

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18916 of 2010

1. Most.Momina Khatoon W/O Late Md. Ali Raja R/O Vill.- Kanhauli Bishun Dutt, P.O.- Ramana, P.S.- Mithanpura, Distt.- Muzaffarpur
2. Md. Salauddin S/O Late Md. Ali Raja R/O Vill.- Kanhauli Bishun Dutt, P.O.- Ramana, P.S.- Mithanpura, Distt.- Muzaffarpur
3. Md. Azad S/O Late Md. Ali Raja R/O Vill.- Kanhauli Bishun Dutt, P.O.- Ramana, P.S.- Mithanpura, Distt.- Muzaffarpur
4. Md. Sazzad S/O Late Md. Ali Raja R/O Vill.- Kanhauli Bishun Dutt, P.O.- Ramana, P.S.- Mithanpura, Distt.- Muzaffarpur
5. Gulshan Khatoon D/O Late Ali Raja R/O Vill.- Kanhauli Bishun Dutt, P.O.- Ramana, P.S.- Mithanpura, Distt.- Muzaffarpur
6. Sahina Khatoon @ Sahzadi Khatoon D/O Late Md. Ali Raja R/O Vill.- Kanhauli Bishun Dutt, P.O.- Ramana, P.S.- Mithanpura, Distt.- Muzaffarpur
7. Guriya Khatoon D/O Late Md. Ali Raja R/O Vill.- Kanhauli Bishun Dutt, P.O.- Ramana, P.S.- Mithanpura, Distt.- Muzaffarpur
8. Jamila Khatoon W/O Abdul Rauf & D/O Md. Yasin R/O Vill.- Kishun Balaur, P.S.- Kurhani, Distt.- Muzaffarpur

... .. Petitioner/s

Versus

- 1.1. Md. Shahabuddin, Son of late Md. Babar Ali, Resident of Kanhauli Bishundat, P.S. Ramna, District- Muzaffarpur.
- 1.2. Md. Gulab Son of late Md. Babar Ali, Resident of Kanhauli Bishundat, P.S. Ramna, District- Muzaffarpur.
- 1.3. Md. Kamaluddin, Son of late Md. Babar Ali, Resident of Kanhauli Bishundat, P.S. Ramna, District- Muzaffarpur.
- 1.4. Md. Sohail, Son of late Md. Babar Ali, Resident of Kanhauli Bishundat, P.S. Ramna, District- Muzaffarpur.
- 1.5. Md. Dildar, Son of late Md. Babar Ali, Resident of Kanhauli Bishundat, P.S. Ramna, District- Muzaffarpur.
- 1.6. Zubaida Khatoon, wife of late Md. Babar Ali, Resident of Kanhauli Bishundat, P.S. Ramna, District- Muzaffarpur.
- 1.7. Amna Khatoon Wife of Abdul Wadob, R/o Ram Nagar Bhusna, P.S. Gaighat, District- Muzaffarpur.
- 1.8. Zarina Khatoon, Wife of Md. Mumtaz, R/o Village- Ram Nagar Bakti.
- 1.9. Samna Khatoon, Wife of Alam, Resident of Village-Pranti, P.S. Buchhan, District- Muzaffarpur.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Pushkar Narain Shahi, Sr. Advocate
Mr. Shivam, Advocate



For the Respondent/s : Mr. Sanjeet Kumar Singh, Advocate
Mr. Syed Md. Iqbal Hasan Rahmani, Advocate

