

**IN THE HIGH COURT AT BOMBAY  
APPELLATE SIDE, BENCH AT AURANGABAD**

**LETTERS PATENT APPEAL NO. 3 OF 2016**

Mangesh S/o. Lata Deshmukh  
Age 17 years, Occupation Student (Minor),  
R/o. Marathwada Plot, Parbhani,  
taluka and district Parbhani.

Through next friend (Guardian)  
Ambika Manik Mane.

**...Appellant.  
[Ori.deft.No.3]**

**Versus**

1. Sau. Sanjeevani W/o. Amrutkaumar  
Deshmukh (Shiradkar),  
Age 40 years, Occupation household,  
R/o. Shiradkar Wada, Mali Galli,  
Parbhani, taluka and District Parbhani.
2. Amrutkumar S/o. Renukadas Deshmukh  
(Shiradkar), Age 45 years, Occu. Service,  
R/o. Shiradkar Wada, Mali Galli,  
Parbhani, taluka and district Parbhani.
3. Lata W/o Prakash Jadhav  
@ Lata W/o. Amrutkumar @ Munna  
Deshmukh, Age 35 years, Occupation  
Household, R/o. Marathwada Plot,  
Parbhani.

**...Respondents.**  
[Resp. 1 is ori.plaintiff,  
Resp.2 & 3 are Ori.  
Deft. 1 & 2]

...  
Mr. P.S. Paranjape, Advocate for Appellants

Mr. K.M. Nagarkar, Advocate for Respondents Nos. 1 & 2.

Mr. M.R. Wagh, Advocate for Respondent No.3.

...

**CORAM : T.V. NALAWADE AND  
SUNIL K. KOTWAL, JJ.**  
**DATED : 26/02/2019**

**JUDGMENT :**

1) The appeal is filed to challenge the decision of Writ Petition No. 2965/2011 which was decided by the learned Single Judge of this Court. The said petition was filed to challenge the compromise decree prepared in view of the settlement shown to be made before the Lok Adalat in Regular Civil Suit No. 114/2007 which was pending in the Court of Civil Judge, Senior Division, Parbhani. Both the sides are heard.

2) Regular Civil Suit No. 114/2007 was filed by present respondent No. 1 Sanjiwani for relief of declaration that she is the legally wedded wife of present respondent No. 2 Amrutkumar. To the suit, present respondent No. 3 Smt. Lata was made party defendant as she was contending that she was also the wife of Amrutkumar. Order of maintenance was already made in favour of Smt. Lata and son Mangesh in the proceeding filed in the year 1999 under section 125 of Criminal Procedure Code and due to that order, Amrutkumar was required to pay monthly maintenance of Rs.1500/-. Amrutkumar is working in police department.

3) In the suit, application for amendment came to be moved on 20.3.2009 and Mangesh was added as defendant No. 3.

He was minor, aged about 13 years at that time and Lata was shown as guardian of the minor. The matter was then kept before Lok Adalat on 22.3.2009 and before Lok Adalat compromise document was filed to the effect that Lata was not legally wedded wife of Amrutkumar and the additional relief claimed against Mangesh by way of amendment that he was not born to Lata from Amrutkumar was also to be given due to the compromise. On the basis of the settlement, Civil Court allowed the suit on 22.3.2009 and decree was prepared as per the settlement.

4) In the writ petition filed by Mangesh through next friend grandmother, he has contended that to avoid giving of maintenance to him and also to avoid further complications in the life of respondent No. 1, father, such document was prepared and the compromise was not in his interest. It is his contention that when such relief could not have been given to the plaintiff, compromise decree is given against him. It is contended that the circumstance that maintenance order was in his favour was also not mentioned in the compromise document, but on the basis of said compromise decree, further step was taken for cancellation of the maintenance order. He contended that there was fraud and his interests were not protected.

5) The learned Single Judge has dismissed the petition on the basis of certificate of one advocate showing that he had given opinion that the compromise was in the interest and for welfare of the minor.

