

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3825 OF 2019

Lata w/o Bharat Kalamkar

...Petitioner

Versus

Shankar s/o Revaji Tambe and others

...Respondents

.....
Mr. K. N. Shermale, advocate for the petitioner
Mr. Amol S. Sawant, advocate for respondent Nos. 1 to 5
Mr. U.S. Mote, advocate for respondent Nos. 6 to 8
.....

CORAM : V. K. JADHAV, J.
DATED : 5TH FEBRUARY, 2021

PER COURT :-

1. By consent of the respective parties, heard finally at admission stage.
2. This writ petition is directed against the compromise decree passed in Lok Adalat on the ground of fraud.
3. Learned counsel for the petitioner submits that the respondent Nos. 2 to 5 herein had instituted Regular Civil Suit No. 374 of 2012 for partition and separate possession in respect of ancestral property against respondent No.1 deceased Revaji and respondent No.6 herein, by excluding the petitioner and other members of the joint family, who are impleaded as respondents in the present writ petition. Learned counsel submits that in the said suit, the parties have arrived at amicable settlement and accordingly filed a compromise

pursis at Exh.22. As per the said compromise pursis, respondent No.1 was allotted the land Gat No. 365 and land Gat No. 368 whereas respondent Nos. 2 to 5 (plaintiffs in the said suit) were allotted the land Gat No. 353. Deceased Revaji Bhau Tambe was allotted the land Gat No. 379. It has also been stated in the said compromise pursis that share of deceased Revaji would go to the defendant No.3 (respondent No.6 herein). The said matter was placed before the Lok Adalat and accordingly head of the Loknyayalaya Panel, Parner i.e. learned Civil Judge, Junior Division, Parner accepted the said compromise and decreed the suit in terms of compromise pursis by order dated 30.06.2013. Learned counsel for the petitioner submits that it would not be out of place to mention that respondent No. 12 herein has also instituted the suit for various reliefs, including the partition and separate possession in respect of the same suit property against the members of joint family including the petitioners and the respondents herein.

4. Learned counsel for the petitioner submits that the petitioner and respondent Nos. 7 to 9 and 12 have share in the ancestral property, however, respondent Nos. 1 and 2 to 6 in collusion with each other had suppressed this fact before the Lok Adalat and obtained the decree by playing fraud. Learned counsel submits that deceased Revaji Bhau Tambe is survived by the petitioner, respondent Nos. 1, 6, 7, 8, 9 and 12. Learned counsel submits that the said R.C.S. No. 374 of 2013 was instituted when deceased

Revaji was suffering from critical health condition. The said suit was instituted on 18.6.2013 and deceased Revaji died on 10.12.2013. Further, the said suit was compromised hastily within 12 days from the date of its institution by excluding other legal heirs.

5. Learned counsel for the petitioner submits that in the case of ***Bhargavi Constructions and another vs. Kothakapu Muthyam Reddy and others, reported in (2018) 13 SCC 480*** the Supreme Court by referring the law laid down in the case of ***State of Punjab vs. Jalour Singh, reported in (2008) 2 SCC 660*** has held that in such type of cases to challenge the award passed in Lok Adalat, the only remedy available to the aggrieved person is to file writ petition under Article 226 and/or Article 227 of the Constitution of India in the High Court.

6. Learned counsel for the petitioner submits that this Court (Coram: Ravindra V. Ghuge, J.) by judgment and order dated 28.03.2019 in writ petition No. 10639 of 2018 by referring the ratio laid down by the Supreme Court in the aforesaid case and further the observations made by the Division Bench of Andhra Pradesh High Court in the case of ***Batchu Subba Lokshmi and others vs. Sannidhi Srinivasulu and others, reported in 2010 (1) ALT 483*** held that the writ petition is maintainable and further quashed and set aside the award passed in the Lok Adalat on the ground of fraud.

7. Mr. Amol Sawant, learned counsel for respondent Nos. 1 to 5 submits in the case of ***State of Punjab vs. Jalour Singh (supra)*** the Supreme Court has observed that where an award is made by the Lok Adalat in terms of a settlement arrived at between the parties (which is duly signed by parties and annexed to the award of the Lok Adalat), it becomes final and binding on the parties to the settlement and becomes executable as if it is a decree of a civil court, and no appeal lies against it to any court. The Supreme Court has further observed that if any party wants to challenge such an award based on settlement, it can be done only by filing a petition under Article 226 and/or Article 227 of the Constitution, that too on a very limited grounds. Learned counsel submits that admittedly the petitioner herein was not party to the said suit R.C.S. No. 374 of 2013 so also respondent Nos. 7 to 9 and 12. In view of the same, the question of challenging the said decree passed in Lok Adalat by way of petition under Article 227 of the Constitution of India does not arise.

8. Mr. Sawant, learned counsel for the respondents submits that even in the case of ***Bhargavi Constructions and another (supra)***, though the Supreme court has observed about the remedy available to the aggrieved person, by way of filing writ petition under Article 226 and/or Article 227 of the Constitution of India, however, next to the words aggrieved person the Supreme court has mentioned (respondents herein/plaintiffs).

9. Mr. Sawant, learned counsel for the respondents submits that in terms of provisions of sub-section (2) of Section 21 of the Legal Services Authorities Act, 1987, every award made by a Lok Adalat shall be final and binding on all the parties to the dispute, and no appeal shall lie to any Court against the award.

10. I have also heard learned counsel appearing for respondent Nos. 6 to 8.

11. I have carefully considered the submissions advanced by learned counsel for the respective parties. With their able assistance, I have perused the pleadings, grounds taken in the petition, annexures thereto and reply filed by the concerned respondents.

