



IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

MONDAY, THE 07th DAY OF SEPTEMBER 2020

THE HON'BLE MR. JUSTICE P.T.ASHA

A.No.4791 of 2015

in

C.S.No.346 2015

C.S.No.346 of 2015

1. Mrs. S.Swarupa
W/o. Late B. Suresh Kumar
2. Master Bhavesh (Minor)
3. Baby Varsha (Minor)

Minors 2 and 3 represented by
their mother and natural guardian

1st Plaintiff

Plaintiffs 1 to 3 residing at :

6th No. Junction,

2-2-1105/37/E, Tilak Nagar,

Amberpet, Nallakunta,

Hyderabad – 500 044.

... Plaintiffs

-Vs-

1. N. Baskar (Deceased)
- * Plaintiffs and Defendants 2, 3 and 5 are recorded
as legal heirs of the deceased 1st Defendant as per order
dt 8/07/2019 on memo in C.S.No.346 of 2015 &
time extend as per order dated 16/7/2021 in
A.No.2145/21 in C.S.No.346 of 2015

2. Mrs. B.Rukmini

3. B. Mani Kumar

4. Mrs. M.Sunitha



1 to 4 residing at:
No.12/38, Nadamuni Street,
G.N.Chetty Road,
T.Nagar, Chennai – 600 017.

5. B. Sathish Kumar

6. Mrs. S.Chithra
5 & 6 residing at
No.491, 15th Cross,
Indira Nagar 2nd Stage,
Bangalore – 560 038.

7. M/s. K.P.J. Associates
a Registered Partnership Firm,
Rep.by its Managing Partner
Manipal Center, NG-04,
No.47, Dickenson Road,
Bangalore – 560 042.

8. M/s. K.P.Jewellery & Gems (P) Ltd.,
Rep.by its Managing Director
Shop Nos.21 to 25 & 28,
BBC Manor, No.11, Doraisamy Road,
T.Nagar, Chennai – 600 017.

9. M/s. K.P. Jewellery & Gems
Rep.by its Managing Partner
No.39, South Usman Road,
T.Nagar, Chennai – 600 017.

... Defendants

A.No.4791 of 2015

1. N.Baskar

2. Mrs.B.Rukmini

3. B. Manikumar

4. Mrs.M.Sunitha



1 to 4 residing at
No.12/38, Nadamuni Street,
G.N.Chetty Road,
T.Nagar, Chennai – 600 017.

5. B. Sathish Kumar

6. Mrs.B.Chithra
5 & 6 residing at
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a Registered Partnership Firm,
Rep.by its Managing Partner,
Manipal Center, NG-04,
No.47, Dickenson Road,
Bangalore – 560 042.

8. M/s. K.P.Jewellery & Gems (P) Ltd.,
Rep.by its Managing Director,
Shop Nos.21 to 25 & 25,
BBC Manor, No.11, Duraisamy Road,
T.Nagar, Chennai – 600 017.

9. M/s.K.P.Jewellery & Gems
Rep.by its Managing Partner
No.39, South Usman Road,
T.Nagar, Chennai – 600 017.

... Applicants

-Vs-

1. Mrs.S.Swarupa
2. Master Bhavesh (Minor)
3. Baby Varsha (Minor)

Minors 2 and 3 represented by
their mother and natural guardian

1st Plaintiff

1 to 3 residing at
6th No. Junction,



2-2-1105/37/#, Tilak Nagar,
Amberpet, Nallakunta,
Hyderabad – 500 044.

... Respondents

Application praying that this Hon'ble Court be pleased to reject the plaint in above C.S.No.346 of 2015.

This application having been heard on 29/07/2020 in the presene of Mr.C.Kasirajan, advocate for the applicants herein and Ms.Vasudha Thiagarajan, advocate for the respondents herein and upon reading the Judges Summons and the affidavit of B.Manikumar and the Counter Affidavit of S.Swarupa filed herein and having stood over for consideration till this date and coming on this day before this court for orders in the presence of the said advocates for the parties hereto and this court having observed that the veracity of the award has also got to be tested during the trial and there is no quarrel to the proposition that a suppression of fact and abuse of process of court is a ground for rejecting the plaint however, in the instant case, the respondent as plaintiff has not suppressed the execution of the Memorandum of Understanding on the contrary one of the prayer in the suit to declare this Memorandum of Understanding as null and void, and as regards the Award the Plaintiffs case is that she has not appeared before the Lok Adalat nor signed the same and this court also entertains doubts about

~~the said award~~ and **it is ordered as follows:-**



That the A.No.4791 of 2015 for rejecting the plaint be and is hereby dismissed.

