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C.R.P.No.2934 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.12.2023

CORAM:

THE HON'BLE MRS. JUSTICE T.V.THAMILSELVI

C.R.P.No.2934 of 2022

and

C.M.P.No.15903 of 2022

S.Sathishkumar

... Petitioner

-Vs-

1. N.Thiyagarajan
2. N.Balasubramaniam
3. N.Challamuthu
4. Chinnammal
5. V.P.Lakshmi
6. V.P.Selvaraj
7. V.P.Balasubramaniam
8. V.P.Sivasamy
9. P.Vijayalakshmi
10. Chinnammal
11. P.Neelavathi
12. P.Kaliammal
13. K.Shanthi
14. K.Kavipriya

... Respondents

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the Lok Adalat Award dated 06.03.2020 made in O.S.No.1936 of 2019 on the file of Ld. III Addl. Sub-Court, Coimbatore.



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For Petitioner : Mr.N.Manoharan

For Respondents : Mr. S.N.Amarnath for R1 to R14

ORDER

The Revision Petitioner is a third party to the suit in O.S.No. 1936 of 2019 and by invoking Art. 227 of Constitution of India, he filed this Civil Revision Petition praying to set aside the Lok Adalat award dated 06.03.2022 made in O.S.No. 1936 of 2019 filed by the respondents herein.

2. According to the Revision Petitioner, the respondents have obtained an award by furnishing incorrect particulars and by making false representation and also by suppressing true facts, the award was passed by the Lok Adalat as if they are original owners of suit property. In fact, the Revision Petitioner would submit that originally the suit property belongs to one Kavunde Gounder. After his demise, his share was allotted to the share of his two sons viz., Kalikuti gounder and Chinnappa gounder as per panchayat muchalika dated 03.04.1940, wherein they were equally allotted half share in respect of total extent of 6.82 acres. The said Kalikuti



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gounder had one son viz., Palanisamy and two daughters viz., Chinnammal and Ramathal. The the said Palanisamy sold 1 acre through a sale deed dated 27.03.1968 by representing minor son and also subsequently he sold another 1 acre through a sale deed dated 16.05.1973 to one Kuppusamy Pillai, thereby Kuppusamy pillai and Kannammal became absolute owner of two acres. But suppressing all those sale deeds, now the legal heirs of Kalikuti Gounder colluding with the respondents 1 to 3 filed a collusive suit in O.S.No. 1936 of 2019 claiming partition of entire extent of 4.47 acres in Survey No.201/1. In fact, the plaintiffs in that suit are sons of Ramathal, who is sister of Kalikuti Gounder and the defendant is one Chinnammal, who is also sister of Kalikuti Gounder. The respondents 2 to 9 are children of the said Palanisamy, who is original vendor of Revision Petitioner, thereby the respondents have lost their title over the property due to the sale effected much earlier in the year 1968 onwards. By suppressing all those transaction collusively they have filed a suit and they have entered into a compromise and recorded the same before the Lok Adalat. Accordingly, the award was passed for division of property as such is totally fraudulent one and liable to be set aside. In support of his contentions, he has relied on the ratio laid down in the authority reported



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in the case of **2008 (2) SCC 660** in the case of ***State of Punjab and another vs. Jalour Singh and others***. Accordingly, he prayed to set aside the award passed by the Lok Adalat.

3. Notice served on the respondents and the learned counsel for respondents have appeared and submitted that if at all, the decree is obtained by way of fraud as alleged by the Revision Petitioner, he has to work out his remedy before the Civil Court to ascertain the fact whether the fraudulent decree was obtained and not by invoking Art. 226 of Constitution of India. For which, they relied on the ratio laid down in the authority reported in **2006 (7) SCC 416** in the case of ***Hamza Haji vs. State of Kerala and another***, wherein the Apex Court held as follows :-

“Constitution of India – Art. 215, 226 and 136 – Fraud on court – Remedy – When a decision is vitiated by fraud, proper course would be to approach the court which had rendered the decision for redressal.....”

