

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.921 of 2018**

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Rajeev Ranjan Upadhyay @ Ghan Shyam Upadhyay, Son of Uday Narayan Upadhyay, Resident of Village Tetariya, P.S. Kochas, District Rohtas.

... .. Petitioner/s

Versus

1. Pramod Kumar Upadhyay, Son of Late Mathura Upadhyay Resident of Village Tetariya, P.S. Kochas, District Rohtas.
2. Dina Nath Upadhyay, Son of Late Mathura Upadhyay, Resident of Village Tetariya, P.S. Kochas, District Rohtas.
3. Ishwar Dayal Upadhyay, Son of Late Mathura Upadhyay, Resident of Village Tetariya, P.S. Kochas, District Rohtas.
5. Aditya Upadhyay @ Raja ji, Son of Dina Nath Upadhyay, Resident of Village Tetariya, P.S. Kochas, District Rohtas.
6. Somjit Upadhyay @ Sonu, Son of Dina Nath Upadhyay, Resident of Village Tetariya, P.S. Kochas, District Rohtas.
7. Vikas Upadhyay @ Dablu, Son of Late Ishwar Dayal Upadhyay. Resident of Village Tetariya, P.S. Kochas, District Rohtas.
8. Anand Bhushan Upadhyay @ Bablu, Son of Late Ishwar Dayal Upadhyay. Resident of Village Tetariya, P.S. Kochas, District Rohtas.
9. Raushan Upadhyay, minor son of Pramod Upadhyay, through father guardian, Resident of Village Tetariya, P.S. Kochas, District Rohtas.
10. Uday Narayan Upadhyay, Son of Late Mathura Upadhyay, Resident of Village- Tetariya, P.S. Kochas, District- Rohtas.
11. Man Mohan Upadhyay, Son of Uday Narain Upadhyay, Resident of Village- Tetariya, P.S. Kochas, District- Rohtas.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Nagendra Rai, Advocate Mr.Surendra Kumar Choubey, Advocate Mr. Navin Nikunj, Advocate Mr. Koshalendra Rai, Advocate
For the Respondent/s	:	Mr.Bachan Jee Ojha, Advocate

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**CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
CAV JUDGMENT**

Date : 16-02-2024

The petitioner has filed the instant petition seeking



the following reliefs :

“(i) Quashing the Award dated 27.06.1998 (Annexure :3) passed by the Lok Adalat, Sasaram in T.S. No.241 of 1997 of the court of Sub-Judge-8, Sasaram.

(ii) Commanding the learned court below to proceed with the T.S.No.241 of 1997 according to the procedure prescribed in the Code of Civil Procedure.

(iii) Grant any other relief deemed fit and proper.”

2. The case of the petitioner is that Title Suit No.241 of 1997 before the learned Sub Judge-8, Sasaram was disposed of in terms of settlement arrived at between the parties of the suit before Lok Adalat, Sasaram on 27.06.1998. In the said title suit, Pramod Kumar Upadhayay was the plaintiff and Uday Narayan Upadhaya (the father of the present petitioner) and others including this petitioner, who was minor at that time, were the defendants. The grievance of the petitioner is that the properties involved in the impugned award were the ancestral properties of the petitioner and he was having birth right in it being a co-parcener and, for this reason, his rights could not be prejudicially affected by any action of his father (respondent no.10 herein). The petitioner, who was a minor at the time of compromise, was not properly represented in the suit and his



interest was not properly protected even by his father.

3. The genealogy, background of the case and family history of the petitioner are quite relevant for better understanding of the case of the petitioner.

One Mahadeo Upadhyay was the common ancestor having two sons:- Dharamraj and Mathura. Mathura has two wives :- Jaumna Kuer and Yashoda Kuer. From Jamuna Kuer, Mathura has a son namely, Uday Narayan, who is respondent no.10 herein. Further, Uday Narayan has two sons; Man Mohan (respondent no.11) and Rajeev (the present petitioner). On the other hand, from Yashoda Kuer, Mathura had four sons; Deena Nath (respondent no.2), Ishwar Dayal (respondent no.3), Pramod Kumar (respondent no.1) and Jai Gobind (who renounced the world). Further, Deena Nath has two sons; Aditya (respondent no.5) and Somjit (respondent no.6). Ishwar Dayal also has two sons; Vikash (respondent no.7) and Anand Bhushan (respondent no.8). Pramod Kumar has a son; Raushan (respondent no.9). Further case of the petitioner is that Dharamraj Upadhyay and Mathura Upadhyay separated and partitioned their properties long time ago and Dharamraj Upadhyay sold his properties measuring 6 acres 69 ½ decimals to Uday Narayan Upadhyay (respondent no.10) vide registered sale deed dated 01.08.1970 for Rs.10,000/- and put him in



