



**A.No. 4540 of 2021
IN
E.P.No. 176 of 2018**

C.V.KARTHIKEYAN, J.

This Application has been filed questioning an order dated 24.09.2021 passed by the Master in E.P.No. 176 of 2018 which Execution Petition has been filed consequent to an award of the Lok Adalat dated 06.02.2008 in C.S.No. 793 of 2007.

2. C.S.No. 793 of 2007 had been filed by R.Boopathy against his mother Mrs. Soundarammal, his brother R.Balakrishnan and his sister Mrs. V.M.Sumathy, seeking partition and separate possession of the two items of properties which had been described in the schedule to the plaint.

3. The matter was referred to the Lok Adalat and before the Lok Adalat, the plaintiff and the defendants were represented by the learned counsels. Terms of settlement were entered into between the plaintiff on the one hand and the defendants on the other hand. It must be stated that the plaintiff and the second defendant /sons of the first defendant had joined together and they had left their own mother, who was the first defendant and their



sister, the third defendant, high and dry on the other side. The terms of the settlement had entered into before the Lok Adalat and the same is extracted below in entirety for better appreciation:-

“TERMS OF SETTLEMENT”

It is a suit for partition. Plaintiff and defendants 2 and 3 are the sons and daughter of the first defendant. The suit has been referred to the Lok Adalat for settlement. All the parties are present with their respective counsel. After due discussion, the parties arrived at a compromise in the following terms:-

a) *The first defendant and the third defendant are willing to take equally Item No.1 of the plaint schedule property;*

b) *The plaintiff and second defendant are willing to take equally item No.2 of the plaint schedule property alone.*

c) *In so far as the share of the plaintiff and the second defendant are concerned, both of them are inclined to*



sell the property and divide the sale proceeds in equal shares.

On the above terms, the Civil Suit is disposed of. Consequently, connected Original Applications are closed.

sd/-

sd/-

R.Boopathy Counsel for the Plaintiff

sd/-

1. Mrs. Soundarammal

sd/-

2. R.Balakrishnan

sd/-

3. Mrs. V.M.Sumathy

sd/-

Counsel for the Defendants

The Lok Adalat award is passed in terms of the above settlement."

4. The broad agreement entered into between the parties as seen is that the mother and the daughter on the one hand would



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be allotted item No. 1 of the plaint schedule property and the two brothers would take item No.2 of the plaint schedule property. It had also been recorded that the two brothers, namely, the plaintiff and the second defendant have no inclination to hold on to the said property and that they would sell the property and divide the sale proceeds between themselves in equal shares. That particular property is situated according to the learned counsels who represented before this Court in Royapettah, Chennai. It is the admitted cases of all the parties, namely, the mother, the two brothers and the sister that the said property had been sold for adequate consideration and the sale proceeds had been enjoyed in entirety by the plaintiff and the second defendant/the two brothers alone.

5. Having disposed of that particular property, which they were entitled and to which they had agreed under the terms of settlement to be allotted to them, they now focused their attention to the property which was allotted to the mother and their sister / third defendant.

6. The learned counsel Mr.T.C.S. Raja Chockalingam appearing for the two brothers in this Application, who are shown



as respondent Nos. 1 and 2, had taken an affinity to categorise the sister as a mentally ill person. Whenever the third defendant/sister/daughter of the family was referred, the learned counsel continuously used the prefix 'mentally ill'.

7. I am not able to understand how a person of sane mind who had signed a Lok Adalat agreement by which the two brothers benefited by allotment of one property which they also sold would become mentally ill, merely because of repetitive usage of the said phrase. No document had been presented before this Court reflecting her mental status.

8. It is trite in law to point out that judicious sense implies that every person is sane unless a competent Medical Board examines him/her in manner known to law and declares that the said person is not of sound mind. Provisions to that extent are available in the Civil Procedure Code.

9. It is also seen that the property, which had been describe as Item No.1 schedule to the plaint, was allotted to the mother and the daughter, but the two brothers / first and second respondents herein / the plaintiff and the second defendant are also



occupying a portion of it and are residing there with their family and more importantly one of them is also in occupation of the shop premises running a petty business. This has naturally infuriated the mother and the daughter.

10. The Execution Petition has been filed seeking delivery of possession and directing the brothers to vacate from the portions which they unlawfully occupying in the teeth of the settlement entered into before the Lok Adalat.

11. To repeat, under the Lok Adalat, they were allotted Item No.2 of the property and they had sold that property for profitable consideration and had invested that money. They however also continued to occupy item No.1 of the property. Such occupation is justified on the ground that they are enjoying the property of the mother's half share and it is therefore stated that they have every right to continue to be in occupation. To justify possession, they have categorised their sister as mentally ill and that they can enjoy that particular half share hoping that their their own mother would be dead person.



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12. Till the mother is alive, she has every right over the property and she has every right to deal with the property in any manner she wishes. She had so dealt with the property by executing a settlement deed settling her share to her daughter. That has further infuriated the two brothers. An application in A.No. 4717 of 2018 came to be filed before the learned Master in the year 2018 to direct the mother and the daughter to appear before the Court and subject themselves for examination.

13. I am not able to understand the rationale behind the filing of such an application. The learned Master had correctly dismissed the said application by an order dated 30.07.2019. Appeal against the said order in A.No. 5634 of 2019 had also been dismissed by an order dated 20.09.2019.