2. That the defendants herein be and are hereby directed to file their written statement by 21/09/2020

WITNESS THE HON'BLE THIRU. AMRESHWAR PRATAP SAHI, CHIEF JUSTICE, HIGH COURT AT MADRAS AFORESAID, THIS THE 7th DAY OF SEPTEMBER 2020.

Sd/-

ASSISTANT REGISTRAR (O.S.II)

//Certified to be true copy//

Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)

From 25th Day of September 2008 the Registry is issuing certified copies of the Orders/Judgments/Decrees in this format.



ED

28.10.2021

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A.No.4791 of 2015
in
C.S.No.346 of 2015

ORDER

DATED: 07.09.2020

THE HON'BLE MS.JUSTICE
P.T.ASHA

FOR APPROVAL: 29.10.2021

APPROVED ON: 29.10.2021



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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 29.07.2020

Pronounced on : 07.09.2020

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

A.No.4791 of 2015 in C.S.No.346 of 2015

C.S.No.346 of 2015:

- 1.S Swarupa
- 2.Master Bhavesh (minor)
- 3.Baby Varsha (minor)

Minors 2 and 3 are represented by
their mother and natural
guardian 1st plaintiff

... Plaintiffs

-Vs.-

- 1.N. Baskar
- 2.B.Rukmini
- 3.B.Mani Kumar
- 4.M. Sunitha
- 5.B. Sathish Kumar
- 6.S. Chithra
- 7.K.P.J. Associates,
a registered Partnership Firm,
rep. by its Managing Partner,
Manipal Center, NG-04,
No.47, Dickenson Road,
Bangalore - 560 042.

... Defendants

A.No.4791 of 2015:

- 1.N. Baskar
- 2.B.Rukmini
- 3.B.Mani Kumar
- 4.M. Sunitha



5.B. Sathish Kumar

6.S. Chithra

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8.M/s.K.P. Jewellery and Gems P Limited,
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Shop Nos.21 to 25 and 23,
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9.M/s.K.P. Jewellery & Gems
rep. by its Managing Partner,
No.39, South Usman Road,
T. Nagar,
Chennai - 600 017.

... Applicants/Defendants

Vs.

1.S Swarupa
2.Master Bhavesh (minor)
3.Baby Varsha (minor)

Minors 2 and 3 are represented by
their mother and natural
guardian 1st plaintiff

... Respondents/Plaintiffs

Prayer in C.S.No.346 of 2015: Civil Suit filed under Order IV Rule 1 of the Original Side Rules and under Order VII Rule 1 of the Code of Civil Procedure (a)to pass a Preliminary Decree declaring that the plaintiffs shall be entitled for 1/4th share in respect of the Plaint Schedule II Item Nos.1 to 34 immovable properties and Schedule III (B) movable assets, and effect division of the same by metes and bounds (b)To grant a declaration that the



Memorandum of Understanding dated 11.07.2012 entered into between the 1st plaintiff and the defendants 1 to 5 as illegal, invalid and non est in the eyes of law and consequently not binding upon the plaintiffs and their interest in the suit schedule mentioned properties, (c) to grant a mandatory injunction, directing the defendants 1 to 6 to return the jeweleries of the plaintiffs and the deceased B. Suresh Kumar, which are in their custody, more fully described in the Schedule III - A items 1 to 5 on a date to be fixed by this Court or the value thereof to be determined (d) to direct the defendants 1 to 6 to render true and proper accounts of the income realized both from the business carried on by the defendants 1 to 6 under the names and style of the defendants 7 to 9 and the Plaint Schedule II properties from the date of demise of B. Suresh Kumar till date of actual division of the properties by metes and bounds in accordance with law (e) To appoint an Advocate Commissioner to effect division of the properties more fully described in the Schedule II item 1 to 34 and Schedule III (B) by metes and bounds and allocate 1/4th share to the plaintiffs in respect of the right and entitlement of the plaintiffs.

Prayer in A.No.4791 of 2019: Application filed under Order XIV Rule 8 of the Original Side Rules read with Order VII Rule 11 of the Code of Civil Procedure to reject the Plaint in the above suit.

