

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.10639 OF 2018

- 1 Kusumbai w/o Ramesh Palve,
Age : 43 years, Occupation : Agriculture,
R/o Bhojewadi, under Village Hivra,
Tal.Ashti, District Beed.
- 2 Swati d/o Ramesh Palve,
now Swati Pandurang Hake,
Age : 21 years, Occupation : Household,
R/o Hakewadi under village Dhamangaon,
Tal.Ashti, District Beed.
- 3 Mangal d/o Ramesh Palve,
now Balika Kalindar Lakde,
Age : 18 years, Occupation : Household,
R/o Bhojewadi, under village Hivra,
Tal.Ashti, District Beed.

...PETITIONERS

-VERSUS-

- 1 Bhausahab s/o Barku Palve,
Age : 61 years, Occupation : Agriculture.
- 2 Kondabai w/o Barku Palve,
Age : 86 years, Occupation : Agriculture.
- 3 Lahanabai d/o Barku Palve,
Age : 51 years, Occupation : Household.

All R/o Bhojewadi, under village Hivra,
Tal.Ashti, District Beed.

...RESPONDENTS

...

Advocate for the Petitioners : Shri Deshpande Ram B.
Advocate for the Respondents : Shri Tandale Tushar M.

...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 28th March, 2019

Oral Judgment :

1 Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2 The issue raised in this petitioner is as to whether, the third party can challenge the award of the Lok Adalat before the High Court on the ground that the litigating sides had excluded the third party from the litigation?

3 The Petitioners, Kusumbai wife of Ramesh Palve and her daughters, namely, Swati and Mangal, are aggrieved by the award of the Lok Adalat dated 08.07.2017 by which, Regular Civil Suit No.730/2017 was compromised and two properties involved in the said suit were shared by the litigating sides to the said suit.

4 Considering the extensive submissions of the learned advocates for the respective sides, I find it apposite to record the details of relevant events, hereunder :-

(a) Barku was the original owner of the properties.

(b) Kondabai is the wife of Barku.

(c) Bhausahab and Ramesh are the two sons of Barku and Kondabai. Lahanabai is the daughter of the said couple.

- (d) Ramesh has passed away in an accident on 08.04.2000 and Kusumbai is the surviving widow along with the two daughters, Swati and Mangal.
- (e) Regular Civil Suit No.447/2000 was preferred by the Petitioners (Kusumbai, Swati and Mangal) seeking partition and separate possession of the ancestral joint family properties. The present Respondents (Bhausahab, Kondabai and Lahanabai) were arrayed as the Defendants in the said suit.
- (f) RCS No.447/2000 was compromised in the Lok Adalat on 02.09.2002. Survey No.104 AA in Vadjai area admeasuring 1 H 55 R =3 Acres 35 Gunthas was handed over to Kondabai and Lahanabai.
- (g) There were several other properties, which were partitioned by the compromise award, but are not being referred to in this order as they are not connected with the subsequent suit.
- (h) RCS No.730/2017 was filed by Bhausahab arraying Kondabai and Lahanabai as the Defendants on 30.06.2017. The Petitioners were excluded.
- (i) The Defendants (Kondabai and Lahanabai) appeared suo moto in the Trial Court and the suit was listed in the Lok Adalat to be held on 08.07.2017, which is within 08 days of

the lodging of the suit.

- (j) On 08.07.2017, the compromise took place between the Plaintiff (Bhausahab) and the Defendants (Kondabai and Lahanabai) with reference to the land Gat No.126/A/1 admeasuring 0.10 Gunthas and Gat No.104/AA/1 in Vadjai area admeasuring 7 Acres 19 Gunthas.
- (k) The Plaintiff (Bhausahab) has pleaded in the plaint in paragraphs 3, 4 and 8 that two suit properties in the second suit are ancestral properties belonging to the joint Hindu family.
- (l) In the order of the Lok Adalat Panel dated 08.07.2017, it was noted that these three litigants are the only legal representatives.
- (m) In the compromise terms dated 08.07.2017, signed by all the three litigants, it was mentioned that besides these three persons there is no other legal representative.
- (n) The suit property in the second suit was Survey No.104/AA/1 in Vadjai area admeasuring 7 Acres 19 Gunthas and the suit property in the first suit was Survey No.104/AA in Vadjai area admeasuring 3 Acres 35 Gunthas.

the judgment of the Honourable Supreme Court in the matter of ***Bhargavi Constructions and another vs. Kothakapu Muthyam Reddy and others***, ***AIR 2017 SC 4428 : (2018) 13 SCC 480***, and contends that in such peculiar circumstances, the Petitioners must resort to a new suit and seek a declaration that the Lok Adalat award would not be binding upon them.

6 I find from *Bhargavi Constructions* (supra) that the Honourable Supreme Court was not dealing with the issue as to whether, a third party could also have the same remedy of challenging the Lok Adalat award in the High Court contending that such third party is aggrieved by the Lok Adalat Award. The Honourable Supreme Court, therefore, concluded that an "aggrieved party" can challenge the Lok Adalat award before the High Court.

