



WEB COPY



W.P.No.11690 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.04.2023

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

Writ Petition No. 11690 of 2019
and
W.M.P. Nos. 11918 and 11919 of 2019

Najini

.. Petitioner

Versus

1. The District Legal Service Authority,
Salem.

2. Y. Adham Sheriff
3. Sulthan Sheriff
4. Ameer Sheriff
5. Kadher Sheriff
6. Raffia Bi

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue an order, a Writ of Certiorari to call for the records pertaining to the impugned award passed by the 1st respondent in O.S. No.592 of 2011 (Lok Adalat Case No.236 of 2011), dated 06.04.2011 and quash the same.

For Petitioner	:	Mr. R. Nalliyappan
For Respondents	:	Mr. M. Alagu Gowtham, Govt. Advocate for R1 Mr. N. Vijaya Baskar for M/s. Law vision for R2 to R6



W.P.No.11690 of 2019

ORDER

WEB COPY

The Lok Adalat Award dated 06.04.2011 issued by the 1st respondent in O.S. No.592 of 1999 (Lok Adalat Case No.236 of 2011) is under challenge in this writ petition.

2. It is the case of the petitioner that originally, the properties belong to one Yahoob Sheriff and Jegarabi Ammal, were partitioned by way of a partition deed, registered as Document No.3686 of 1999 on the file of Sooramangalam Sub Registrar Office, It is averred that out of the said partition, property shown in the “A” Schedule was allotted to her husband and the remaining properties were allotted to respondents 2 to 6 as per respective schedules and they are in peaceful possession and enjoyment of their respective allotted shares. Against the said partition, particularly about the property allotted to her husband, the 2nd respondent filed a suit in O.S. No.592 of 1999 on the file of I Additional Sub Court, Salem and got a preliminary decree on 15.02.2002. Subsequently, based on the preliminary decree, the 2nd respondent filed a final decree petition in I.A. No.619 of 2006, which was referred to Lok-Adalat and later final decree was passed on 21.04.2011, based on Settlement/compromise arrived at between the parties on 06.04.2011. It is the grievance of the petitioner that the parties in the suit viz., O.S. No.592 of 1999 acted fraudulently by



W.P.No.11690 of 2019

fabricating the signature of her husband and obtained exparte preliminary decree against her husband. It is the further case of the petitioner that her husband died on 25.12.2008, without impleading her and other legal heirs of her husband, the respondents 2 to 6 colluded together and obtained a final decree. Therefore, she filed a suit in O.S No.566 of 2016 on the file of IV Additional District Munisf Court, Salem along with other legal heirs of her husband to declare that the decree in O.S. No.592 of 1999 is null and void as well as to set aside the compromise decree in I.A. No.619 of 2006. On notice in the suit in O.S. No.566 of 2016, the 6th respondent has filed an application in I.A. No.876 of 2016 under Order 7 Rule 11 to reject the plaint and the same was allowed by way of fair and final order dated 11.01.2019. Challenging the same, the petitioner has filed this writ petition with the aforesaid prayer.

3. Learned counsel for the petitioner submitted that the petitioner and other legal heirs of Jalal Sheriff are in possession of the property based on the partition deed dated 14.10.1999. While so, the 2nd respondent suppressed the same and filed a suit in O.S. No.592 of 1999 and obtained an exparte decree. He also submitted that without impleading the petitioner and other legal heirs of Jalal Sheriff, who is the petitioner's husband or serving any notice to them, the impugned Award has been passed, which is unsustainable. Further, the 1st



W.P.No.11690 of 2019

respondent ought not to have entertained the compromise memo filed by the respondents 2 to 6, which is the basis for passing final decree. In view of the above, he prays before this Court for quashment of Lok Adalat Award dated 06.04.2011 issued by the 1st respondent and thereby, this writ petition may be allowed.

4. Per contra, Mr.N.Vijaya Baskar, learned counsel appearing for the respondents 2 to 6 vehemently opposes the contentions raised in this writ petition and firstly submitted that suit summons were served to the defendants in O.S. No.592 of 1999 and due to non filing of written statement, the defendants were set exparte and preliminary decree was passed on 15.02.2002. Secondly, he submitted that subsequent to death of petitioner's husband, who is the brother of the 2nd respondent, petitioner as well as other legal heirs of Jalal Sheriff have been impleaded and notice was served. Thirdly, recording the compromise memo, the 1st respondent has passed the orders in Lok Adalat case No.236/2011, dated 06.04.2011 and thereafter final decree was passed on 21.04.2011. After passing of final decree, the “A” schedule property was sold to one Subramani on 14.07.2016 and the sale proceedings were shared among the parties in the suit in O.S. No.592 of 1999, leaving the share of petitioner's husband Jalal Sheriff.