For Plaintiffs : Ms. Vasudha Thiagarajan

For Defendants : Mr. Kasirajan

ORDER



with this instant application for rejecting the Plaint on the following grounds:

(a).As the entire issue which is the subject matter of the present issue has been settled on 05.10.2012 by virtue of an Award passed by the Lok Adalat in Pre-Litigation Case No.204 of 2012 organised by the City Civil Court, Legal Services Authority, High Court, Chennai, this suit is not maintainable.

(b).Despite signing the Award the applicant had deliberately suppressed the same in the Plaint as well as in the affidavit filed in support of her judges summons seeking interim relief.

(c).The plaintiff without performing her part of the obligations under the Award has filed the suit.

(d).Under Section 21 of the Legal Services Authorities Act, the award is passed by the Lok Adalat is deemed to be a Decree and Section 22E of the Act stipulates that every award made by the Permanent Lok Adalat is final and no appeal shall lie against this Award. Therefore, the suit as filed is not maintainable On that basis, the defendants have come forward with the instant application.

3.Before proceeding to discuss the dispute between the parties, it

is necessary briefly to allude the pleadings of the plaintiff/1st respondent in



the Plaintiff in C.S.No.346 of 2015 which has been filed by her on her behalf as well as on behalf of her minor children/respondents 2 and 3.

4.The case of the 1st respondent is that she had married to the third son of the applicant's 1 and 2 on 15.09.2002 and from out of this wed lock, respondents 2 and 3 were born to them. The 1st respondent would contend that her in-laws were running a flourishing Jewellery business besides other businesses and her husband was also a part of the businesses and the properties stand in his name and in the name of the other sons who are the applicants 3 and 5 herein as well as the Partnership Firms and Company described as applicants 7 to 9 herein.

5.The 1st respondent would contend that in order to develop the Family business her husband had shifted to Hyderabad where she had joined him and as the business was doing well, the defendant and her husband has decided to expand and open a Shop at Visakhapatnam. The family had business interests in Chennai, Hyderabad, Bangalore, Visakhapatnam, etc., The petitioner's husband and herself were running the business at Visakhapatnam and Hyderabad. She had also contributed to the business. Unfortunately, the said Suresh Kumar died on 31.10.2011 due to

cardiac arrest leaving behind him the respondents herein and the 2nd



applicant herein as his legal heirs.

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6.The first respondent's contention is that on the death of her husband, her in-laws had turned against her and their motive appeared to be to chase her out of the matrimonial home without a penny. Since she was harassed she was compelled to file a criminal complaint under Sections 498A, 506, 427 of IPC and a case was registered by Katchiguda Police Station on 02.02.2012. Thereafter, since the defendants 1 to 6 have threatened to dispossess her from the matrimonial home she had filed O.S.No.458 of 2012 on the file of the City Civil Court, Hyderabad, against the applicant herein for an injunction restraining them dispossessing from the matrimonial home.

7.During this proceedings, it is the case of the 1st defendant that the first applicant, the father in law, brought about a Memorandum of Understanding dated 11.07.2012 and before the 1st respondent could understand its contents she was made to sign the documents. Her father in law had assured her that she would get an equitable share of the properties both movable as well as immovable and she could be rest assured that he would protect her interests. Believing the words of the 1st applicant, the 1st



not have any assistance to decipher to the terms of Memorandum of Understanding. However, contrary to the assurance given, the 1st respondent realized that the respondent has not provided the properties as promised when she later had read through the terms of the Memorandum of Understanding. She had realised that she has had a raw deal under the said Memorandum of Understanding. The 1st respondent would contend that under the Memorandum of Understanding, most of the properties went to the applicants and she and her children had been allotted nothing of value. The jewellery business of the defendants is earning profits of nearly Rs.4 Crores per month and that apart, the rental income alone would fetch a sum of Rs.20 lakhs. The 1st respondent therefore came forward with the instant suit for a Partition and to set aside the Memorandum of Understanding signed by him on the ground of fraud, misrepresentation and undue influence.

