MRS.JUSTICE J. NISHA BANU

C.R.P (MD) No.90 of 2018 (NPD)

and

CMP (MD) .No.367 of 2018

S.Paulchamy

.. Petitioner/
Petitioner / 2nd defendant

Vs.

1.R.Rajendran
2.R.Mayakrishnan
3.R.Petchiammal
4.K.Mariselvi
5.R.Murugeswari
6.R.Maheswari

.. Respondents 1 to 6/
Respondents 1 to 6 / Plaintiffs

7.A.Rajaram

.. 7th respondent /
7th respondent / 1st defendant

PRAYER: Civil Revision Petition is filed under Section 115 of the Civil Procedure Code, praying to set aside the fair and decreetal order, dated 14.07.2017, passed in I.A.No.460 of 2015 in O.S.No.21 of 2014 by the learned District Munsif Court, Thirumangalam, dated 14.07.2017.

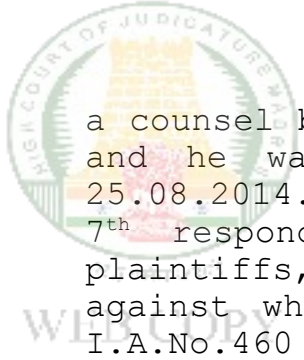
For petitioner

:Mr.R.Gowrishankar

ORDER

This civil revision petition has been filed by the 2nd defendant challenging the order, dated 14.07.2017, passed in I.A.No.460 of 2015 in O.S.No.21 of 2014.

2. The 7th respondent / 1st defendant is the father of the respondents 1 to 6 / plaintiffs. The respondents 1 to 6 herein / plaintiffs have filed the suit in O.S.No.21 of 2014 for partition of their ancestral properties and for declaration that the registered sale deed, dated 23.11.2012, executed by their father viz., 7th respondent / 1st defendant in favour of the revision petitioner / 2nd defendant in respect of the suit 1st item of the property as null and void. Though the revision petitioner entered appearance through



a counsel before the Court below, he did not file written statement and he was called absent and hence, he was set ex parte on 25.08.2014. Thereafter, on the basis of compromise memo filed by the 7th respondent / 1st defendant and the respondents 1 to 6 / plaintiffs, an award was passed in the Lok-adalath on 27.03.2015, against which the revision petitioner / 2nd defendant has filed I.A.No.460 of 2015 seeking to set aside the ex parte decree. The Court below has dismissed the said interlocutory application on the ground of maintainability. Aggrieved by the same, the revision petitioner has filed this revision petition.

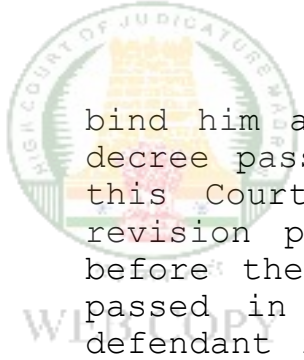
3. The learned counsel for the revision petitioner would submit that the revision petitioner is the bona fide purchaser of the 1st scheduled suit property from the 7th respondent / 1st defendant, who is the father of the other respondents 1 to 6 / plaintiffs and without his knowledge, the respondents 1 to 6 / plaintiffs and the 7th respondent / 1st defendant collusively created a compromise memo, dated 27.03.2015 and obtained an award before the Lok-Adalat held on 27.03.2015. Though in the compromise memo, it is stated that the 7th respondent herein has to cancel the sale deed execute in favour of the revision petitioner and the other respondents have to financially help for that, the respondents herein did not even approach the revision petitioner to repay the sale amount and cancel the sale deed and instead, they are misrepresenting as if they got decree on merit and disturbing the possession of the revision petitioner. Therefore, the revision petitioner has filed I.A.No.460 of 2015 before the Court below for setting aside the said ex parte decree. He would further submit that the Court below has erroneously dismissed the said application on the ground of maintainability and hence, the order impugned in this revision petition may be set aside and the said interim application may be allowed.

