

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Order Reserved on : 22.07.2019****Order Passed on : 14/08/2019****W.P.(227) No. 301 of 2019**

1. Inderpal Singh Bhatia S/o Late Harbans Singh Bhatia, Aged About 60 Years R/o Jagatpur, Raigarh, District Raigarh Chhattisgarh
2. Sunil Agrawal S/o Ramdas Agrawal Aged About 55 Years R/o Friends Colony, Raigarh, District Raigarh Chhattisgarh
3. Poonam Chand Agrawal, S/o Lalchand Agrawal, Aged About 52 Years R/o Gandhi Ganj, Raigarh Chhattisgarh

---- Petitioners***Versus***

1. Suresh Kumar Jagatramka S/o Shri Banwarilal Jagatramka, Aged About 59 Years R/o Gandhi Chowk, Raigarh, District Raigarh Chhattisgarh
2. Smt. Sarita Devi Jagatramka, W/o Suresh Kumar Jagatramka, Aged About 52 Years R/o Gandhi Chowk, Raigarh, District Raigarh Chhattisgarh
3. Smt. Tilotama Devi Agrawal, W/o Shri Omprakash Agrawal Aged About 72 Years R/o 19, Naya Bazaar, Kharagpur (West Bengal)
4. Ganesh Kumar Jagatramka, S/o Shri Banwarilal Jagatramka, Aged About 70 Years R/o Shyam Talkies Road, Raigarh District Raigarh Chhattisgarh
5. Mahesh Kumar Jagatramka, S/o Shri Banwarilal Jagatramka, Aged About 68 Years R/o Kolkata, Presently Residing At Raigarh District Raigarh Chhattisgarh
6. Smt. Pushpa Saraf W/o Prem Kumar Saraf, Aged About 65 Years R/o 3/A, Siddheshwar Road, Kolkata - 29, Presently Residing At Raigarh District Raigarh Chhattisgarh
7. Pradeep Kumar Kejriwal S/o Late Manohar Lal Kejriwal, Aged About 60 Years R/o 19-B James Long Sarani, Kolkata- 38, Presently Residing At Subhash Chowk, Raigarh District Raigarh Chhattisgarh
8. Smt. Basant Mala Thakkar, W/o Late Shri Vishram Meghji Thakkar, Aged About 64 Years R/o In Front Of Kaalibadi, Daroga Para, Raigarh

District Raigarh Chhattisgarh

9. Rajesh Kumar Thakkar, S/o Late Shri Vishram Meghji Thakkar, Aged About 55 Years R/o Kaalibadi, Daroga Para, Raigarh District Raigarh Chhattisgarh
10. Rakesh Kumar Thakkar, S/o Late Shri Vishram Meghji Thakkar, Aged About 50 Years R/o Kaalibadi, Daroga Para, Raigarh, District Raigarh Chhattisgarh

---- Respondents

For Petitioner	:	Mr. B.P. Sharma with Mr. Hari Agrawal, Advocate.
For respondent No.2	:	Mr. Manoj Kumar Sinha, Advocate.
For respondent No.1	:	Dr. Shailesh Ahuja with Mr. Suresh Kumar Jagatramka (Respondent No.1) in person.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

C A V ORDER

14/08/2019

1. This petition has been brought challenging the order/decreed dated 10.02.2018, in civil suit No. A/05/2017, passed by the National Lok Adalat, Bench No.2, Raigarh (C.G.), decreeing the compromise agreement.
2. Learned counsel for the petitioners submits that the petitioners are the owners of land situated at Nazul Sheet No. 44, Plot No. 3/5, measuring 2150 sq.ft situated near Gandhi Putla Road, Raigarh, District- Raigarh, C.G., which they have purchased from respondent No.7 by a registered sale-deed. On the basis of this transfer, the property has been mutated in the name of the petitioners. Respondent No.1 has filed a civil suit without impleading the petitioners as party, which is registered as Miscellaneous Case No.10/97 vide Annexure-P/3, making a claim on the

property, which is under the title and ownership of the petitioners. The suit was filed as pauper suit and sufficient time was taken by the respondent No.1 before he paid Court fees and then the suit was registered as a regular suit. The respondent No.1 then filed an application under Order 23 Rule 3 of C.P.C., before the trial Court on 12.01.2015, which was an agreement between respondent No.1, the plaintiff and respondent No.2/defendant No.1, who happens to be the wife of respondent No.1. This application was not allowed by the trial Court thereafter another application was filed on 27.08.2015 in similar fashion, which was again not allowed by the trial Court for the reason that it was not a compromise between all the persons impleaded as parties in the said suit. It is submitted that concealing the rejection of the earlier applications for compromise, the respondent No.1 and 2 in collusion filed an application before the Lok Adalat on 10.02.2018 and by suppressing the facts and by deliberately misleading the Court for obtaining the decree have obtained an award which can not be said to be effective against all the other defendants of this case including these petitioners, who also have an interest in the said property mentioned hereinabove. Relying on the judgment of the Co-ordinate Bench of this Court in ***W.P.C. No.3017/2017*** dated ***11.09.2018***, it is submitted that the remedy is available to the petitioners under Article 226 or/and 227 of Constitution of India as it has been held by the Supreme Court in ***Bhargavi Constructions & Anr. Vs. Kothakapu Muthyam Reddy & Ors.*** reported in ***2017 SCC Online SC 1053***. Therefore, it is prayed that in the interests of justice, the impugned order dated 10.02.2018 of Lok Adalat be quashed by issuing a writ of certiorari.