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL JUDGMENT

Date : 13-05-2019

1. This writ petition was heard at length on Friday (3.5.2019) and after hearing the parties, the Court directed the case to be listed under the heading “For Orders” on 6.5.2019. The case was listed for orders and in open Court the order was dictated. At the time of rising of the Court, Mr. Syed Md. Iqbal Hasan Rahmani, learned counsel appearing for the respondents made a prayer that he was not heard before dictating the order. He admitted that the case was listed under the heading “For Orders” with note to be taken up at 10.30 AM but he could not mark the list properly and as such he could not attend the Court at the time of dictating the order. Under the aforesaid circumstances, the Court posted the case for orders on 7.5.2019 and Mr. Syed Md. Iqbal Hasan Rahmani was heard at length. After making oral submissions and replying the query of the Court, he submitted that he may be granted liberty to file ‘Written Notes of Argument’. Considering his request he was granted time till 8.5.2019 to file ‘Written Notes of Argument’. Mr. Rahmani has filed the ‘Written Notes of Argument’ enclosing the judgments in support of his case.
2. This writ petition was filed by the petitioner Most Nomina Khatoon, wife of Late Md. Ali Raja and 6 sons and



daughters of Late Md. Ali Raja and Jamila Khatoon daughter of Md. Yasin for setting aside the order dated 3.4.2006 and the consequential award dated 3.4.2006 passed by the Mobile Lok Adalat, Muzaffarpur in Partition Suit No. 7 of 2006 vide Annexures 3 and 3/A and also for setting aside the order dated 6.7.2019 passed by the learned Munsif in Miscellaneous Case No. 2/2009 as well as the order dated 30.3.2010 passed by the District Judge, Muzaffarpur in Misc. Appeal No. 14/2009.

3. The brief facts, relevant for deciding the present writ petition, are set out below.

Partition Suit No. 7 of 2006 was filed by respondents in the Court of Munsif, East Muzaffarpur stating therein that Md. Yasin was the common ancestor of the parties who left behind two sons and one daughter, namely, Md. Babar Ali (respondent) late Md. Ali Raja (husband of petitioner no. 1 and father of petitioner nos. 1 to 7) and Jamila Khatoon petitioner no. 8.

The suit was filed for half share of the suit property being Plot No. 3044, Khata No. 585 situated at village Kanhauli, Bishun Dutt, P.S. Mithanpura, District-Muzaffarpur. The plaintiff claimed that Md. Yasin and his sons were members of joint family and Md. Yasin was karta and Karbari.



Before the suit could be admitted, a compromise petition alleged to have been signed by the parties to the partition suit was filed in the Court of Munsif, East Muzaffarpur. In the compromise petition it was claimed that the defendants (plaintiffs) have relinquished their share in favour of the plaintiff and voluntarily gifted the land to the respondent on 29.1.2006 i.e. before the date of filing partition suit. After the compromise petition was filed, the suit was admitted on 3.3.2006. The Sheristedar was thereafter directed to examine the compromise petition and submit report. The Sheristedar gave a report and on that basis the record was sent to Mobile Lok Adalat on 3.4.2006 for disposal. On 3.4.2006 the suit was disposed of on the basis of compromise as the Court noted that Sheristedar has reported that the compromise was in order and on that basis the award was passed.

It is the contention of the petitioners that signature of defendant No. 4 Md. Sazzad was not obtained on the compromise petition and the petitioners have no notice about the partition suit nor they have engaged any lawyer to identify the signature and thumb impression of petitioner Nos. 1 to 3 and 5 to 8 nor they have signed any compromise petition. Their claim is that the signature of petitioner nos. 1 to 3 and 5 to 8 on compromise petition is forged and fabricated.



When the Execution Case No. 22/2008 was filed for execution of the award in partition suit, the executing Court issued notice to the judgment debtor (the petitioners). The petitioners thereafter filed objection pointing out that the award is not valid. It does not bear the signature of the defendant No. 4 on the compromise petition and petitioners have also filed a petition under Order IX Rule 13 of the Code of Civil Procedure for setting aside the award pleading therein that the award passed on compromise was obtained by fraud and misrepresentation. The learned Munsif vide order dated 6.7.2009 passed in Misc. Case No. 2/2009 rejected the prayer of the petitioners stating that the petition under Order IX Rule 13 is not maintainable.

