



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 23.10.2018

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

CRP (PD) (MD)No.608 of 2016

WEB COPY

- 1.P.Suyambu Anantham (died)
- 2.S.Arokeya Mery Bhanumathi
- 3.S.Ananth Premkumar
- 4.S.Aani Suhasini
- 5.S.Mala Kamaladevi
- 6.S.Rajan

...Petitioners

(Petitioners 2 to 6 are brought on record as Lrs of the the deceased sole petitioner vide Court order dated 11.08.2016 made in CMP(MD)Nos. 6284 & 6285 of 2016).

Vs.

- 1.Sadana Gnana Selvi
- 2.Chitra Devi
- 3.Joyal
- 4.Sigamani
- 5.Pavoul Raj
- 6.Lavanya
- 7.Manokaran
- 8.Kalaiselvi
- 9.Sathiya Seela
- 10.Saroja
- 11.Chandra
- 12.Vimala
- 13.Jones
- 14.Christy
- 15.Sophia

....Respondents 1 to 9/Plaintiffs

... Respondents 10 to 15/Defendants 1 to 6

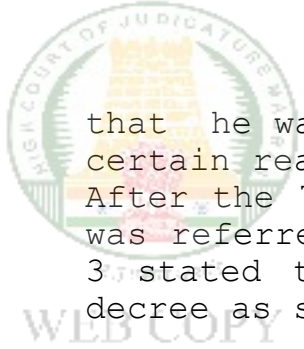
Prayer : Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order passed in Lok Adalat Case No.103 of 2015 in O.S No.201 of 2015 dated 12.09.2015 on the file of the Principal District Munsif Court, Valliyoor (Taluk Legal Services Committee, Valliyoor).

For Petitioners : Mr.H.Arumugam

For Respondents : Mr.S.Palani Velayutham for R1 to R9
No appearance for R10 to R15.

ORDER

O.S No.201 of 2015 on the file of the Principal District Munsif Court, Valliyoor was filed by the respondents 1 to 9 herein. It is a suit for partition. The original revision petitioner Suyambu Anandham was shown as the 7th defendant in the suit. His stand was



that he was the absolute owner of the suit property. But then, for certain reasons, he came to be set exparte. This was on 31.08.2015. After the 7th defendant Suyambu Anandham was set exparte, the matter was referred to Lok Adalat. In the Lok Adalat, the defendants 1 to 3 stated that they have no objection for passing a preliminary decree as sought for.

2. Thereafter, the seventh defendant moved the trial court for setting aside the order whereby he was set exparte. The trial court declined to do so. That necessitated the seventh defendant to file CRP (MD) No. 240 of 2016 before this Court. This Court gave a direction to the trial court for numbering the I.A and giving a disposal on merits and in accordance with law. But then, the court below has returned the I.A with an endorsement that it is not maintainable in the absence of a challenge to the Lok Adalat award. Therefore, the revision petitioner has now challenged the Lok Adalat award itself.

3. The real grievance of the revision petitioner is that he should be allowed to contest the suit on merits. The said request is reasonable and acceptable. As rightly contended by the learned counsel appearing for the revision petitioner, the suit itself was filed only on 29.07.2015. After receiving the suit summons, the original petitioner namely, Suyambu Anandham appeared before the court below on 28.08.2015. Since the presiding officer was on casual leave, the matter was not taken up. Therefore, Thiru. Suyambu Anandham returned. He was probably under the impression that he would receive one more invitation from the court. He omitted to engage a counsel through whom he could have filed Vakalat. Since he did not do so, when the matter was taken up for hearing on 31.08.2015, he came to be set exparte. The matter was referred to Lok Adalat on 12.09.2015.

4. On the said date, the plaintiffs and three of the defendants were present. The other four defendants including the seventh defendant Suyambu Anandham were not present. Admittedly, the suit is one for partition. Yet, based on the consent given by the defendants 1 to 3 for passing a preliminary decree as sought for, an award came to be passed by the Lok Adalat. The question that arises for consideration is whether the Lok Adalat could have passed an award of this nature even though all the parties to the dispute were not present before it.

5. Section 89 CPC provides for settlement of disputes outside the court. It reads as under :

89. Settlement of disputes outside the court.- (1)
Where it appears to the Court that there exist elements of a settlement which may be acceptable to the parties, the Court shall formulate the terms of settlement and give them to the parties for their observations and after receiving the observations of the parties, the Court may reformulate the terms of a possible settlement and refer



the same for (a) arbitration (b) conciliation (c) judicial settlement including settlement through Lok Adalat ; or (d) mediation.

It has been held that the duty to formulate the terms of settlement and giving them to the parties for their observation is mandatory. This is because, in Section 89(1), the expression "may" and "shall" have both been employed. It has been held that the expression "shall" will have to be construed as mandatory in this case. If there is more than one defendant, the court is obliged to formulate the terms of the settlement and pass on the same to all the defendants for their observations. I hold that the expression "parties" will have to be given its literal meaning. In other words, all the parties to the dispute will have to be taken into confidence. Since Section 89 is all about compromise and amicable resolution of the dispute outside the court. In the very nature of things, the expression "parties" would include even those who have been set exparte.