8.The suit is filed for the following reliefs:

"(a)to pass a Preliminary Decree declaring that the plaintiffs shall be entitled for 1/4th share in respect of the Plaintiff Schedule II Item Nos.1 to 34 immovable properties and Schedule III (B) movable assets, and effect division of the same by metes and bounds



(b) To grant a declaration that the Memorandum of

Understanding dated 11.07.2012 entered into between the 1st plaintiff and the defendants 1 to 5 as illegal, invalid and non est in the eyes of law and consequently not binding upon the plaintiffs an their interest in the suit schedule mentioned properties,

(c) to grant a mandatory injunction, directing the defendants 1 to 6 to return the jeweleries of the plaintiffs and the deceased B. Suresh Kumar, which are in their custody, more fully described in the Schedule III - A items 1 to 5 on a date to be fixed by this Court or the value thereof to be determined

(d) to direct the defendants 1 to 6 to render true and proper accounts of the income realized both from the business carried on by the defendants 1 to 6 under the names and style of the defendants 7 to 9 and the Plaint Schedule II properties from the date of demise of B. Suresh Kumar till date of actual division of the properties by metes and bounds in accordance with law

(e) To appoint an Advocate Commissioner to effect

division of the properties more fully described in the Schedule



II item 1 to 34 and Schedule III (B) by metes and bounds and allocate 1/4th share to the plaintiffs in respect of the right and entitlement of the plaintiffs. "

9. On receipt of summons, the applicants herein had come forward with the instant application to reject the Plaint.

10. The learned counsel for the applicants would contend that under Section 21 of the Legal Services Authorities Act, the Award passed by the Permanent Lok Adalat is a Decree and the plaintiffs having signed the said documents and the Award has suppressed the same in her Plaint. He would rely upon the following Judgments:

(1).2020 SCC Online SC 245

Canara Bank v. P. Selathal and others

This Judgment is relied upon by the applicant in support his contentions that the Plaint can be rejected on the ground that it is vexatious and frivolous and nothing but an abuse of process of the Court.

11. The next Judgment that has been relied upon by the applicants is the Judgment reported in ***1998 (3) CTC 165 [Mosammal and other vs.***



was nothing but an attempt to reagitate the matter the Plaintiff is liable to be rejected.

12. The Judgment of this Court reported in *(2010) 5 LW 748 [M.V. Jayavelu v. E. Umapathy]*, wherein the learned Judge has observed that the provision of Order 7 Rule 11 of the Code of Civil Procedure is not exhaustive but is only illustrative.

13. He would therefore contend that considering the fact that the Award has been passed by the Lok Adalat under the Legal Services Authorities Act, the present application is nothing but fraud on Court and deserves to be rejected.

14. Per Contra, Ms. Vasudha Thiagarajan appearing on behalf of respondents/plaintiffs would contend that in an application to reject the Plaintiff, the Court has to only look into the contents of the Plaintiff and the documents and nothing more. She would contend that the suit has been filed on the ground that the respondent's signatures in the Memorandum of Understanding has been obtained by fraud, undue influence and misrepresentation and that she and her children have not been given their rightful due and the properties which were promised to her was also not



allotted. There is absolutely no misrepresentation on her part and she has not signed the Award before the Lok Adalat as contended by the applicants.

She would submit that considering the fact that the Memorandum of Compromise has been obtained under subterfuge and fraud the only remedy available to the respondents/plaintiffs was to file the suit to declare the Memorandum of Understanding as null and void.

15. Heard the learned counsels appearing on either side and perused the Complaint and the documents filed along with the Complaint.

16. The Court has also looked into the Complaint and the documents that have been filed along with rejecting the Complaint. The case that is espoused in the Complaint is that the 1st respondent/1st plaintiff and her husband had set up a family business at Visakhapatnam and Hyderabad and had been doing extremely well with the Company making huge profits. She has also contended that several properties have been purchased in the joint names of her husband and his brothers and the Sale Deeds have been filed as Document Nos. 1 to 19 along with the Complaint. The pleadings and documents would reveal that within three months of the death of her husband, the 1st respondent had been compelled to file a complaint before the Kachiguda

Police Station and thereafter, she has been threatened to be dispossessed



from her matrimonial home which constrained her to file the suit for bare injunction before the City Civil Court, Hyderabad in O.S.No.458 of 2012.

The 1st respondent/1st Plaintiff has stated that on the death of her husband, all the Jewelleries and L.I.C. Policies etc., has been taken away by her in-laws and she was left with nothing to fend for herself and her children.

17.It is her case that while struggling to get over the untimely death of her young husband and the anxiety to take care of two minor children coupled with the onslaught by her in-laws, she was in a very vulnerable state and the applicants had taken advantage of this.