The petitioners filed Misc. Appeal No. 14/2009 against the order dated 6.7.2009 which was dismissed on 30.3.2010 holding that the petitioner under Order IX Rule 13 is not maintainable and compromise decree can be challenged on the ground of illegality including fraud by filing a petition in the same Court and not by a separate suit in other Court. Notwithstanding the fact that the decree was passed against the defendant no. 4 who was not signatory of the compromise petition and as such the award was ex parte decree.



4. Mr. Pushkar Narayan Shahi, learned senior counsel appearing on behalf of the petitioner has summarized the factual aspects relevant for the purpose of deciding the present writ petition paragraph 17 which is quoted below:-

“17. That certain glaring facts which are apparent from the records of the case, may be summarized as follows:

- (a) In the plaint of the Partition Suit No. 7/2006 (Annexure-1), mention of some of the defendants as Karta and the plaintiff (respondent) as karta has been made which obviously cannot be applicable to Mohammedans.
- (b) The factum of residential house being in existence over the suit property in which the petitioner nos. 1 to 7 also reside, has been suppressed.
- (c) No reason has been assigned in the compromise petition (Annexure-2) as to why the petitioners herein would relinquish their entire share and choose to come on the road.
- (d) As per Mohammedans law, oral gift is valid only when it is coupled with delivery of possession and it was claimed in the compromise petition that on 29.1.2006, the petitioners orally gifted the suit property to the respondent. If this was the position, there was no occasion to file the partition suit on



1.2.2006 as no cause of action for filing the suit existed after the oral gift alleged to have been made on 29.1.2006.

- (e) In the compromise petition, petitioner no. 4 has neither signed nor his signature appears in the Vakalatnama said to have been filed on behalf of the defendants. In fact, the petitioners had never engaged either Sri Ashwani Kumar, Advocate or Sri Gopaljee Upadhyay, Advocate or Sri Raj Kumar, Advocate in relation to Partition Suit No. 7 of 2006 and had never executed any Vakalatnama in his favour. The Sheristedar did not point out the defect in the compromise petition as one of the parties to the suit has neither signed the compromise petition nor any reason had been mentioned for non-appearance of signature of petitioner no.4.
- (f) It was the duty of the learned Munsif, East, Muzaffarpur as also the Presiding Officer of the Mobile Lok Adalat, Muzaffarpur to examine the compromise petition themselves and both of them appear to have solely relied on the clerical note of the Sheristedar which evidently is erroneous and illegal.
- (g) Before the Lower Appellate Court in seisin of the Misc. Appeal No. 14/2009, the respondent tried to explain the absence of signature of petitioner no. 4 saying that he was minor at the relevant time and erroneously it could not be explained in the Vakalatnama or the



compromise petition that he had not signed for that reason. Firstly, it is stated that petitioner No. 4 was major on the relevant date that is the date of execution of compromise and even if he had been minor, it was the duty of the Court to have seen and protected his interest specially in the absence of any material that any guardian in accordance with law has protected his interest.

5. Mr. Shahi, learned senior counsel appearing on behalf of the petitioners has highlighted many infirmities in entertaining the suit and passing the award. He also highlighted that value of the suit property which is within the town area is more than Rs. 5 Lakhs. Mr. Shahi highlighted that Mobile Lok Adalat has no jurisdiction to pass award as under the scheme of the Act the Legal Services Authority may refer the matter for settlement of the dispute in Lok Adalat or under Section 79 of the CPC and the Court can refer the matter for settlement by way of Lok Adalat. Continuing Lok Adalat is different from Permanent Lok Adalat and as such it is not vested with jurisdiction of Permanent Lok Adalat for determination of compromise or settlement of dispute by way of Continuing Lok Adalat. He placed reliance on the judgment of this Court dated 1.8.2013 passed in CWJC No. 2283 of 2013, where distinction has been drawn between Permanent Lok Adalat and Mobile Lok Adalat and the



Court on consideration of the scheme of the Legal Services Authority Act, 1987 held out that the power and jurisdiction vested in the Permanent Lok Adalat cannot be exercised by the Continuing Lok Adalat.