12. In the facts of the present case, respondent Nos. 2 to 5 herein had instituted the Regular Civil Suit No. 374 of 2013 against respondent No.1 deceased Revaji and respondent No.6 herein Mamtabai (wife of deceased Revaji) for partition and separate possession in respect of ancestral property. Admittedly, the present petitioner and respondent Nos. 7, 8, 9 and 12 herein are also legal heirs of deceased Revaji Bhau Tambe. The same is also evident from the fact that respondent No.12 herein has also instituted the Regular Civil Suit No. 368 of 2018 for partition and separate possession against the petitioner and respondent Nos. 1 to 11 herein.

13. It further appears that the said R.C.S. No. 374 of 2013 was compromised before the Lok Adalat in terms of the settlement arrived at between the parties by order dated 30.6.2013 passed by the Head of Lok Nyayalay Panel i.e. then Civil Judge, Junior Division, Parner. The suit was decreed in terms of the compromise pursis Exh.22.

14. In the case of ***State of Punjab and another vs. Jalour Singh and others (supra)*** in para 12, the Supreme court has made the following observations:-

“12. It is true that where an award is made by Lok Adalat in terms of a settlement arrived at between the parties, (which is duly signed by parties and annexed to the award of the Lok Adalat), it becomes final and binding on the parties to the settlement and becomes executable as if it is a decree of a civil court, and no appeal lies against it to any court. If any party wants to challenge such an award based on settlement, it can be done only by filing a petition under Article 226 and/or Article 227 of the Constitution, that too on very limited grounds. But where no compromise or settlement is signed by the parties and the order of the Lok Adalat does not refer to any settlement, but directs the respondent to either make payment if it agrees to the order, or approach the High Court for disposal of appeal on merits, if it does not agree, is not an award of the Lok Adalat. The question of challenging such an order in a petition under Article 227 does not arise. As already noticed, in such a situation, the High Court ought to have heard and disposed of the appeal on merits.”

15. In the case of ***Bhargavi Constructions and another vs Kothakapu Muthyam Reddy and Others, (supra)*** the Supreme court by referring the aforesaid para No.12 in the case of ***State of Punjab and another vs. Jalour Singh and others,*** in para No. 24 has made the following observations:-

“24. In our considered view, the aforesaid law laid down by this Court is binding on all the Courts in the country by virtue of mandate of Article 141 of the Constitution. This Court, in no uncertain terms, has laid down that challenge to the award of Lok Adalat can be done only by filing a writ petition under Article 226 and/or Article 227 of the Constitution of India in the High Court and that too on very limited grounds. In the light of clear pronouncement of the law by this Court, we are of the opinion that the only remedy available to the aggrieved person (respondents herein/plaintiffs) was to file a writ petition under Article 226 and/or 227 of the Constitution of India in the High Court for challenging the award dated 22.08.2007 passed by the Lok Adalat. It was then for the writ Court to decide as to whether any ground was made out by the writ petitioners for quashing the award and, if so, whether those grounds are sufficient for its quashing.”

16. In the case of ***Batchu Subba Lakshmi vs. Sannidhi Srinivasulu (supra)*** the Andhra Pradesh High court while dealing with the issue of third party challenging the award of the Lok Adalat, in para 8 has made the following observations:-

"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. What are the grounds of challenge."

17. Even this Court (Coram: Ravindra V. Ghuge, J.) in the case of ***Kusumbai Ramesh Palve and others vs. Bhausaheb Barku Palve and others*** in writ petition No. 10639 of 2018 decided on 28.03.2019 in para 12 of the judgment has made the following observations:-

“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.”

18. In the instant case, the petitioner and respondent Nos. 7 to 9 and 12 are the daughters of deceased Revaji. I have carefully gone through the pleadings of said R.C.S. No. 374 of 2013 wherein there is no reference to the petitioner and respondent Nos. 7 to 9 and 12. On the other hand, plaint is silent and there is no pleading as to whether the daughters have relinquished their share in respect of the ancestral property. I find much substance in the contention raised by learned counsel for the petitioner that deceased Revaji was suffering from severe health condition and the same is evident from the fact

that within four months of institution of the suit deceased Revaji died. It further appears that the said R.C.S. No. 374 of 2013 was instituted on 18.6.2013 and it was compromised on 30.6.2013 i.e. within 12 days. Thus, prima facie, the contention raised about the fraud is sustainable. The petitioner is technically not party to the suit but being the daughter of deceased Revaji she was necessary party to the said R.C.S. No. 374 of 2013 alongwith respondent Nos 7 to 9 and 12. Prima facie, it appears that the suit was hastily compromised before the Lok Adalat to prevent the daughters from raising their right in respect of the ancestral property.

19. The petitioner though is not party to the suit which was decreed in terms of the compromise before the Lok Adalat, however, the petitioner, as the aggrieved person, either can file a separate suit for seeking declaration that such decree would not be binding upon her share or the petitioner may file writ petition on the ground of fraud for setting aside the award passed in the Lok Adalat.

20. In view of above, writ petition deserves to be allowed by setting aside the impugned award of the Lok Adalat dated 30.6.2013 and in consequence thereto, the Regular Civil Suit No. 374 of 2013 needs to be restored to the file of learned Civil Judge, Junior division, Parner. Hence, I proceed to pass the following order:-

O R D E R

- I. Writ petition is hereby allowed in terms of prayer clauses “C”, “D” and “E”.
- II. The parties shall appear before the trial court in restored R.C.S. No. 374 of 2013 on 06.04.2021.
- III. The trial court shall proceed to decide the suit after addition of the parties on its own merits.
- IV. Needless to say that the parties to the suit are prevented to create the third party interest or any encumbrance on the suit properties till disposal of the suit.
- V. Writ petition is accordingly disposed of.

(V. K. JADHAV, J.)

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