7 The Division Bench of the Andhra Pradesh High Court, in the matter of ***Batchu Subba Lakshmi and others vs. Sannidhi Srinivasulu and others***, ***2010 (1) ALT 483 : 2010 (1) ALD 277***, dealt with the issue of a third party challenging the award of the Lok Adalat. The observations made by the Andhra Pradesh High Court as to who can challenge the Lok Adalat award are found in paragraph 8 of the judgment, which read as under :-

"Who can file writ petition challenging the Lok Adalat Award.

8. *The parties to the compromise or settlement, which is the basis for award of Lok Adalat, no doubt entitled to challenge the award on any of the grounds referred to*

herein above grounds. Ordinarily, a third party cannot challenge the award in a writ petition even if such award causes prejudice. The remedy of such party would be to institute a separate suit or proceeding for necessary redressal and seek appropriate decree of declaration by filing a suit within the period of limitation prescribed under law. Under Section 34 of the Specific Relief Act, 1963, any person entitled to legal character or any right as to any property, may file a suit for declaration. Under this provision, any person can even institute a suit for declaration that the decree passed by Civil Court in an earlier suit is not binding on him. When a civil Court can even declare that an earlier decree of the Court is not binding on the party before it, we do not see any objection for a third party to institute a suit in a civil Court seeking a declaration that the award of Lok Adalat is not binding on him/her subject to the law of limitation. We however hasten to add that there may be extraordinary cases where a third party is meted with injustice at the behest of two or more conniving and colluding parties, who may have obtained an award of Lok Adalat by fraud or misrepresentation only to defeat the rights of such third party. In such cases within a reasonable period such third party may maintain a writ petition. But in such cases, there should be prima facie evidence of fraud or misrepresentation or collusion in obtaining the award of Lok Adalat. Even if such allegations are made and the question involves complicated questions of fact requiring voluminous evidence, third party should be left to seek remedy in a civil Court rather than preferring extraordinary remedy under Article 226 of Constitution."

8 While dealing with such challenge, the Andhra Pradesh High Court also concluded in ***Batchu Subba Lakshmi (supra)*** that such a challenge can be posed on certain grounds. The grounds for challenge are recorded in paragraph 9 of the said judgment, which read as under :-

"What are grounds of challenge.

9. *Insofar as legal position that the Lok Adalat cannot pass award unless and until there is a compromise and settlement under Section 20(3) and (5) of the Act between the parties, is well settled. In State of Punjab v. Ganpat Raj : (2006) 8 SCC 364 : 2006 (7) SCJ 364 : 2007 (1) ALT 28.3 (DNSC), respondent moved Punjab and Haryana High Court by filing writ petition seeking writ of Mandamus to the State to pay interest at 18% per annum on the delayed payment of pension arrears and other retiral benefits. The case was sent to Lok Adalat, which passed award without any settlement or compromise between the pensioner and the State. The writ petition filed by the State was dismissed as misconceived. In the Supreme Court, it was submitted that the matter could not have been disposed of by Lok Adalat in view of the specific provisions contained in Section 20 of the Act. While allowing the appeal, the matter was remitted to High Court for de novo consideration. The purport of Section 20(3) and (5) of the Act is explained by Supreme Court in the following words.*

The specific language used in Sub-section (3) of Section 20 makes it clear that the Lok Adalat can dispose of a matter by way of a compromise or settlement between the parties. Two crucial terms in Sub-sections (3) and (5) of Section 20 are 'compromise' and 'settlement'. The former expression means settlement of differences by mutual concessions. It is an agreement reached by adjustment of conflicting or opposing claims by reciprocal modification of demands. As per Tertnes de la Ley, 'compromise is a mutual promise of two or more parties that are at controversy'. As per Bouvier it is 'an agreement between two or more persons, who, to avoid a law suit, amicably settle their differences, on such terms as they can agree upon'. The word 'compromise' implies some element of accommodation on each side. It is not apt to describe total surrender. (See NFU Development Trust Ltd., Re (2) (1973) 1 All ER 135 : (1972) 1 WLR 1548 (Ch D)). A compromise is always bilateral and means mutual adjustment. 'Settlement' is termination of legal proceedings by mutual consent."

9 In the instant case, RCS No.730/2017 was filed on 30.06.2017 and the Defendants appeared suo moto in the said matter. It was immediately placed in the list of matters, which could be taken up in the Lok Adalat after 08 days, scheduled on 08.07.2017. On the said date, the suit was compromised with reference to the properties mentioned above. Prima facie, a fraud is played by the Plaintiff and the Defendants on these Petitioners. All of them were parties to the earlier RCS No.447/2000. The entire family as appearing in the family tree was before the Civil Court. The said first suit was compromised on 02.09.2002 and the shares of the parties were demarcated. The property at Survey No.104 in Vadjai sector was mentioned in the suit properties in the 2000 suit as well as in the 2017 suit as noted above. The Plaintiff in the 2017 suit, therefore, had no reason to exclude these Petitioners.