W.P.No.11690 of 2019

5. By placing reliance on paragraph No.8 of the counter affidavit, he vehemently argued that the petitioner was very well aware about the finality of the suit (preliminary as well as final decree) and the sale of respective portion of the property i.e. “B” Schedule property to one Rajaravi Sekar on 14.05.2014 registered as Document No.2730 of 2014 on the file of SRO, Suramangalam, Salem. He therefore concluded his arguments by submitting that the aforesaid facts were well known to the petitioner and the other legal heirs of Jalal Sheriff but by suppressing the same the suit viz., O.S. No.566 of 2016 was filed before the Additional District Court, Salem. The said suit was filed to harass the private respondents, who in turn filed a petition for rejection of plaint and the said petition was allowed on 11.01.2019. Since the plaint itself was rejected on the basis of the Interlocutory Application filed to strike off the plaint, without challenging the same, the instant writ petition is not maintainable. On the aforesaid score, he submitted that the relief sought for in this writ petition is not maintainable as the suit filed by the petitioner has already reached finality and therefore, no interference by this Court is warranted to quash the order dated 06.04.2011. Accordingly, he prays for dismissal of this writ petition.

6. This Court heard and considered the submissions made by the learned counsel on either side and perused the materials placed before it.

7. On perusal of records, it reveals that the subject property in



W.P.No.11690 of 2019

dispute originally belongs to a joint family. It is an undisputed fact that pending suit in O.S. No.592 of 1999, the petitioner's husband Jalal Sheriff died and thereafter his legal heirs were impleaded, including the petitioner. Further, it reveals from the records that subsequent to passing of final decree, which was passed by the 1st respondent on the basis of compromise entered between the parties before the Lok Adalat Court, Salem the petitioner and other legal heirs of Jalal Sheriff were left alone due to non co-operation or non acceptance. Further, a bare perusal of records reveal that the petitioner and other legal heirs of Jalal Sheriff have sold their portion of "B" Schedule property to one A. Rajaravi Sekar, which was registered as Document No.2730 of 2014 on 14.05.2014 on the file of the SRO, Suramangalam, Salem. The aforesaid sale was effected in the year 2014, whereas the sale effected by the 2nd respondent in respect of the "A" schedule property was of the year 2016 to one Subramani. That being the position, it could be inferred that the petitioner was well aware about the finality of the suit viz., O.S. No.592 of 1999, particularly about the preliminary decree and final decree, which was passed on 21.04.2011 by the 1st respondent. Being aggrieved by the same, the petitioner has filed a suit in O.S. No.566 of 2016 before the I Additional District Court, Salem seeking for declaration of the decree in O.S. No.592 of 1999 as well as the compromise decree in I.A. No.619 of 2006 as null and void. Thereafter, the 2nd respondent filed a petition in I.A.



W.P.No.11690 of 2019

No.876 of 2017 for rejection of plaint, which was allowed. Thus, it is clear that

the petitioner has suppressed certain facts in this case. Moreover, the suit filed by the petitioner has come to an end, due to allowing of the rejection of plaint application filed by the 2nd respondent and without challenging the same, the prayer sought for in the writ petition cannot be granted. In view of the aforesaid reasonings, the impugned order, dated 06.04.2011 does not suffer the vice of any illegality or arbitrariness, rather, the said order has been passed after thorough consideration of all the materials and, therefore, the same is liable to be sustained.

8. In view of the reasons aforesaid, this writ petition is devoid of any merits and, accordingly, the same is dismissed. No costs. Consequently connected miscellaneous petitions are closed. However, liberty is granted to the petitioner to work out her remedy in a manner known to law and this order will not preclude the petitioner from doing so.

03.04.2023

Speaking/Non Speaking order

Index : Yes/No

Internet: Yes/No

Neutral citation : Yes / No

vsi2



WEB COPY



W.P.No.11690 of 2019

vsi2

To

The District Legal Service Authority
Salem.

W.P. No.11690 of 2019

03.04.2023