4. Heard the learned counsel for the revision petitioner and perused the records carefully.

5. The suit is filed for partition. The revision petitioner / 2nd defendant is stated to be purchased suit 1st item of the property from the 7th respondent / 1st defendant. But, the revision petitioner / 2nd defendant remained ex parte in the suit and not filed any written statement in the suit. While so, the respondents 1 to 6 / plaintiffs and the 7th respondent / 1st defendant settled the matter in the Lok-Adalath by filing a compromise memo, dated 27.03.2015 and obtained an award before the Lok-Adalat on 27.03.2015 itself. In respect of the other items of the suit properties, there is no dispute between the parties. If any party wants to challenge the order of Lok-adalath, it can be done only by filing a petition under Article 226 or 227 of the Constitution of India.

6. Though it is contended by the learned counsel for the revision petitioner that based on the collusive compromise memo, the order in the Lok-adalath has been passed and the said order does not

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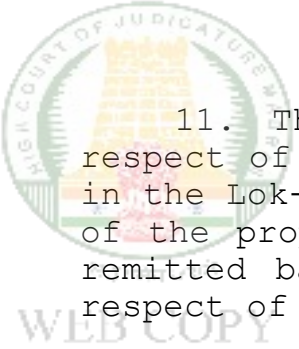
bind him as he did not sign in the same and therefore, ex parte decree passed against him has to be set aside by the Court below, this Court is of the view that having remained ex parte, the revision petitioner / 1st defendant now cannot question the same before the Court below. Rightly or wrongly, the decree has been passed in the Lok-Adalath and as the revision petitioner / 1st defendant remained ex parte, he ought to have directly challenged the said ex parte decree before this Court by filing a petition under Article 226 or 227 of the Constitution of India. The Court below has rightly rejected the application filed by the revision petitioner / 2nd defendant.

7. Though the revision petitioner / 2nd defendant has filed this revision petition questioning the order refusing to interfere with the ex parte decree passed by the Court below, considering the facts and circumstances of the case and to avoid further litigation, this Court exercising its discretionary power deals with this case as a revision filed under Article 227 of the Constitution of India challenging the said ex parte decree.

8. Considering the order to be passed in this petition and also considering the fact that even if notice will be served and respondents appeared in this petition, the ultimate result would be the order passed in this petition, this Court is of the view that notice need not be sent to the respondents.

9. The function of the Lok-Adalat is purely conciliatory role and not a judicial role. A Lok-adalat determines a reference on the basis of a compromise or settlement between the parties at its instance and puts its seal of confirmation by making an award in terms of the compromise or settlement. When it is stated that the terms recorded in the compromise memo, based on which the Lok-adalat order is passed, is violated or the order in the Lok-adalat is passed without the consent of necessary parties, such an order of the Lok-adalat has to be set aside and the matter is liable to be remanded to the concerned Court for adjudication.

10. In the case on hand, admittedly, in respect of the suit first item of the property, without the consent of the revision petitioner / 2nd defendant, who is the subsequent purchaser of the property, the compromise memo cannot be accepted and effected, though in the terms of compromise memo it is stated that the 7th respondent / 1st defendant herein has to cancel the sale deed executed in favour of the revision petitioner and for that, the other respondents herein have to financially help him. Now, it is stated by the revision petitioner / 2nd defendant that without taking any efforts as stated in the compromise memo, the respondents herein have threatened him to vacate the property under the guise of the decree passed in the Lok-adalat. It would go to show that the respondents have violated the terms of the settlement arrived in respect of the suit first item of the property.



11. Though the order passed in the Lok-adalat is valid in respect of the other items of the suit properties, the order passed in the Lok-adalat has to be set aside in respect of the suit 1st item of the property. Accordingly, it is set aside and the matter is remitted back to the file of the Court below for adjudication in respect of the suit 1st item of the property.

12. In the result, this civil revision petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-II)

/True copy/

Sub Assistant Registrar

To

1.The District Munsif, Thirumangalam.

2.The Record Keeper, **(2 COPIES)**

V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

+1CC TO M/S.R.GOWRISHANKAR, ADVOCATE, SR NO.58721

order made in
C.R.P (MD) No.90 of 2018
28.03.2018

gcb

MS/JC/SAR-1/12.04.2018/4P.5C