possession through his father-guardian. This property was acquired from the personal fund of the respondent no.10 provided from his mother's side and he came in exclusive possession on attaining majority. However, as relationship soured between Mathura Upadhyay and his sons, severance in mess and residence took place. A Title (Partition) Suit No.532 of 1972 was filed in the court of learned Sub Judge, Sasaram in which the respondent no.10 and his mother Yamuna Devi were the plaintiffs and Mathura Upadhyay, Yashoda Devi (second wife of Mathura), Dina Nath and Ishwar Dayal were the defendants. The suit was compromised and compromise decree dated 26.02.1973 was passed and the respondent no.10 and his mother were allotted Schedule 'Ka' of suit land. Similarly, Mathura Upadhaya was allotted Schedule 'Kha' and Yasoda and her sons got Schedule 'Ga' properties. As has already been mentioned that Title Suit No.241 of 1997 came to be filed by the respondent no.1 Pramod Kumar for partition against the respondent no.10 and others which ended in compromise before Lok Adalat and a decree was passed on the basis of compromise.

4. Further case of the petitioner is that he had no knowledge about the Title Suit No.241 of 1997 and the compromise which took place resulting in passing of impugned



award and compromise decree. The petitioner came to know about the aforesaid facts only on 12.01.2017. The petitioner became aware of illegality and invalidity of the award and compromise on coming to know about the contents of the compromise and award dated 27.06.1998. Thereafter, the petitioner filed a Title Suit No. 122 of 2017 before the Civil Judge, Senior Division-1, Sasaram for declaration of the impugned award as forged, fraudulent, invalid and void and also for partition of his share in the ancestral properties. However, the plaint of Title Suit No. 122 of 2017 was rejected under Order 7 Rule 11 (d) of the Code of Civil Procedure (hereinafter referred to as 'the Code') vide order dated 20.03.2018 passed by the learned Sub-Judge-7, Sasaram. Thereafter, the petitioner approached this Court by filing the instant petition.

5. The learned counsel appearing on behalf of the petitioner submitted that the self acquired property of the respondent no.10 could not be transferred to other respondents without a registered deed of transfer or without any adjudication by the court and that can be only after proper pleading and evidence. The award is in violation of Section 17 of the Registration Act. At the same time, the impugned award is void as it is in teeth of the final compromise decree in Title Suit No.532 of 1972. Further, the compromise in question did not



protect the interest of the minors as the father of the petitioner did not sign the compromise agreement as guardian of his minor son, the petitioner herein. Further, no separate guardian *ad litem* (hereinafter referred as 'GAL') was appointed for the petitioner and the GAL, who was appointed, represented the other minors also when the interest of the minor, the petitioner herein, was in conflict with the interest of other minor respondents. The learned counsel relied on the provisions of Order 32 Rule 3 and 7 of the Code as well as the decision of the Hon'ble Supreme Court in the case of ***Kaushalya Devi and Ors. vs. Baijnath Sayal (deceased) and Ors.***, reported in ***AIR 1961 SC 790*** to assail the compromise. The learned counsel submitted that Order 32 Rule 3 of the Code provides for the court to appoint a person as guardian of minor defendant and such guardian can be appointed on an application of the plaintiff or an application in the name of and on behalf of minor. The said application would be supported by an affidavit verifying the fact that guardian had no interest in the subject matter adverse to the minor. Further, Order 32 Rule 7 of the Code provides that no guardian shall without leave of the court expressly recorded in the proceeding enter into an agreement or compromise on behalf of the minor. Further, an application for leave under Sub-rule (1) shall be accompanied by an affidavit of the guardian to the effect that



