



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

Writ Petition No. 7595 / 2020
With
Civil Application No. 11482 / 2023
in
Writ Petition No. 7595 / 2020

Chandpasha s/o Amirsab Ansari,
Age : 62 years, Occupation : Agriculture,
R/o Uti (Bu.), Tq. Ausa, Dist. Latur.

...Petitioner

Versus

1. Ejaz s/o Amirsab Ansari,
Age : 42 years, Occupation : Agriculture,
R/o Uti (Bu.), Tq. Ausa, Dist. Latur.
2. Amatulabi w/o Amirsab Ansari,
Age : 70 years, Occupation : Household,
R/o Uti (Bu.), Tq. Ausa, Dist. Latur.
3. Amirsab s/o Chandsaab Ansari (deceased)
Through L.Rs.
 - i. Chandpasha s/o Amirsab Ansari (Petitioner herein)
 - ii. Ejaz s/o Amirsab Ansari (Respondent No.1 herein)
 - iii. Surajpasha Amirsab Ansari,
Age : 50 years, Occupation : Agriculture,
R/o Uti (Bu.), Tq. Ausa, Dist. Latur.
 - iv. Sultana Jabbar Pathan,
Age : 48 years, Occupation : Household,
R/o Ambejigai Rd, Near Chandtara Masjid, Latur.
 - v. Rizwana Salim Sheikh,
Age : 46 years, Occupation : Household,
R/o Mangrul, Tq. Kalamb, Dist. Osmanabad.

- vi. Mumtaz Raifoddin Syed,
Age : 44 years, Occupation : Household,
R/o Uti (Bu.), Tq. Ausa, Dist. Latur.
- vii. Channa Ejaz Pathan,
Age : 40 years, Occupation : Household,
R/o M.H.A.D.A. Colony, Babhal Gaon Rd, Latur.
- viii. Rubina Pirpasha Sheikh,
Age : 38 years, Occupation : Household,
R/o Bhada, Tq. Ausa, Dist. Latur.
- ix. Irfana Jafar Patel,
Age : 35 years, Occupation : Household,
R/o Nanad Jau, Tq. Nilanga, Dist. Latur.
(L.Rs. iii to ix formal parties). ...Respondents

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Mrs. Anjali Dube (Bajpai), Advocate for the Petitioner.
Mr. R.P. Adgaonkar, Advocate for Respondent Nos.1 and 2.

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CORAM : SHAILESH P. BRAHME, J.
RESERVED ON : 22nd JANUARY 2024.
PRONOUNCED ON : 29th JANUARY 2024.

JUDGMENT :

1. Rule. Rule is made returnable forthwith with the consent of the parties. Heard the learned Counsel for the litigating sides finally.

2. The petitioner is challenging an award dated 17.03.2019 passed by the National Lok Adalat, Ausa in RCS No.174/2019. The petitioner is a step-brother of the respondent no.1 and step son of

the respondent no.2. The respondent no.2 is the wife of respondent no.3. The respondent no.1 had filed RCS No.174/2019 for perpetual injunction against respondent no.2 and 3. The petitioner was not party to the litigation. The respondent no.3 was the owner of suit land which was gifted by him to respondent no.1 by oral Heeba. The possession of the respondent no.1 was stated to be obstructed which was cause to file suit.

3. There was settlement amongst respondent nos. 1 to 3. Respondent no.2 secured power of attorney of the respondent no.3. She entered into compromise on behalf of herself and the respondent no.3 with the respondent no.1 on 17.03.2019. The compromise was recorded and an award was passed on 17.03.2019 by the panel of National Lok Adalat, Ausa.

4. The petitioner's case is that respondent no.3 was not the exclusive owner of the suit land. He is son begotten from deceased wife of respondent no.3. He had interest in the suit land. From the record of right, he noticed the award passed by the National Lok Adalat. The respondent no.1 had no right to gift suit land to the respondent no.1 and to part the possession. Feeling aggrieved by the decree drawn in pursuance of the award passed by the National Lok Adalat, the petition is preferred on the ground of fraud and misrepresentation.