6) The learned counsel for appellant has placed reliance on the law laid down in the case reported as **AIR 2008 SC 1209 [State of Punjab & Anr. Vs. Jalour Singh & Ors.]**. In this case, the Apex Court has laid down that the Lok Adalat is not the Court and it cannot hear matters on merits and make award. The Apex Court has laid down that as the award made on the basis of settlement is final, if party wants to challenge the award, it can be done by filing petition under Article 226 and/or 227 of Constitution of India, that too on limited grounds. In view of this decision, it can be said that the petition was tenable before the learned Single Judge and L.P.A. is also tenable.

7) The learned counsel for appellant submitted that in one way, negative decree is given in favour of plaintiff. He also submitted that the plaintiff had no cause of action to challenge the relationship between him and Amrutkumar. The learned counsel submitted that in ordinary course, exhaustive trial is necessary in such cases and advocate cannot certify that such settlement is in the interest of

minor. He submitted that the settlement does not show that any amount was given for the maintenance of the minor when there was the order of maintenance made in his favour by criminal Court and which was confirmed in revision by the Sessions Court. He submitted that even mother could not have compromised his interest in view of the peculiar situation which was to be created due to such compromise against the appellant, minor. This Court holds that prejudice has been caused to the interest of minor as provided in Order 32, Rule 3A of Civil Procedure Code as there is force in all the aforesaid submissions.

8) The learned counsel placed reliance on some observations made by Madras High Court in **S.A.No.484/2006 [R.N. Shanmugavadivel and ors. Vs. R.N. Myilsami and Ors.]** decided on 21.9.2010 and Calcutta High Court in **C.R.C.No.515/2018 [Smt. Sukumoni Murmu Vs. Sri Dhirendranath Murmu & Anr.]** decided on 6.8.2018. In the first case, in view of the provision of section 34 of Specific Relief Act, Madras High Court has observed that declaration of negative nature cannot be given and such suit is not maintainable. Though the suit was filed for declaration that defendants had no right to the property and it was apparently done to avoid the payment of Court fees, the fact remains that before entertaining this suit, it is the duty of the Court to ascertain as to

whether there was cause of action for plaintiff and relief sought can be given to the plaintiff. In the present matter, there was already order of maintenance in favour of minor. The lady, plaintiff had filed suit against other lady to establish that plaintiff was legally wedded wife of defendant No. 1. That kind of relief could have been given, but the relief that present appellant is not son, born from defendant No. 1 could not have been given to the plaintiff. For that, she has no cause of action. It was matter between defendant Nos. 1 and 2 and there was no such claim from defendant No. 1. Thus, the decree of the aforesaid nature could not have been given in favour of the plaintiff and this aspect is not considered by the Court while accepting the settlement which was placed before Lok Adalat. Such settlement cannot be called as the settlement made in the interest of minor as the minor was not to get anything under the settlement and he was to lose everything due to such settlement. These circumstances show that the trial Court failed to discharge the duty given to it in Order 32, Rule 7 of C.P.C. (proviso portion). Thus, the relief itself could not have been given in the suit, but by using aforesaid modus operandi, such relief is given to the plaintiff and that was probably done at the instance of defendant No. 1. In such cases, when the person involved is minor like present appellant, others cannot be allowed to compromise his interests. He needs to be given opportunity to have his say in such matters as it is his

personal matter and not about his property. On that ground also, this Court holds that the decree cannot sustain as against the present appellant. The learned Single Judge has not considered this aspect of the matter and so, interference is warranted. In the result, following order :-

**O R D E R**

1. Appeal is allowed. The judgment and order of learned Single Judge of dismissal of writ petition is set aside. The writ petition is allowed. The decree prepared on the basis of settlement before Lok Adalat as against the present appellant is hereby quashed and set aside. The suit which was there as against the present appellant also stands dismissed to that extent.

[SUNIL K. KOTWAL, J.]

[T.V. NALAWADE, J.]

ssc/