3. Respondent No.1-in-person along with learned Counsel Dr. Shailesh Ahuja opposes the grounds raised in the petition and submissions made

in this respect. It is also submitted that the order of the High Court and the judgment of Supreme Court which have been referred to by the petitioners are based on different facts, therefore, are not applicable in this case. It is submitted that there has to be specific allegation of fraud having been committed in obtaining the decree of Lok Adalat, which is totally absent in this case. It is submitted that property referred to by the petitioners had been a joint property of the family of respondent No.1, regarding which there is a dispute and the portions of this undivided property were sold by the respondent No.4 to respondent No.7, in which sale was not in accordance with law. Relying on the documents filed in reply as Annexure R.1-6, it is submitted that the petitioner No.1 has been made a party in this case. It is further submitted that the dispute regarding partition between the family members of respondent No.1 is still not resolved. Further the petitioners did not file any review of the order passed in Lok Adalat nor did he file any application for rectification of the award and have directly filed this petition after passing of about one year from the date the award was passed, which shows malice on their part. Hence, the petition does not deserve to be allowed.

4. On behalf of respondent No.2, it is submitted that the property in question has been transferred to respondent No.2 by a will of the owner of the said property. The sale of the property has been made during the pendency of civil suit. The compromise has become effective, therefore, if this petition is allowed, the case will be reopened again, whereas the case has already been pending since about more than 20 years. It is also submitted that the mutation of the property in favour of the petitioners has been cancelled, therefore, it is prayed that the petition be dismissed.

5. In reply, it is submitted by the learned counsel for the petitioners that the

civil suit was filed by respondent No.1 in the year 1997 as a pauper suit. Huge delay has occurred on account of the lethargy of the respondent No.1 himself. The pauperism of the respondent No.1 was determined and according to the Court order for payment of Court fees, the same was valued in the plaint by respondent No.1 on 20.03.2017 and thereafter he took further five months to pay the Court fee, on 04.08.2017. In reply to the contention of the respondent No.1 that petitioners were impleaded as party in civil suit, it is submitted that the document referred Annexure R.1-6, very clearly demonstrates that the document is an order sheet of civil suit No. 308(A)/2007, whereas the present suit is numbered as A/5/17. Hence, the respondent No.1 has made a misleading and misguiding statement which cannot be entertained.

6. I have heard learned counsel for the both the parties and perused the documents placed on records.
7. On perusal of the title and the award of the impugned order passed in civil suit, there is no need to mention that the petitioners have not been impleaded as parties in the said civil suit. It may show that the sale of the property to the petitioners has been made during the pendency of the said civil suit, in that case also it is clearly made out that some interest has accrued in favour of the petitioners, and on that basis they are entitled to defend and prosecute their interest. The respondent No.1 and 2 have never stated or claimed that they do not have the knowledge of the same. In contrary to that, they are making a statement that the sale made by the respondent No.4 to 7 is unlawful, which implies that the respondent No.1 is needed to claim a relief in a civil suit for the alleged sale, which he claims to be unlawful. Further, according to the award/decree of Lok Adalat, the dispute has been resolved only

between respondent No.1 and 2 and the relief granted in the said decree cannot be said to be effective against other defendants of that case, which is a flaw remaining in the said decision of the Lok Adalat.

8. Order 23 Rule 3 of C.P.C. is reproduced as under:-

“Order XXIII Rule 3 C.P.C.: Compromise of suit – Where it is proved to the satisfaction of the court that a suit has been adjusted wholly or in part by any lawful agreement or compromise (in writing and signed by the parties), or where the defendant satisfies the plaintiff in respect of the whole or any part of the subject-matter of the suit, the Court shall order such agreement, compromise or satisfaction to be recorded, and shall pass a decree in accordance therewith (so far as it relates to the parties to the suit, whether or not the subject-matter of the agreement, compromise or satisfaction is the same as the subject-matter of the suit.)”

9. On perusal of the above, it is very clear that the compromise was although present in the civil suit, but it was not signed by all the parties. The dispute present between the plaintiff/respondent No.1 and all the defendants was not completely or partially resolved and the subject matter of the suit that is the property on which the other defendants also had interest was not lawfully resolved as there were no consent of the rest of the defendants. Therefore, the impugned award of National Lok Adalat suffers from legal infirmities, because of which, it cannot be sustained and there appears to be necessity to exercise the jurisdiction under Article 227 of the Constitution of India. In ***Bhargavi Constructions & Anr. Vs. Kothakapu Muthyam Reddy & Ors. (Supra)***, the reference has been made to the judgment of three Judges Bench of Supreme Court in ***State of Punjab & Anr. Vs. Jalour Singh & Ors.*** reported in **2008 (2) SCC 660** and it has been held that the only remedy available is that the aggrieved person has to challenge the

award of Lok Adalat by filing a writ petition under Article 226 or/and Article 227 of Constitution of India. Therefore, on this basis, it can be observed that the petitioners have brought this petition rightly to challenge the award/decreed of Lok Adalat, which has been erroneously and illegally passed by the said bench of Lok Adalat.

10. In conclusion and on the basis of the discussions made hereinabove and the findings arrived at, I am of this view that this petition filed by the petitioners deserves to be allowed.

11. Accordingly, the petition under Article 227 of Constitution of India filed by the petitioners is allowed and the impugned award dated 10.02.2018 passed by the National Lok Adalat (Bench No.2), Raigarh in Civil Suit No. A/5/2017 is hereby quashed. The effect of this quashment is this that the civil suit is restored to its original number and the petitioners are at liberty to approach the said trial Court for making a prayer to implead them as a party in that case and the concerned trial Court is directed to take up the trial of the case in accordance with law.

Sd/-
(Rajendra Chandra Singh Samant)
Judge