6. In this case the respondents have filed a counter affidavit. Paragraph Nos. 5 to 15 of the counter affidavit are quoted below for ready reference:-

“5. That in reply to averment made in para no. 6 to 9 are partly denied and submitted the petitioner/plaintiffs and respondents after due satisfaction and in presence of counsels of both the parties signed the compromise petition put their thumb impressions i.e. LTI and lawyers of both the parties had identified the compromise petition.

6. That the reply of paragraph no. 7 & 8 is submitted that from perusal of the record of partition suit No. 7/2006 it appears that on 23/02/2006 both the parties appeared with compromise petition duly signed by them through their counsels and on 03/03/2006 Shiristedar of the Court was directed to submit report on the compromise petition and orders were passed on 08/03/2006 in the light of report of Shiristedar and then the suit was sent to Lok Adalat for formal disposal.



7. That in reply of averments made in paragraphs nos. 10 to 13 are partly admitted and it is submitted that both the parties appeared before Lok Adalat got accepted the compromise as perfect and genuine after long process and the learned Lok Adalat had passed the award with consent on 03/04/2006 and compromise petition was found true and genuine was duly executed by both the parties correctly and accordingly award on 03/04/2006 was prepared as per order.

8. That Misc. case No. 2/09 was filed by this applicant which was not maintainable and was rightly dismissed by learned Munsif East Muzaffarpur.

9. That averments made in paragraph nos. 14 to 19 needs no comments it is matter of record.

10. That Misc. Appeal No. 14/2009 was also rightly dismissed by the learned District Judge the appellate court by affirming the order dated 06/07/2009 passed by learned Munsif, East Muzaffarpur stating therein that the Misc. Case no. 2/09 was without jurisdiction as Misc. case was filed with malafide intention after lapse of three years time only after receiving notices of execution case filed by respondent as execution case no. 22/2008, hence both the case was rightly dismissed by the learned both the courts because the same were without jurisdiction.



11. That under legal services Authorities Act, 1987, A lok Adalat can dispose of matters by way of compromise and is always bilateral and by means of mutual adjustment settlement and termination of legal proceeding and in the instant case the award was passed after adopting legal proceeding after full satisfaction of both the parties by mutual consideration consent and understanding in presence of their counsels and the Court.

12. That in this light catena of decision, held by Hon'ble Apex Court as well as Hon'ble High Courts are there and once an award is passed/attains finality under legal services Authorities Act, 1987 the same cannot be challenged before any appropriate forum, hence in view of the matter a compromise decree passed by Lok Adalat the same cannot be challenged on any ground of illegality at any forum or court, hence instant writ application is fit to be dismiss in liminae.

13. That averment made in paragraph nos. 20 to 23 requires no comments as it is matter of records.

14. That in the light of catena of decisions of Hon'ble Apex Court as well as Hon'ble High Court that Lok Adalat passes the award with consent of the parties, therefore there is no need either to reconsider or review the matter again and the award of Lok Adalat is final and



permanent, which is equivalent to a decree executable and same is an ending to the litigation among parties hence in the light of Hon'ble Courts observations instant writ petition CWJC No. 18916/2010 is fit to be dismissed at very threshold.

15. That an award passed by Lok Adalat is the decision of the Court itself and it cannot be challenged at any forum held by Hon'ble Apex Court in their catena of decisions.”

7. Analyzing the pleadings, the Court finds that the Counter affidavit is evasive and does not answer the specific plea raised by the petitioners, firstly, on the point that concept of joint family is alien to Muhammadan Law and Karta of the family is also alien to scheme of Muhammadan Law. The Counter affidavit does not answer the specific plea that compromise petition does not bear the signature of defendant no. 4. The Counter affidavit also does not dispute the fact that the daughter is also entitled to share in the property.