compromise is in his opinion for the benefit of the minor. Thus, learned counsel for the petitioner submitted that the compliance of Order 32 Rule 3 and 7 are not mere formalities and it is for the purpose of safeguarding the interest of the minors. For non-compliance of these mandatory provisions, the compromise gets vitiated and it cannot be sustained. The learned counsel relied on the decision of the Hon'ble Supreme Court ***Sarda Prasad and Ors. vs. Lala Jumna Prasad and Ors.***, reported in ***AIR 1961 SC 1074*** that the rigours of Order 32 Rule 3 are applicable even to natural guardian. The learned counsel, thus, submitted that violation of the said provision, the award is voidable at the instance of the minor. Further, for entering into a compromise, GAL needs to seek leave of the court which was not sought in the present case. In this context, he has again placed reliance on the decision of the Hon'ble Supreme Court in the case of ***Sarda Prasad and Ors. (supra)***. Also, there was no signature of GAL on the order sheet of Lok Adalat. The learned counsel reiterated that in the aforesaid compromise before the Lok Adalat, individual property as well as properties falling in share of the petitioner were made part of the suit property and given away to others to the detriment of this petitioner, who was minor at that time.

6. The learned counsel for the petitioner further



submitted that the petitioner has every right to assail the impugned award since the properties involved are ancestral/coparcenary properties in which the petitioner has got the right by his birth and the same cannot be denied to him. This fact is also evident from the cause title of the Partition Suit No.241/1997 where this petitioner was made party along with his father as defendant as he was a necessary party.

7. The learned counsel for the petitioner further submitted that there is violation of Sections 19 and 20 of the Legal Services Authorities Act, 1987 (hereinafter referred to as the 'LSA Act') as the concerned court has first to refer the case to the Lok Adalat for compromise and settlement and the reference cannot be made without giving the parties reasonable opportunity of being heard. But it appears from the record that there was no reference by the court to the Lok Adalat and no opportunity was given to the parties to make their stand about the matter being referred to the Lok Adalat. Hence, the award became illegal and without jurisdiction due to non-compliance of the mandatory provisions.

8. The learned counsel further submitted that one GAL is appointed for defendant nos. 6 to 11 who are of different branches and there is a conflict of interest and the same person cannot represent different minors having adversarial interest to



each other. Further, one joint petition dated 25.03.1998 is on record wherein the father of the petitioner along with Dina Nath and Ishwar Dayal sought permission of the court to allow GAL to sign on compromise. The said petition is not affidavated and it is not filed by GAL and, for this reason, there is non-compliance of Order 32 Rule 7. It is also very much strange that a written statement dated 18.06.1998 by GAL is on record, whereas the petition of the father of the petitioner seeking permission to GAL to sign on compromise dated 25.03.1998. These lacunae could not be explained and makes the whole exercise a mockery. Further, the compromise and award show father of the petitioner has not signed as his guardian and different parties signed the compromise on different dates. Further, all parties to the suit did not sign the award and there is no signature of GAL on the award.

9. The learned counsel also submitted that there is inequitable distribution of the properties as separate properties of the father and grandmother of the petitioner namely, Yamuna Devi, which they got under sale deed (Annexure-1) and final decree (Annexure-2) were mixed in common stock and all coparceners have been allotted their shares in those properties. However, Yasoda Kuar, the mother of the plaintiff Pramod Upadhyay and other defendants have been allotted separate



shares of 6.68 acres.

10. On the point of the present petition being barred by limitation, the learned counsel submitted that since the present petition is a civil miscellaneous petition, a writ, under Article 227 of the Constitution of India and hence, there is no application of Limitation Act. There may be ground of delay/laches, but the petitioner has not approached the Court after any delay. Soon after coming to know about the award in December, 2016, Title Suit No.122/2017 was filed in 2017 and after its dismissal, as being not maintainable, the present miscellaneous petition has been filed. Moreover, Article 59 of the Limitation Act prescribes period of three years for cancelling/setting aside a decree from the date of knowledge and the knowledge to the petitioner has been pleaded in December, 2016, so no question of limitation arises.

Thus, learned counsel submitted that the impugned award is liable to be set aside.