18.The 1st applicant/father in-law had come forward and assured that he would make an equitable partition and provide for the 1st respondent and her children, the respondents 2 and 3. Orally she has been informed that she would be given certain properties. A reading of the Schedules to the Memorandum of Understanding, which has been filed as Document No.25 to the Plaint and a reading of Annexure-3 which lists out several properties indicates that in all of these the respondents are giving up their rights. A reading of Annexure-1 coupled with Clause 4 of the Memorandum of Understanding would clearly show that the jewelleries, Bank account, the



includes the jewellery of the 1st respondent. This clinches the statement of the respondent in her Complaint that after the death of her husband all the jewellery, LIC policies Card were taken away by her in-laws. The applicant is just given the B schedule properties which by no stretch of imagination would be an equitable allotment more particularly when it is compared to the properties listed in Annexure 3. It is no doubt true that the respondent has set her hands in the said documents, she has however pleaded the circumstances under which Memorandum of Understanding came to be signed by her and how she had later come to know that the properties which are sought to be allotted to her are a small portion of the properties rightfully due to the share of her husband which she was even otherwise entitled to along with the respondents 2 and 3 and the 2nd applicant. The plaintiff has pleaded fraud, misrepresentation and undue influence which are to be proved only during the trial.

19.*Prima facie*, the plaintiff has made out a case in her pleadings with reference to inequitable allotment as well as the exercise of undue influence and misrepresentation by the 1st applicant.

20.The main ground on which the reject the complaint application has

been filed is on the ground that there has been a suppression about the



Award on the part of the respondents. The defence to this contention is that the 1st respondent has not appeared before the Lok Adalat and has not signed the documents there. Although while considering the application for rejecting the Plea only the Plea and the documents have to be considered, however, considering the fact that the applicants have come forward with a ground of suppression. I have examined the Award said to have been passed by the Lok Adalat at Hyderabad and which has been filed as a document by the learned counsel for the applicants. It is rather strange that when a suit for injunction is pending on the file of the City Civil Court, Hyderabad, the Memorandum of Understanding dated 11.07.2012 is sought to be filed three months later before a Pre-Litigation Lok Adalat. The documents filed at Page 5 of the typedset of papers does not carry the signatures of either the Presiding Judge and the Member or the learned counsel appearing on behalf of the respondents herein.

21. Chapter VI A of the Legal Services Authorities Act, 1987 was inserted by Act 37 of 2002 with effect from 11.06.2002 in and by which Pre Litigation Conciliation and Settlement was introduced. For the purposes of considering the issue on hand it is necessary to extract Section 22 C (1) & (2).



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brought before any court, make an application to the Permanent Lok Adalat for the settlement of dispute:

Provided that the Permanent Lok Adalat shall not have jurisdiction in respect of any matter relating to an offence not compoundable under any law:

Provided further that the Permanent Lok Adalat shall not have jurisdiction in the matter where the value of the property in dispute exceeds twenty five lakh rupees:

Provided also that the Central Government, may, by notification, increase the limit of "twenty five lakh rupees" specified in the second proviso in consultation with the Central Authority.

(2) After an application is made under sub-section (1) to the Permanent Lok Adalat, no party to that application shall invoke jurisdiction of any court in the same dispute."

Therefore a reading of Section 22 C (1) will make it evident that any party to a dispute can make an application to the permanent Lok Adalat for settlement of dispute **before the dispute is brought before any Court.** In the case on hand the respondent had already instituted proceedings and the suit O.S.No.458 of 2012 was pending on the file of the City Civil Court, Hyderabad.

22. Therefore, the veracity of the Award has also got to be tested

<https://hcservices.ecourts.gov.in/hcservices/>

during the trial. There is no quarrel to the proposition that a suppression of



fact and abuse of process of Court is a ground for rejecting the Plaint.

However, in the instant case, the respondent as plaintiff has not suppressed the execution of the Memorandum of Understanding on the contrary one of the prayer in the suit to declare this Memorandum of Understanding as null and void. As regards the Award the Plaintiffs' case is that she has not appeared before the Lok Adalat nor signed the same. This Court also entertains doubts about the said Award.

23. In these circumstances, the application for rejecting the Plaint is dismissed. The defendants are directed to file their written Statement by 21.09.2020.

Sd./- P.T.A.J.
07.09.2020

//Certified to be true copy//

Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)

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