8. On 7.5.2019 Mr. Syed Md.Iqbal Hasan Rahmani in reply to the query of the Court admitted that there is no concept of joint family under the Muhammadan Law. He also admits that there no concept of Karta under the Muhammadan Law. Under the Muhammadan Law, he admitted the position that there is share of the daughter. Now the next question is whether there was



signature of the defendant No. 4 in the compromise petition. On the query of the Court with reference to specific averments made in para-6 of the writ petition, it has not been specifically answered by Mr. Syed Md. Iqbal Hasan Rahmaniand. He replied that he is not in a position to answer that situation without perusing the records although the Annexure-2 is the compromise petition which does not bear the signature of defendant No. 4 in the compromise petition.

9. Mr. Shahi, learned senior counsel appearing on behalf of the petitioners referring to the judgment of the Supreme Court in the case of **State of Punjab and another Vs. Jalour Singh and others: (2008) SCC 1209**, submitted that the Apex Court has categorically held out that the Lok Adalat has neither adjudicatory nor judicial function, its role is to see the right and lis on compromise or settlement, but the kind of dispute agitated in the present case is not falling in the category amenable to Continuing Lok Adalat. Referring to the judgment of the Apex Court, he submitted that award of the Lok Adalat can be challenged in exercise of power under Articles 226 and 227 of the Constitution. Mr. Shahi placed reliance on the judgment of the Apex Court in the case of **Interglobe Aviation Ltd. Vs. Satchidanand: (2011) 7 SCC 463**, paras 32 and 33 of which are



are relevant for the purpose of the present writ petition which is quoted below:-

32. We may also at this juncture refer to the confusion caused on account of the term Permanent Lok Adalat being used to describe two different types of Lok Adalats. The LSA Act refers to two types of Lok Adalats. The first is a Lok Adalat constituted under Section 19 of the Act which has no adjudicatory functions or powers and which discharges purely conciliatory functions. The second is a Permanent Lok Adalat established under section 22B(1) of LSA Act to exercise jurisdiction in respect of public utility services, having both conciliatory and adjudicatory functions. The word Permanent Lok Adalat should refer only to Permanent Lok Adalats established under section 22B(1) of the LSA Act and not to the Lok Adalats constituted under section 19. However in many states, when Lok Adalats are constituted under section 19 of LSA Act for regular or continuous sittings (as contrasted from periodical sittings), they are also called as Permanent Lok Adalats even though they do not have adjudicatory functions.
33. In LIC of India vs. Suresh Kumar - 2011 (4) SCALE 137, this court observed: "It is needless to state that Permanent Lok Adalat



has no jurisdiction or authority vested in it to decide any lis, as such, between the parties even where the attempt to arrive at an agreed settlement between the parties has failed". The said decision refers to such a 'Permanent Lok Adalat' organized under section 19 of the Act and should not be confused with Permanent Lok Adalats constituted under section 22B(1) of the Act. To avoid confusion, the State Legal Services Authorities and the High Courts may ensure that Lok Adalats other than the Permanent Lok Adalats established under section 22B(1) of the Act in regard to public utility services, are not described as Permanent Lok Adalats. One way of avoiding the confusion is to refer to the Lok Adalats constituted under section 19 of the Act on a regular or permanent basis as 'Continuous Lok Adalats'. Be that as it may.

10. Mr. Shahi next relied upon the judgment of this Court in the case of **Nawal Kishore Prasad Singh Vs. The State of Bihar through the Chief Secretary & Ors: 2016 (1) PLJR 935** and the judgment of the Division Bench reported in the case of **Ashish Kumar & Ors. Vs. Vishundeo Prasad Singh & Ors.: 2017 (3) PLJR 276** to contend that the decision of the Lok Adalat obtained by practising fraud or misrepresentation can be



challenged in writ proceeding. The Division Bench noticing the act of the dishonest litigant in obtaining award in connivance with certain Judicial Officers has held out that a partition suit cannot be filed directly in Lok Adalat.