6. Likewise, before the Lok Adalat also all the parties to the dispute will have to be present. Section 20(1) of the Legal Services Authorities Act, 1987 is in two parts. Case can be referred to Lok Adalat and taken cognizance of by the Lok Adalat under two circumstances. The first is where the parties themselves agree. If one of the parties apply to the court for referring the case to the Lok Adalat for settlement and if the court is prima facie satisfied that there are chances of such settlement, reference can be made. This reference is made at the instance of all the parties or some of the parties. The second circumstance for making reference is when the court is satisfied that the matter is an appropriate one to be taken cognizance of by the Lok Adalat. But, in such a case the reference can be made only after giving a reasonable opportunity of being heard to the parties.

7. Section 21 of the Legal Services Authorities Act, 1987 states that every award made by the Lok Adalat shall be final and binding on all the parties to the dispute. In order to encourage such kind of court settlements, an incentive is also provided under Section 21(1) of the Act. Where the reference is successful, the court fee paid in such a case shall also be refunded in the manner provided under the Court Fees Act.

8. Now, let us envisage a situation. "A" makes a money claim against "B" and "C". "C" remains exparte. In view of pendency of the case, no exparte decree is passed against "C". At this stage, at the instance of "A", the case is referred to Lok Adalat. Before the Lok Adalat, "A" and "B" arrived at a settlement and an award is passed. Thereafter, "C" applies to the Court for setting aside the order whereby he was set exparte. In the meanwhile, "A" applies to the court for refund of the court fee paid by him since a Lok Adalat award has been passed. The court has no option but to refund the fee. If thereafter the exparte order is set aside and



when "C" is allowed to contest the proceedings, A cannot be called upon to remit court fee once again. Such will be the strange anomalies cropping up if Lok Adalat awards are passed even if all the parties to the dispute are not present before the Lok Adalat.

9. The illustration have given cannot be characterized as a hypothetical one. The case on hand amply indicates that in order to encourage the parties to resort to Lok Adalat mechanism, mechanical references can be made even though all the parties to the case are not present before the Lok Adalat. Such situations can be avoided by properly construing the scope of Section 89 of CPC and Section 20 of the Legal Services Authorities Act, 1987. I therefore hold that before making reference to the Lok Adalat, the court should put all the parties to the dispute on notice. The expression "parties" would include even those who have been already set *ex parte*. Likewise, the Lok Adalat should also verify if all the parties to the dispute are present. Otherwise, it will only lead to multiplicity of litigation. Of course, if the awards can stand independently in respect of those present before the Lok Adalat, then there cannot be any difficulty in passing such awards. But, in such case, the record must be returned to the court. Thereafter, the court can pass an appropriate decree against the person who was set *ex parte*.

10. The Hon'ble Division Bench of the High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh in the decision reported in (2018) 1 ALD 424 (Nallala Anjavva Vs. Lok Adalat Bench at Sircilla) quoting an earlier decision, held that when any of the parties to the proceeding before the Lok Adalat does not appear for any reason, it is not permissible for the Lok Adalat to act on the settlement entered into by the other parties for, it will not be exercising its adjudicatory power when it passes an award based on a settlement *simpliciter*. A Lok Adalat award drawn on the basis of a settlement between some of the parties alone leaving out the rest was characterized as suffering from an incurable defect. National Legal Services Authority (Lok Adalat) Regulations 2009 were notified in exercise of the powers conferred by Section 29 of the Legal Services Authorities act, 1987 (39 of 1987). Regulation No.10 reads as under :

10. Reference of cases and matters :-

1. Lok Adalat shall get jurisdiction to deal with a case only when a court of competent jurisdiction orders the case to be referred in the manner prescribed in section 20 of the Act or under Section 89 of the Code of Civil Procedure, 1908 (5 of 1908).

2. A mechanical reference of pending cases to Lok Adalat shall be avoided and the referring court shall, *prima facie* satisfy itself that there are chances of settlement of the case through Lok Adalat and the case is appropriate to be referred to Lok Adalat : Provided that matters relating to divorce and



criminal cases which are not compoundable under the Code of Criminal Procedure, 1973 (2 of 1974) shall not be referred to Lok Adalat.

3. In a pending case where only one of the parties had made application to the court for referring the case to Lok Adalat, or where the court suo motu is satisfied that the case is appropriate to take cognizance by Lok Adalat, the case shall not be referred to the Lok Adalat except after giving opportunity of being heard to the parties."

It is relevant to note that the regulations frown upon a mechanical reference of pending cases to Lok Adalat.

11. In the present case, since the impugned Lok Adalat award was passed based on the consent given only by three of the defendants, I have to necessarily hold that the impugned award is liable to be set aside. Accordingly, the award passed by the Lok Adalat is set aside. The original 7th defendant Suyambu Anandham who filed this Civil Revision Petition has also since passed away. The legal heirs of the said Suyambu Anandham since come on record. The revision petitioners herein who are the legal heirs of the said Suyambu Anandham are at liberty to file an application before the Trial Court for setting aside the order whereby the said Suyambu Anandham was set exparte. The court below shall number and allow the same immediately. The revision petitioners shall come on record in place of Suyambu Anandham in O.S No.201 of 2015 on the file of the Principal District Munsif Court, Valliyoor. It is made clear that in view of the pendency of this Civil Revision Petition, the question of abatement will not arise. This civil revision petition is allowed on these terms. No costs.

Sd/-

Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar (CS-II)

To

The Principal District Munsif,
Valliyoor
(Taluk Legal Services Committee, Valliyoor).

+1CC to Mr.H.Arumugam, Advocate, SR.No.91366

+1CC to Mr.S.Palani Velayutham, Advocate, SR.No.91531

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SKM

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