11. On the other hand, learned counsel appearing on behalf of the respondents vehemently opposed the submission made on behalf of the petitioner. The learned counsel submitted that the genealogy given by the petitioner in the instant petition and in the plaint of Title Suit No. 122 of 2017 is not the same. The petitioner has made contradictory statements in his plaint of



Title Suit No. 122 of 2017 and the present petition regarding acquisition of properties by his father Uday Narayan Upadhyay, the respondent no.10 herein. The learned counsel further submitted that the petitioner has not presented correct facts before this Court. Before compromise petition was prepared, both the parties to the compromise nominated 'Panchas' on their behalf for resolving the dispute and after several rounds of sittings, the compromise was effected and the compromise petition was filed before the learned Sub Judge-8, Sasaram on 25.03.1998. Thereafter, the matter was referred to the Lok Adalat. There was no infirmity in sending the matter to Lok Adalat and the Lok Adalat acted in accordance with law. The father of the petitioner namely, Udaya Narayan Upadhyay represented the petitioner and his minor brother Man Mohan Upadhyay, who were defendant nos. 6 & 7 before the learned Sub Judge-8 in Title Suit No. 241 of 1997 and the father of the petitioner accepted the land allotted to them in Schedule 'Kha' of the compromise petition and as per direction of the learned Presiding Officer of the Lok Adalat, the Advocate Arvind Kumar Singh signed the compromise petition as GAL on behalf of minor defendant nos. 6 to 11. Thus, the Lok Adalat protected the interest of the minors by appointing GAL for minor defendant nos. 6 to 11, but the petitioner has suppressed all



these facts. The learned counsel further submitted that since the father of the petitioner had represented the petitioner and his brother Man Mohan Upadhayay and had signed the compromise petition being a natural guardian and, thereafter, they were allotted the Schedule 'Kha' of the land of the compromise petition, for this reason, neither Uday Narayan Upadhayay nor the brother of the petitioner joined him in instituting the suit or in filing of the instant petition. Uday Narayan Upadhayay had already sold most of the land which was allotted to him, the petitioner and his brother through a number of registered deeds of sale. After the compromise came into effect, Jamabandi was created in the names of the parties and rent receipts are being issued to them. Land Possession Certificate had also been issued to the parties including the petitioner and the respondents. The petitioner and his father themselves applied for issuance of Land Possession Certificate prior to institution of the suit by the petitioner. The learned counsel further reiterated that father of the petitioner had already sold almost all of his land by a number of sale deeds. The learned counsel further submitted that the petitioner attained majority in the year 2005 and he was supposed to take steps to challenge the compromise decree and award within three years of attaining his majority under the existing law. The act of the father being natural guardian for the



interest of minor will bind the minor, the petitioner herein as the father of the petitioner had executed several sale deeds in which the recitals had been made that the land which was being sold have been allotted to him in compromise decree prepared in Title Suit No.241 of 1997. The instant petition has been filed on 09.05.2018, i.e., after expiry of about 13 years after attaining the majority by the petitioner. The learned counsel further submitted that the award based on compromise before the Lok Adalat can only be set aside on the ground of fraud, but the petitioner has miserably failed to show what was the fraud committed by the parties. The learned counsel relied on the decision of the Hon'ble Supreme Court in the case of *K. Srinivasappa & Ors. vs. M. Mallamma & Ors.*, reported in *2022 SCC OnLine SC 636* on the proposition that the writ courts cannot reverse/set aside the award of Lok Adalat without setting aside the facts recorded in the said award as being fraudulent. The learned counsel further relied on the decision of this Court in the case of *Amiteshwar Dayal & Ors. Vs. Shambhu Dayal & Ors.*, reported in *2012(4) PLJR168* stressing the fact that this Court dismissed the first appeal on the ground of limitation against the arbitral award with finding that plaintiff was required to file the suit within three years from the date of attaining his majority.

12. In reply to the submission of learned counsel for the



respondents, the learned counsel for the petitioner submitted that limitation would not apply in this case as the same will be counted from the date of knowledge and the present petition has been filed under Article 227 of the Constitution of India. The petitioner has already stated that he got the knowledge only on 20.12.2016 and filed the suit in the year 2017 and the present petition has been filed in the year 2018. So, reliance placed by the learned counsel for the respondents on the decision rendered in *Amiteshwar Dayal case* (supra) is not relevant for the purpose. The learned counsel again reiterated that if the petitioner was a necessary party, rigours of Order 32 Rule 7 would come into play. Further, there would be no application of proposition rendered in *K.Srinivasappa case* (supra) since there is no specific allegation of fraud. The learned counsel again reiterated that there has been no compliance of Sections 19 and 20 of the 'LSA Act' as no case could be referred to the Lok Adalat without giving opportunity of hearing to the parties.