Admittedly, as per the ratio laid down in the aforesaid case reflects that if the decision is vitiated by fraud, proper course would be to approach the court, where the decree was passed. Now, the prayer of Revision Petitioner



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is that he wanted to set aside the Lok Adalat award as such is obtained fraudulently.

4. By way of reply, the learned counsel for Revision Petitioner relied on the ratio laid down in the authority reported in **2018 (13) SCC 480** in the case of ***Bhargavi Constructions and another vs. Kothakapu Muthyam Reddy and others***, wherein the Apex Court held as follows :-

“A. Legal Aid and ADR – Lok Adalats – Award passed by Lok Adalat – challenge to – Remedy available to aggrieved party in such a case – Held, by virtue of law laid down by Supreme Court in Jalour Singh (2008) 2 SCC 660, challenge to award of Lok Adalat can be made only by filing a Writ Petition under Art. 226 and/or Art. 227 of Constitution of India and that too on very limited grounds – Civil Suit not maintainable thereof.”

The learned counsel would further submit that since the Lok Adalat Award was based on the ground of fraud, invoking of Art. 227 of Constitution of India alone is maintainable as the same can be challenged by invoking Art. 227 of Constitution of India and not by the Civil Suit. The ratio laid



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down in the authority reported in **2018 (13) SCC 480** in the case of

Bhargavi Constructions and another vs. Kothakapu Muthyam Reddy

and others is squarely applicable to the facts of the present case.

Furthermore, since because an improper award is passed, as per the ratio

laid down in the case of **2008 (2) SCC 660** in the case of ***State of Punjab***

and another vs. Jalour Singh and others, wherein the Apex Court

held as follows :-

“C. Legal Aid – Lok Adalats – Improper award of Lok Adalat (one based on compromise and settlement between parties) – Non-finality of - Remedy against – Award itself permitting parties to approach court in appeal in case of disagreement with award – Such an award not being a Lok Adalat award proper, cannot be challenged under Art. 227 of the Constitution – In such a situation, court concerned should hear and dispose of the appeal on merits – Legal Services Authorities Act, 1987 – S.20 – Constitution of India – Art. 226 and 227 – Alternate dispute resolution – Conciliation.”

Therefore, the Revision Petitioner is entitled to challenge the Lok Adalat award invoking Art. 227 of Constitution of India stating that the decree is obtained by fraudulently.



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5. Even on perusal of records, the suit in O.S.No. 1936 of 2019 was filed by the respondents/plaintiffs 1 to 3 and the defendants and also on perusal of documents, which they relied before the trial court is only death certificate, legal heir certificate and aadhar card, but they have not produced any document of title nor they have produced the encumbrance certificate. If the Encumbrance Certificate is produced, it would have clearly revealed the earlier transaction. But, they have not produced the same before the trial court at the time of filing of suit nor they produced those documents before referring the matter to Lok Adalat. Therefore, as on date, the Sale deeds relied on by the Revision Petitioner shows that from the year of 1968 onwards, the property was owned by Palanisamy. According to him, he is only owner of entire property. Even otherwise, from 1968 onwards, the sale was effected in respect of the suit property and the same was not proved before the trial court by producing relevant title deed as well as encumbrance certificate as discussed above. So, the non-production of relevant documents is also amounting to fraud as well as abusing process of law as rightly pointed out by the Revision Petitioner.



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Therefore, this Court is inclined to set aside the award passed by the Lok Adalat in O.S.No.1936 of 2019 dated 06.03.2020 and the said Suit is restored. Liberty is granted to the Revision Petitioner to work out his remedy before the trial court to prove his claim. Both parties are also directed to deceive themselves as proper persons and to prove their title before the trial court as per manner known to law. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

12.12.2023

Index : Yes/No
Speaking Order : Yes/No
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To

The III Addl. Sub-Judge, Coimbatore.



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T.V.THAMILSELVI, J.

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