11. Md. Rahmani has filed a Written Notes of Argument. For ready reference the Written Notes of Argument is quoted below:-

“Humble written Argument as directed by this Hon’ble Court.

1. That all the allegation are baseless erroneous and afterthought, That instant writ application is fit to be dismissed at very threshold and impugned Award dated 03.04.2006 and impugned order dated 30.03.2010 is fully covered by catena of Hon’ble Apex Court Judgments is fully convened by Catena of Hon’ble Apex Court reported in 2005(4) PLJR (SC) page 46, relevant paras 16, 17 and 22 Hon’ble Court has held that every award made by a lok Adalat shall be final and binding on all the parties to the dispute and no appeal shall lie to any court against the award and Hon’ble Apex Court followed judgment reported in AIR 1956 Supreme Court page 346. Constitution Bench Apex Court.
2. That it is admitted fact that with the intervention of well wisher of both the parties



suit was compromised out of the court and petitioners (defendants) had awarded their share by way of oral gift in favour of the plaintiff(Respondent) and they had orally gifted the suit land to the respondent on 29.01.2006 and all three essentials of a valid oral gift was complied by the both parties i.e. (1) A declaration (2) A Acceptance (3) delivery of possession of the property, as mention at paras 6 of the instant writ petition.

3. That it is admitted fact that compromise petition was filed on 23.02.2006, both the parties appeared, duly signed by them through their counsels, learned court below had directed Shiristedar to submit report and learned court had passed order on 08.03.2006 after perusal of record and report of Shiristedar and then the suit was sent to Lok Adalat for formal disposal. As mentioned in para 6 of the writ petition the matter was already settled out of the court and compromised by the parties on 29.01.2006 and the land in question was already orally gifted to the plaintiff respondent much before filing of compromise petition.

4. That compromise petition was sent to Lok Adalat after long process only for formal disposal by the learned Munsif, after perusal of record finding the same perfect and genuine dully executed by both the parties through their counsels.



5. That learned Munsif had passed order after finding the same perfect and genuine for formal disposal of matters and in the instant case the Award was passed after adopting all legal proceeding after full satisfaction of both the parties mutual by understanding consent and understanding in presence of their counsels.

6. That the instant writ application is filed on baseless and erroneous allegation and is devoid of any merit and fit to be dismissed in Laminea Impugn order dated 30.03.2010 is also fully covered by Hon'ble Apex Court judgment reported in 2005(4) SC page 46 PLJR and rightly dismissed the above mention Misc. Appeal No. 14/2009 order dated 30.03.2010.

7. That petitioner (defendants) had already transferred their right title interest delivery of possession also prior to file compromise petition on 23.02.2006 by Awarding oral gift to the Respondent plaintiff on 19.01.2006 as mentioned at para 6 of the writ petition in the light of catena of decision of Hon'ble Court reported in AIR 1995 Supreme Court page 1205 and AIR 1966 (SC) page 1194 respectively, that Misc. Case No. 2/09 was without jurisdiction, Misc. Appeal was rightly dismissed by learned lower court, the award of learned Lok Adalat is final and permanent which is equivalent to a decree by Civil Court



and same is an ending to the litigation among the parties. Hence, in the light of Hon'le Apex Court observations instant writ petition is fit to be dismissed at very then should."

12. Mr. Rahmani has relied upon the judgment of the Constitution Bench of the Supreme Court reported in AIR 1956 SC 346 to contend that consent decree operates as estoppel.

13. The aforesaid decision is of no use to the respondents. Admittedly the signature of the defendant no. 4 was not obtained on the compromise petition. The submission of oral gift does not merit any consideration for the reason that the present dispute is in relation to recording of compromise by the Continuing Lok Adalat which does not bear the signature of defendant No. 4 and does not take care of the interest of the respondent No. 8 who was the daughter of Md. Yasin. Therefore, the submission as to consent decree or the oral gift is not relevant for deciding the present application. The submission that compromise petition has been filed by both the parties and have appeared and signed is contrary to the materials on record. The report of the Shiristedar is not conclusive particularly when the defendant No. 4's signature is absent from the compromise petition and recording compromise and passing award on that basis was totally illegal and without jurisdiction. The dismissal of



the Misc. Case ignoring the fact that the compromise was ex parte qua defendant no. 4 and as such the petition under Order IX Rule 13 was maintainable. The order of the Appellate Courts in Misc. Appeal suffers from same vice as such it is unsustainable.

