

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(227) No. 757 of 2017

Smt. Sarashwati Sharma, D/o. Baldev Prasad Sharma, W/o. Rajesh Kumar Sharma, Aged About 55 Years, R/o. Beside Sumeru Karn Gali, House No. 264, Ramganj, Old Grain Market, Post- Jaipur, Tahsil and District Jaipur, Rajasthan.

---- Petitioner

Versus

1. Mangal Prasad Sharma, S/o. Baldev Prasad Sharma, Aged About 71 Years, R/o. Old Hatkeshwar Naka, Near to Dr. Rathor, Beside Rathi Provision, Ratnabandja, Dhamtari, Tahsil and District Dhamtari, Chhattisgarh.
2. Murari Lal Sharma, S/o. Baldev Prasad Sharma, Aged About 68 Years, R/o. Mahavir Ward, Tahsil Bhatapara, District Baloda- Bazar- Bhatapara, Chhattisgarh.

-----Respondents

For Petitioner : Mr. Hemant Gupta, Advocate

For Respondents : Mr. Dashrath Kushwaha, Advocate

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

12/02/2020

1. This petition has been brought under Article 227 of the Constitution of India being aggrieved by the award passed by the National Lok Adalat dated 08.07.2017, passed in Civil Suit No. 01/2017.

2. It is submitted that the respondent No.2 filed a Civil Suit No.1/2017, before the Court of Additional District Judge, Bhatapara, District – Baloda Bazar (C.G.) in which the respondent No.2 had pleaded that property with description in the plaint was jointly owned by the brothers and sisters, who are parties in that suit. Notice was served upon the respondent No.1, however, no notice was served upon the petitioner, who was defendant No.2 in that case. Later on compromise petition was presented before the Court and the award on the basis of compromise was passed in the National Lok Adalat.
3. It is submitted that the award on the basis of the compromise passed by the National Lok Adalat is erroneous and illegal as the petitioner was not a party to that compromise and apart from that it is mentioned in the plaint itself that legal heirs of the deceased Bhagwati Bai, the owner of the disputed property were including the plaintiff, defendats as well as daughter of Gulab Bai, Rajkumari Bai. Gulab Bai and Rajkumari Bai were not made a party in that civil suit, therefore, the compromise decree passed has not determined the dispute completely between the parties. Therefore, the award of the National Lok Adalat is liable to be set-aside.
4. Counsel for the respondent No.1 and 2 submits that daughter of Bhagwati Bai namely Gulab Bai and Munni Bai both had relinquished their right in the suit property by the registered release deed, therefore, they were not a necessary party.

Rajkumari being the daughter of Munni Bai, who is now deceased is also not at all necessary party in that case. Further the petitioner, who was defendant No.2 was proceeded ex-parte for the reason that she refused to accept the service of summon upon her. Hence, there is no error committed by the National Lok Adalat. Hence, the petition be dismissed.

5. On the basis of the averments in the pleadings in the plaint, it is clearly found that title on the disputed property was shared by the petitioner and respondents as well as Gulab Bai and legal representative of Munni Bai. Gulab Bai and Munni Bai are clearly not made a party in the suit. The non-appearance of the petitioner and ex-parte proceeding against her is not a ground to presume that she has consented for the compromise that has taken place between the respondents No.1 and 2. The statement, that Gulab Bai and Munni Bai have relinquished their shares in the suit property by registered release deed is merely a statement. On perusal of the whole record of the Court below, it is found that there is no such documents filed by the respondent No.2. Therefore, it was a case in which the statement of the respondent No.2/plaintiff needed verification whether any such relinquishment has taken place or not and secondly the petitioner was not a party to compromise in the said application, which was filed before the Court below. Therefore, the award which has been passed under Order 23 Rule 3 of C.P.C. does not appear to be in accordance with law. Although the compromise petition is

recorded statement, but i.e. the statement of respondent No.2 only, which can not be regarded as statement made by the petitioner. Secondly non-filing of the documents on the basis of which the statement has been made itself is a reason to hold that the learned National Lok Adalat was not in a position to verify and come to the conclusion that terms of compromise were lawful. Therefore, on the basis of these errors found in the impugned award, the said award does not appear to be sustainable. Hence, the petition is allowed at the motion stage. The impugned award of the National Lok Adalat, which is under challenge is hereby set-aside. The civil suit is restored to its original number and remanded back to the trial Court with a direction to proceed in accordance with law.

6. Parties present before this Court are directed to give their appearance before the Court below on 20th March, 2020.

Sd/-
(Rajendra Chandra Singh Samant)
Judge