13. Perused the records.

14. From the facts available on record and submissions made on behalf of the parties, it is evident that the petitioner has challenged the award dated 27.06.1998 of the Lok Adalat on the ground that there has been no compliance of provisions of Order 32 Rule 7 of the Code and there was no proper representation of



the minor and the interest of the minor was not protected while the award was passed based on a compromise. The award has also been assailed on the ground that there was no proper reference of the matter by the learned trial court, i.e., learned Sub Judge-8, Sasaram complying the mandate of law under Sections 19 and 20 of the 'LSA Act'. Apart from that, the challenge to the award is also on the ground that it was inequitable. On the other hand, the respondents has raised the issue of delay/laches. It has also been contended on behalf of the respondents that the subsequent events belie the claim of the petitioner about having no knowledge of earlier compromise decree.

15. Obviously, on the ground of technicalities, the petitioner has challenged impliedly the award of the Lok Adalat. Though fraud has been alleged but nothing has been brought on record to show that the fraud was perpetrated by the respondents who were plaintiff and the defendant apart from father and brother of the present petitioner. The whole focus of the argument of the petitioner is on non-compliance of some statutory provisions rendering the compromise and subsequent award based on the said compromise void and not enforceable. The Hon'ble Supreme Court in the case of ***K. Srinivasappa (supra)*** has referred to ***Ruby Sales and Servioces Pvt. Lotd. V.***



State of Maharashtra, reported in (1994) 1 SCC 531 wherein the Hon'ble Supreme Court observed that the consent decree is a creature of agreement and is liable to be set aside on any of the grounds which will invalidate an agreement. Therefore, it would follow that the level of circumspection, which a Court of law ought to exercise while setting aside a consent decree or a decree based on a memo of compromise, would be at least of the same degree, which is to be observed while declaring an agreement as invalid. It has further been held that where an allegation of fraud is made against a party to an agreement, the said allegation would have to be proved strictly, in order to avoid the agreement on the ground that fraud was practiced on a party in order to induce such party to enter into the agreement. Similarly, the terms of a compromise decree, cannot be avoided, unless the allegations of fraud has been proved. Moreover, there has not been specific allegation to the effect that any fraud was committed though there is innuendo about the same. A question of award being based on any fraud can be outrightly ruled out as it is nowhere the case of the petitioner that the plaintiff induced the father of the petitioner to become party to the compromise. The father of the petitioner admittedly entered into a number of transactions transferring the land which came into his share as a result of the award and neither the father nor the brother of the



petitioner choose to become party in the present case.

16. So far as contention of the petitioner about irregularities in the appointment of GAL is concerned, I think the same should not be given undue importance. The plaintiff duly moved before the learned trial court, i.e., learned Sub Judge-8, Sasaram for appointment of GAL of minor defendants and produced Nazir receipt no.712 dated 13.02.1998 for appointment as is reflected from the order dated 25.03.1998 passed in Title Suit No.241/1997. So, GAL was appointed in due course and the same is also reflected from the order sheet dated 29.05.1998. Further, not much importance can be attached to the claim of the petitioner that only one GAL was appointed for all minor defendants who were having adversarial interest. The father of the petitioner, being his natural guardian, was there to protect his interest. If there was an iota of possibility that the interests of the minor defendants were adversarial, the same was to be raised by GAL so appointed under his duty and for the court concerned to consider such objection. In the facts of the case, the father/natural guardian of the minor defendants were also on record and the appointment of GAL was in addition to the presence of the natural guardian. In any case, the court was there to take care of interest of minor defendants and the role of GAL was to assist the court to arrive at a just



decision.

17. It has also been contended on behalf of the petitioner that GAL did not sign the compromise petition or the parties signed on different dates, but the chronology would show that nothing appears to be amiss. The compromise petition was filed on 25.03.1998. Thereafter, the father of the petitioner filed objection to the said compromise petition which was later on withdrawn and an application accepting the compromise has been filed by the father of the petitioner. In the same sequence, a written statement in routine manner was filed by GAL which is dated 18.06.1998. Thereafter, on the next date, i.e., 19.06.1998, the GAL put his signature on the compromise petition with the following endorsement :

“On admission of minor defendants 6 to 11, on submission of natural guardian of minor, this compromise petition is in favour of the minor”.

