

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

AND

HON' BLE SRI JUSTICE T. AMARNATH GOUD

WRIT PETITION No.17494 of 2017

ORDER: (Per Hon'ble Sri Justice C.Praveen Kumar)

1) The present writ petition came to be filed seeking issuance of writ of Certiorari, declaring the award dated 13.08.2016 passed by the Mandal Legal Service Committee and Lok Adalat, Vikarabad District in O.S.No.45 of 2016 on the file of the XII Additional District Judge, Ranga Reddy District at Vikarabad, is contrary to law; and quash the same on the ground that a fraud has been played on the petitioners.

2) The averments in the affidavit filed in support of the writ petition would show that the first petitioner is the mother, second petitioner is the wife and third petitioner is the son of Javed Ahmed Siddique, who died on 28.01.2016. It is said that originally the property forming part of Sy.No.288/ 1, admeasuring Ac.2.00, Sy Nos. 300 and 301 admeasuring Ac.4.18 gts., Sy.No.299, admeasuring Ac.4.16 gts., and Sy.No.289 admeasuring Ac.4.39 gts., total admeasuring Ac.15.33 gts., situated at Chilkur Village, Moinabad Mandal, Ranga Reddy District, was acquired by

Javed Ahmed Siddique under four separate sale deeds vide document Nos. 6705/ 1998, dated 02.09.1998, 11202/ 1993 dated 17.12.1993, 3873/ 1994, dated 06.05.1994 and 9552/ 1993 dated 25.10.1993 and since then he claimed to be in possession and enjoyment of the same. Later, Javed Ahmed Siddique made a lay out in the name of “Golden Meadows” and sold away several plots. It is said that respondent No.4 is divorcee of Javed Ahmed Siddique and in collusion with respondent Nos.1 and 2, got filed a suit O.S.No.45 of 2016, then got it referred to Lok Adalath and a settlement was arrived at without making the petitioners, who are the legal heirs of Javed Ahmed Siddique, as parties. The averments in the affidavit further show that after the death of Javed Ahmed Siddique, the fourth respondent came to their house for sympathy, during which time she committed theft of documents, jewellery and also kidnapped the third petitioner, which lead to registration of a case in Crime No.76 of 2016. It is said that even after registering the crime, the police could not recover the documents from the fourth respondent. While things stood thus, on 27.04.2016 some persons, particularly respondent Nos.2 and 3, along with anti-social elements came to the property and tried to dispossess the petitioners from the said property. However, on account of strong protest they

left the place. Later the petitioners came to know that the respondent No.4 in collusion with respondent Nos.2 and 3, entered into a settlement with regard to property belonging to Javed Ahmed Siddque.

3) As seen from the record, basing on the compromise arrived at before the Lok Adalat, an award came to be passed on 10.08.2016 and later E.P.No.4 of 2017 came to be filed seeking a direction to the judgment debtor to vacate the property. At that point of time, the present writ petition came to be filed.

4) By an order dated, 19.12.2017, this Court granted interim stay of all further proceedings. Subsequently, I.A.No.2 of 2017 came to be filed to vacate the interim order.

5) Respondent Nos.2 and 3, filed their counters contending that Javed Ahmed Siddque has no issues through his wife-fourth respondent, therefore, both of them have decided to go for surrogacy through Farzana Begum and accordingly the third respondent was born on 12.08.2005.

6) A counter came to be filed by the fourth respondent disputing the averments made in the affidavit filed in support of the writ petition. A reading of the averments in the counter would show that the allegation of fourth

respondent committing theft of documents, jewellery and also kidnapping the third petitioner was denied and it is pleaded that the allegations of the registration of crime are invented by petitioner Nos.1 and 2. It was further stated that several cases came to be filed against the fourth respondent, which were dismissed. Since the fourth respondent is the legal heir of Javed Ahmed Siddque, she is entitled for entering into a compromise. It is said that to honour the sale executed by Javed Ahmed Siddque, fourth respondent entered into compromise and that there is no fraud on the petitioners.

7) The averments in the affidavit filed by the petitioners would show that in E.P.No.4 of 2017 filed by the respondent Nos.1 to 4, the petitioners herein filed E.A.No.3 of 2017, making a request, which is sought to be made in the writ petition. It is pleaded that the issue involves disputed questions of fact namely as to whether the fourth respondent is the wife of Javed Ahmed Siddque; whether there was any divorce granted and also whether the petitioners have any claim or right over the property.