14. Considering the rival submissions of the parties the Court finds that the award was obtained by practicing fraud and misrepresentation. The Apex Court has held out the effect of playing fraud and misrepresentation in obtaining judgment. The Apex Court held out that fraud vitiates all decisions and even the highest Court's judgment can be collaterally challenged if it is obtained by fraud and misrepresentation. Reference may be made to the judgment reported in **(1994)1 SCC 1**.

15. On factual aspect it is undisputed that the partition suit was filed by the respondent on the strength that there is joint family and the respondent was Karta of the joint family. Admittedly, the concept of joint family and Karta is alien to the Muhammadan Law. There is dispute as to the compromise petition filed by the petitioners herein. Materials are available on the record including Annexure-2 to indicate that all the parties have not signed the decree. Therefore, that compromise cannot form part of the award and the Continuing Lok Adalat has gone beyond the jurisdiction in entertaining the compromise petition only on



certificate by Shirestedar award was passed on compromise. The Court also finds substance in the submission of Mr. Shahi that under the Muhammadan Law daughters are entitled to definite share but the daughter of Md. Yasin interest was ignored and thus the compromise which was entertained by the Court directly as suit was admitted subsequent to filing of compromise petition only because Saristedar accepted the compromise in order and the Continuing Lok Adalat entertained the compromise and passed the award on the basis of that compromise which is unsustainable. As indicated hereinabove, the Apex Court has held out that if the judgment and order obtained by practicing fraud then in that situation even the highest Court's judgment cannot be given effect and even the lowest Court may ignore the judgment of the highest Court if it is vitiated on account of fraud or misrepresentation. The manner in which the Continuing Lok Adalat has acted in the present case and the appellate Court declined to exercise jurisdiction in the case, the Court is of the view that the award is vitiated by fraud and misrepresentation, precisely, this was the reason that the Division Bench has to comment that in connivance with the Judicial Officers dishonest litigants obtained favourable award in Lok Adalat and therefore, the validity of such award can be examined under Article 227 of the Constitution of India.



16. Noticing the factual aspect and the legal position as emerged from different judgments cited at the bar, I am of the considered view that the Continuing Lok Adalat has gone beyond jurisdiction in entertaining the compromise petition and committed manifest error in recording the compromise decree and passing award in partition suit where all the parties have not signed the compromise and even the daughter interest was totally ignored. The partition suit itself was not maintainable for the reason that the partition suit was based on false premise of fact and law. The Muhammadan Law does not recognize concept of joint family and the concept of Karta which is totally alien to the Muhammadan Law. The Continuing Lok Adalat has accepted the report of the Saristedar for the purpose of passing the award in the instant case as if the Saristedar decides the question of fact and law. The Lok Adalat is not supposed to record a finding without applying judicial mind in the decision making process.

17. For the reasons stated hereinablve, the writ petition is allowed. The orders contained in Annexures 3, 3/A, 4,5 and 6 are hereby quashed and set aside. Since the Permanent Lok Adalat are in place, if the parties agreed to settle their dispute, the parties may approach the Permanent Lok Adalat, if they desire to settle their dispute. Otherwise, if no consensus is arrived between the parties,



then the suit if any filed can be adjudicated only by the competent Civil Court.

18. With the aforesaid, the writ petition stands allowed and disposed of. But in the facts and circumstances of the case, there shall be no order as to costs.

(Anil Kumar Upadhyay, J)

spandey/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	13.05.2019
Transmission Date	NA