18. From perusal of the record of the learned trial court, it appears that the compromise petition was brought on record with separate petitions by plaintiff and defendants including father of the petitioner in support of the compromise petition. At the time of filing the compromise petition, another application was filed by the defendants who were natural guardian of the minor defendants to allow GAL to sign the compromise. So it



was natural that the GAL put his signature at a different date from other parties. Taking together all these facts, I am of the considered opinion that there has been substantial compliance of the Order 32 Rule 7 of the Code.

19. Much stress has been put on non-compliance of Sections 19 and 20 of the 'LSA Act', but in my opinion this is a non-issue. Sections 19 and 20 of the 'LSA Act' provide as follows :

“19. Organisation of Lok Adalats.—(1) Every State Authority or District Authority or the Supreme Court Legal Services Committee or every High Court Legal Services Committee or, as the case may be, Taluk Legal Services Committee may organise Lok Adalats at such intervals and places and for exercising such jurisdiction and for such areas as it thinks fit.

(2) Every Lok Adalat organised for an area shall consist of such number of—

(a) serving or retired judicial officers; and

(b) other persons, of the area as may be specified by the State Authority or the District Authority or the Supreme Court Legal Services Committee or the High Court Legal Services Committee, or, as the case may be, the Taluk Legal Services Committee, organising such Lok Adalat.

(3) The experience and qualifications of other persons referred to in clause (b) of sub-section (2) for Lok Adalats organised by the Supreme Court Legal Services Committee shall be such as may be prescribed by the Central Government in consultation with the Chief Justice of India.

(4) The experience and qualifications of other persons referred to in clause (b) of sub-section (2) for Lok Adalats other than referred to in sub-section (3) shall be such as may be prescribed by the State Government in consultation with the



Chief Justice of the High Court.

(5) A Lok Adalat shall have jurisdiction to determine and to arrive at a compromise or settlement between the parties to a dispute in respect of—

(i) any case pending before; or

(ii) any matter which is falling within the jurisdiction of, and is not brought before, any court for which the Lok Adalat is organised:

Provided that the Lok Adalat shall have no jurisdiction in respect of any case or matter relating to an offence not compoundable under any law.

20. Cognizance of cases by Lok Adalats.—(1)

Where in any case referred to in clause (i) of sub-section (5) of Section 19,--

(i) (a) the parties thereof agree; or

(b) one of the parties thereof makes an application to the court,

for referring the case to the Lok Adalat for settlement and if such court if prima facie satisfied that there are chances of such settlement; or

(ii) the court is satisfied that the matter is an appropriate one to be taken cognizance of by the Lok Adalat,

the court shall refer the case to the Lok Adalat:

Provided that no case shall be referred to the Lok Adalat under sub-clause (b) of clause (i) or clause (ii) by such court except after giving a reasonable opportunity of being heard to the parties.

(2) Notwithstanding anything contained in any other law for the time being in force, the Authority or Committee organising the Lok Adalat under sub-section (1) of Section 19 may, on receipt of an application from any one of the parties to any matter referred to in clause (ii) of sub-section (5) of Section 19 that such matter needs to be determined by a Lok Adalat, refer such matter to the Lok Adalat, for determination: Provided that no matter shall be referred to the Lok Adalat except after giving a reasonable



opportunity of being heard to the other party.

(3) Where any case is referred to a Lok Adalat under sub-section (1) or where a reference has been made to it under sub-section (2) the Lok Adalat shall proceed to dispose of the case or matter and arrive at a compromise or settlement between the parties.

(4) Every Lok Adalat shall, while determining any reference before it under this Act, act with utmost expedition to arrive at a compromise or settlement between the parties and shall be guided by the principles of justice, equity, fair play and other legal principles.

(5) Where no award is made by the Lok Adalat on the ground that no compromise or settlement could be arrived at between the parties, the record of the case shall be returned by it to the court, from which the reference has been received under sub-section (1) for disposal in accordance with law.

(6) Where no award is made by the Lok Adalat on the ground that no compromise or settlement could be arrived at between the parties, in a matter referred to in sub-section (2), that Lok Adalat shall advise the parties to seek remedy in a court.

(7) Where the record of the case is returned under sub-section (5) to the court, such court shall proceed to deal with such case from the stage which was reached before such reference under sub-section (1)".