8) As seen from the record, the allegations and counter allegations came to be made with regard to the alleged compromise entered before the Lok Adalath. The

allegations made by the petitioners that the fourth respondent is not the legal heir of Javed Ahmed Siddque and the suit was initiated with a malafide intention. In para No.6 of the counter filed by respondent Nos.2 and 3, it is admitted that Javed Ahmed Siddque died on 28.01.2016, but denied that the petitioners are his legal heirs. According to respondent Nos.2 and 3, the fourth respondent is the wife of Javed Ahmed Siddque and she is entitled to a claim over the property. The counter further show that Javed Ahmed Siddque has acquired several properties and he had orally gifted the properties at Moinabad to the fourth respondent. It was further stated that Javed Ahmed Siddque has not blessed with issues through his wife ie., fourth respondent. Therefore, the wife and husband have decided surrogacy through Farzana Begum and accordingly a male boy was born on 12.08.2005. The birth certificate dated 11.09.2015 is placed on record, to show that the mother of the said boy was Mrs. Roohi Javed. The passport of the third petitioner also reflects the name of the mother as Mrs. Roohi Javed.

9) From the above, it is clear that there are disputed factual aspects which could not be decided in this writ petition. In the E.P. filed by the respondent, the petitioners filed E.A.No.3 of 2017. In E.P.No.4 of 2017 the writ petitioners took the plea of fraud and filed an application

seeking the very same relief. From the above, it is clear that the petitioners filed applications requesting the trial Court to decide their right over the property in E.P.No.4 of 2017 and the said E.P. is still pending adjudication.

10) In some what identical circumstances, in *Chatti Hanumantha Rao v. The Chairman, Mandal Legal Services Authority*¹ a Division Bench of this Court held as under:

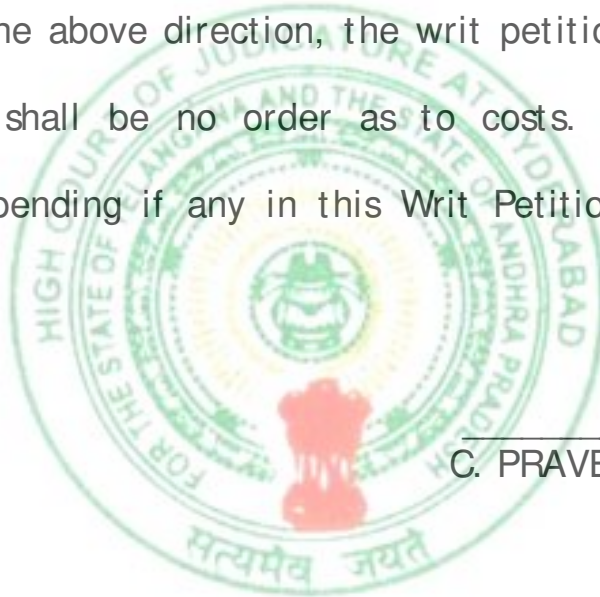
“The questions whether the person who allegedly signed the compromise petition and the Lok Adalat award was duly authorized by the petitioner or not, or whether the Lok Adalat award is binding on the petitioner or not, fall within the realm of the disputed questions of fact. Such disputes cannot be resolved in the Writ Petition by this Court in exercise of its writ jurisdiction. Though under the Legal Services Atuhority Act, 1987, the Lok Adalat awards are final, if such awards are obtained by fraud, the civil Court’s jurisdiction is not barred. Therefore, if the Lok Adalat award was obtained by playing fraud on the petitioner, he is entitled to oppose the Execution petition besides availing any other remedy available to him seeking invalidation of award.”

11) As stated earlier, the issue involves disputed questions of law which cannot be decided in this writ petition. Further the writ petitioners filed an application in the execution petition, making identical allegations and seeking

¹ W.P.No.18780 of 2017, dt. 15.06.2017

similar relief. Since the civil Court has already ceased of the matter, we feel that the petitioners shall agitate and ventilate their grievances before the trial Court in E.P. No.4 of 2017, in which event the same shall be decided in accordance with law, as expeditiously as possible, uninfluenced by the order passed by the Lok Adalat and also the observations, if any, made by this Court in this writ petition.

12) With the above direction, the writ petition is disposed of. There shall be no order as to costs. Miscellaneous Petitions, pending if any in this Writ Petition shall stand closed.



C. PRAVEEN KUMAR, J

T. AMARNATH GOUD, J

16.04.2018
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