14. A further Appeal was filed before the Division Bench in O.S.A.No. 289 of 2019 and the Original Side Appeal was also dismissed by an order dated 06.01.2020. However, the learned counsel seeks to take advantage of certain observations made by the Division Bench.



15. That portion of the observations are extracted below:-

“The execution petition is yet to be concluded. On the contrary, the appellant seeks to adjudicate on the veracity of the settlement deed executed by the mother, who is still alive. Therefore, we are not inclined to say anything on the merits of the case. In such view of the matter, the observation of the learned Single Judge stands eschewed.

5. Accordingly, the Original Side Appeal stands dismissed leaving all the issues open to be decided in the execution petition. No Costs. Consequently, connected C.M.P.No.23167 of 2019 is closed. We further make it clear that any observation made by the learned Single Judge as well as the judgment passed by us will not have any bearing in deciding the pending suit.”

16. The observations are read by Mr. T.C.S. Raja Chockalingam learned counsel for the respondents to indicate that



the daughter is actually mentally ill and that the settlement deed was vitiated. But however, that is not the tenure of the observations of the Hon'ble Division Bench. They had only stated that when the mother is alive, they cannot pass any Judgment as to whether she was illiterate or not and it is for her to speak about that fact directly. They had dismissed the Original Side Appeal and stated that the issues can be examined by the learned Master.

17. The learned Master in the order which is the subject matter of the Appeal had moved on a tangential course. It must be mentioned that the Execution Petition has been filed only by the third defendant/sister. The learned Master took umbrage that the mother was shown as respondent over looking the fact that the mother in her counter affidavit had affirmed execution of the settlement deed and had further affirmed that the property was under the possession of the two brothers / her own sons and had further affirmed that the possession should be granted as agreed and undertaken before the Lok Adalat.

18. The learned Master had proceeded to examine the provisions under Order 21 Rule 15 of the Code of Civil Procedure. The entire approach is misguided.



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22. In the instant case, the plaintiff and the third defendant, who are the parties to the Lok Adalat had understood the facts and had signed the settlement and at that particular point of time, there was no allegation that the daughter / sister was mentally ill. It is to be noted that if that allegation is to be accepted then the settlement itself has to be set aside and the respondents will have to be called to pay the share of the mother and daughter of the sale consideration received from the property sold.

23. An advocate should realise that he argues for the cause of the client. There must be judicious reasoning in the arguments put forth by the counsel and the instructions like categorising a party as mentally ill should not be parroted in a Court of law. Having agreed to the terms of settlement before the Lok Adalat, it does not lie in the mouth of the two brothers to now turn around and dispose of the property allotted to them, not share a single paisa of the consideration received with the mother or sister, utilise it and thereafter, continue to squat on the property allotted to the mother and sister unashamedly, without any right and claim that they have a right to one half share of the mother when the mother is very much alive.



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24. I just cannot digest that the two brothers are expecting the death of the old lady so that they are usurp her one half share. The stand taken that the settlement deed is null and void or not executed in manner known to law is not an issue either before the executing Court or before this Court.

25. The learned counsel placed reliance on the Judgment of a learned Single Judge of this Court reported in **85 L.W. 164 [Ramaswami Jadaya Goundar (died) and another Vs. V.T.Elaiya Pillai and another]**. The Judgement relied has no application to the facts of this Court. In the case the executant was said to be an illiterate person. It was therefore stated that the beneficiary should first establish that the document was executed in manner known to law.

26. Here the settlement deed is between the mother and the daughter and the two brothers have no right to question it so long as the mother has very categorically stated in the counter affidavit to the execution petition that she had signed and executed the settlement deed knowing the contents of the document.



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27. The learned counsel then relied on **1996 (II) CTC 279 (Dharman & Six others Vs. Marimuthu)**.

28. Once again the ratio laid down was that the beneficiary will have to disprove undue influence by establishing that a gift was made voluntarily.

29. In the instant case, the two brothers are neither the donors nor the donees. They are strangers to the document. The document had been executed by the mother in favour of the daughter. Either one of them should question the said document if they so deem necessary. They have not done so.

30. The third Judgment relied by the learned counsel for the respondent is reported in **2001 2 L.W. 286 [Prabhu Cabs Vs. Padavettamman Transport and others]**, wherein it is stated that the very execution or registration of a document is not sufficient to prove its veracity.

31. In this case, both the settlor and the settlee have admitted to the settlement deed. The said Judgment is not applicable to the facts of this case.



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32. The respondents have to vacate the premises in their occupation. They have to honour their own commitment before the Lok Adalat. It is hoped that their counsels would advise them that it would be in their interest to vacate and hand over vacant possession to their own mother and sister. It does not augur well for them to hope the mother should die and to categorise their own sister as being mentally ill, all for greed and lust for property.

33. The order of the learned Master to say the least does not inspire confidence. It does not stand the scrutiny of this Court either on principles of law or on facts. The learned Master has being probably pressurised by the nature of the arguments advanced on behalf of the respondents.

34. The two respondents are directed to vacate and handover possession on or before 31.12.2022 failing which the learned Master can pass necessary orders in E.P.No. 176 of 2018 which shall be heard again on 30.11.2022 before the learned Master to observe the status of the respondents having vacated the premise. The Master is directed to issue necessary orders to ensure that the two respondents /brothers do indeed vacate the



premises and adhere to the compromise which they had entered into before the Lok Adalat.

35. This Application is allowed.

36. Costs of Rs.10,000/- to be paid by each one of the two respondents directly to the two petitioners.

08.11.2022

Index:Yes/No
Internet :Yes/No
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