20. Perusal of the order-sheet of the learned trial court shows the compromise petition dated 25.03.1998 was accepted by the learned Sub Judge-8, Sasaram on 19.06.1998. It goes without saying that the compromise petition was brought into existence by the parties and all of them accepted its contents. If



the compromise was accepted to the satisfaction of the learned trial court, no question arises about not giving a reasonable opportunity of being heard to the parties. Once the compromise was accepted, the reference to the Lok Adalat was a mere formality. Further it transpires from perusal of award of Lok Adalat that parties filed a joint petition before the authority of Lok Adalat and the dispute was settled in terms of compromise petition. So there would be application of Section 19(2) of the 'LSA Act' and there was no heed for court of learned Sub Judge-8, Sasaram to refer the matter to the Lok Adalat.

21. The learned counsel for the petitioner has also agitated the point that the self acquired property of the father of the petitioner was thrown into joint stock along with the property allotted to the father and the grandmother of the petitioner. If the property of the father of the petitioner was self acquired, the father of the petitioner was well within his rights to deal with it in the manner he deemed fit and proper. The same goes with the other property of the father and grand mother of the petitioner. Moreover, the same came in their share after family partition. So I find no merit in the submission that the exclusive property of the petitioner's father was mixed in common stock and the co-sharers were allotted those properties. Further, from the recital of the compromise petition, it appears



that the petitioner's father and his brothers got around 7.40 acres of land and wife of Mathura Upadhayay, Yasoda Kumar was allotted 6.6. acres of land. It has also come on record that in the partition of 1973, both wives of Mathura Kumar, namely, Yasoda Kumar and Yamuna Kumar were allotted shares with their sons. This distribution could not be said to be inequitable or unconscionable. If it was to the detriment of the father of the petitioner, he could have raised the issued and could have avoided the compromise, rather the father of the petitioner and his brother chose not to challenge the compromise and they accepted their allotted shares. Annexure R/1 has been brought on record along with counter affidavit of respondent no.1 which appears to be a '*panch*' document signed by Mostt. Yasoda Kuar, Uday Narayan Upadhayay, Deena Nath Upadhayay, Ishwar Dayal Upadhayay, Pramod Kumar Upadhayay, Jai Govind Upadhayay and by two '*punchas*' and recital of this document shows all the aforementioned persons admitted that everybody will have 1/6th share in movable and immovable property and it would be immaterial which property stands in the name of which person and all of them will have equal share. Further, in the same counter affidavit, details of a number of sale deeds executed by father of the petitioner have been brought on record which goes on to show that father of the



petitioner acted upon the compromise and transferred the property which were allotted in his share. It has also not been disputed that after preparation of award, the father of the petitioner along with other parties applied for creation of *Jamanbandi* in their names. It has further been contended that the petitioner and his father applied for land possession certificate and it was issued to them even in the year 2015.

22. Lastly, I would like to deal with the delay in filing the civil miscellaneous petition. Though it has been contended by the petitioner that there is no delay and laches in filing the present petition. Admittedly, the petitioner attained majority in the year 2005 and for 12 years, the petitioner sat tight over the matter and when the father of the petitioner has been dealing with the land out of their allotted shares, knowledge could be imputed to the petitioner. It is not believable that the petitioner came to know about the impugned award only when the respondent nos. 1 to 3 started construction over the land of the petitioner. When the petitioner claims to be a co-sharer and was enjoying the property through his father, it was incumbent upon the petitioner to be vigilant about his rights. The law helps only those who remain vigilant about their rights and do not sleep over it. So, I am of the view that the present petition even suffers on account of delay and laches on part of the petitioner.



The Hon’ble Supreme Court in the case of *Chennai Metropolitan Water Supply & Sewerage Board and others v. T.T. Murali Babu*, reported in, *AIR 2014 SC 1141* has held that the doctrine of delay and laches should not be lightly brushed aside. Such delay may have impact on others’ ripened rights and may unnecessarily drag others into litigation.

23. In the light of the aforesaid discussion, I am of the considered opinion that the petitioner has not been able to make out a case in his favour and hence, I do not find any merit in the present petition. Accordingly, the petition stands dismissed.

Arun Kumar Jha, J)

V.K.Pandey/-

AFR/NAFR	AFR
CAV DATE	29.01.2024
Uploading Date	16.02.2024
Transmission Date	NA