10 The learned counsel for the Petitioners submits that this mischief is played because the husband of Petitioner No.1 (deceased Ramesh), who is the brother of the Plaintiff Bhausaheb in the 2017 suit, had passed away in 2000 and Bhusaheb along with other relatives desired to deprive the widow of Ramesh with that share of the property to which Ramesh would have a right. This prima facie appears to be the fraud played upon these Petitioners as well as the court when the 2017 suit was settled in the Lok Adalat within 08 days of its institution and when the

Defendants had appeared suo moto without any notice. All had declared that there are no other family members.

11 These set of facts are not found in the judgments delivered by the Honourable Supreme Court in **Bhargavi Construction (supra)** and in ***State of Punjab and another vs. Jalour Singh and others, (2008) 2 SCC 660*** and in the matter decided by the High Court of Punjab and Haryana in the case of ***Shalu vs. Vineet, 2014 (174) (2) PLR 602 : 2013 TLP & H 4103***.

12 It is true that a party aggrieved by the Lok Adalat award can approach the High Court if it discovers any fraud post the Lok Adalat award. It is equally true that the third party, which is not a litigant in a suit which has suffered a compromise decree, can also file a separate suit for seeking a declaration that such decree which affects the rights of the third party, would not be binding upon the said party as the said decree was delivered in the matter in which, such third party was never arrayed. It, therefore, appears that an option to either prefer a separate suit or file a writ petition in the High Court would be available to such third party. At times, the issue of limitation would crop up and the suit to be preferred by such third party might be barred, of course, subject to the date of the knowledge of such decree.

13 Both the learned Advocates submit that despite their best efforts, they could not locate any judgment, directly on this law point,

delivered by this Court or by the Honourable Supreme Court. It is conceded that the judgment delivered by the High Court of Andhra Pradesh in the matter of *Batchu Subba Lakshmi (supra)* is the only judicial pronouncement available dealing with a third party being aggrieved by the Lok Adalat award on the ground of fraud and his/her exclusion from such proceedings, which culminated into the Lok Adalat award.

14 The learned Advocate for the Petitioners, who are the third parties, relies upon the judgments delivered by the Honourable Supreme Court in *Bhargavi Constructions (supra)* and *State of Punjab (supra)* to contend that when any aggrieved party can approach the High Court for challenging the Lok Adalat award, such "aggrieved party" would also include a "third party" as like the Petitioners herein.

15 While hearing the learned Advocates for the respective sides, notwithstanding that prima facie the contention of fraud is sustainable, I have perused the record and have found that the property situated in Survey No.104 which is known as Vadjai area, was the suit property in the 2000 suit for partition and separate possession and the same survey number involving a larger area of land in Vadjai area was the suit property in the 2017 suit, in which these Petitioners were excluded. As such, if at all there is any fraud played by the Plaintiff (Bhausahab) or the Defendants (Kondabai and Lahanabai) in the 2017 suit, it relates to the

property Survey No.104 in Vadjai area and which, therefore, fortifies the contention of the Petitioners that the property admeasuring 3 Acres 35 Gunthas, which was subject matter of the 2000 suit is the suit property in the 2017 suit, which is shown to be admeasuring 7 Acres 19 Gunthas.

16 In view of the above, I conclude, in the light of the law laid down by the Honourable Supreme Court in *Bhargavi Constructions (supra)* and *State of Punjab (supra)*, that the third party would be covered by the meaning "aggrieved person" and as is held by the High Court of Andhra Pradesh in the matter of *Batchu Subba Lakshmi (supra)*, such a third party can challenge the Lok Adalat award provided the ground of fraud and misrepresentation is, prima facie, made out.

17 In the light of the above, this Writ Petition is allowed. The impugned Lok Adalat award dated 08.07.2017 is quashed and set aside and RCS No.730/2017 stands restored to the file of the learned Joint Civil Judge, Junior Division at Ashti.

18 Naturally, the Petitioners will now have to move an application for addition of parties in the said suit, which the Trial Court would have to consider in the light of the conclusions arrived at by this Court in this judgment.

19 The learned counsel for the Petitioners submits that the Petitioners would appear before the concerned Court at Ashti on 15.04.2019 with an application for being impleaded as the Defendants.

The said request is granted. All the litigating sides shall, therefore, appear before the said Court on 15.04.2019. Hence, notice need not be issued by the Trial Court and the Trial Court shall proceed to decide the suit after the addition of parties, on it's own merits.

20 Needless to state, all the litigating sides shall be refrained from creating third party interest or encumbrances on the suit properties, which are subject matter of RCS No.730/2017. In the event, any litigant desires to create a third party interest or an encumbrance, he/she shall apply to the Trial Court for seeking such permission and the Trial Court would consider such an application in the light of the rival contentions and on it's own merits.

21 Rule is made absolute in the above terms.