5. Learned Counsel for the petitioner submits that the award passed by the National Lok Adalat on 17.03.2019 is vitiated by fraud and misrepresentation. The petitioner has a right of inheritance and he was necessary party. The respondents suppressed material facts and obtained impugned award on the same date. The impugned award is passed in very casual manner and mechanically which has resulted into miscarriage of justice. Learned Counsel Smt. Dube submits that the mandatory procedure contemplated by the Order 1, Rule 8(1)(b) and Order 23, Rule 3(b)(2) have not been followed. Without seeking permission of the Court, the respondent no.2 acted on behalf of respondent no.3 by tendering power of attorney. The impugned award is void. It is further submitted that the petitioner has no alternate remedy of filing suit challenging the judgment and award passed by the Lok Adalat. Neither can she challenge the award passed by the National Lok Adalat by preferring any appeal in view of Section 21(1) of the Legal Services Authorities Act, 1987.

6. Learned Counsel for the petitioner seeks to rely upon the judgment rendered by the Division Bench of Hyderabad High Court in the matter of **P. Naresh Kumar Vs. Secretary Legal Services Authority and Others** in Writ Petition No. 1932/2020; judgment passed in the matter of **Dinkar Indrabhan Kadaskar and Others Vs. Grampanchayat Bhagwatipur and Others**, 2009(1) Bom.C.R. 39.

7. Per contra, learned Counsel for the respondents supports impugned award passed by the Lok Adalat. He has raised objection for the maintainability of the petition by relying upon the judgment passed by the Division Bench of Andhra Pradesh High Court in the matter of **Batchu Subba Lakshmi and Others Vs. Sannidhi Srinivasulu and Others**. He would submit that the writ petition is not maintainable because the petitioner is a third person and he was not party to the litigation. The petitioner has remedy of preferring independent suit challenging award passed by the National Lok Adalat on the ground of fraud, misrepresentation or violation of statutory procedures.

8. Learned Counsel for the respondent has invited my attention to the plaint in RCS No.101/2022 instituted by the petitioner against the respondents and others for partition, possession and declaration. The compromise deed filed in RCS No.174/2019 is sought to be challenged in the suit. For that reason also, the maintainability of the petition is objected. He would further submit that the respondent no.3 was the exclusive owner of the suit land and had right to execute Heeba in favour of the respondent no.1. There are disputed questions of facts and intricate issues involved in the matter which cannot be decided by writ Court.

9. I have considered rival submissions of the parties. Admittedly,

petitioner was not party to RCS No.174/2019. He was not signatory to the terms of settlement and he was not present before the National Lok Adalat. As per Section 21(2) of Legal Services Authorities Act, 1987, the award passed by the Lok Adalat is final and binding between the parties and appeal is not maintainable against them. Section 21(2) reads as follows :

“21. Award of Lok Adalat .[(1) Every award of the Lok Adalat shall be deemed to be a decree of a Civil Court or, as the case may be, an order of any other Court and where a compromise or settlement has been arrived at, by a Lok Adalat in a case referred to it under sub-section (1) of section 20, the Court-fee paid in such case shall be refunded in the manner provided under the Court-Fee Act, 1870 (7 of 1870)].

(2) 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. It relevant to refer to Order 23 Rule 3(a) of the Civil Procedure Code which is as follows :

“3A. Bar to Suit _ No suit shall lie to set aside a decree on the ground that the compromise on which the decree is based was not lawful.”

. The above section prohibits filing of the suit challenging compromise decree. The petitioner was not a party to the suit and the compromise terms culminated into award passed by the Lok Adalat. He is challenging award passed by the National Lok Adalat on the ground of (i) fraud, (ii) misrepresentation and suppression of material facts; (iii) violation of statutory procedure contemplated by

Order 23 Rule 3(b)(2) and Order 1 Rule 8(b)(d). (iv) The award was not lawful.

11. It is trite law that fraud vitiates everything. The decree passed by the Civil Court or award of the National Lok Adalat obtained by fraud is nullity. Such an award/decreed is Non-est. Aggrieved party has every right to challenge such an award. Only fulcrum of the issue is before which forum it is to be challenged.

12. Learned Counsel for the respondents has referred to the judgment rendered by the Division Bench of Andhra Pradesh High Court in the matter of Batchu Subba Lakshmi (supra). In that case, the petitioners before the Division Bench were not party to the suit and award passed by the Lok Adalat. They had challenged award passed by the Lok Adalat directly by preferring writ petition, albeit challenge to award in execution had rendered unsuccessful.

Paragraph No.8 is relevant which is as follows :

“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. u/s 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."

13. The writ petition was dismissed by the Division Bench of Andhra Pradesh High Court. However no findings were recorded whether writ petition at the instance of a party who was not impleaded before the Civil Court or Lok Adalat could maintain the petition. On facts of that case, the writ petition found to be not entertainable due to latches. Hence this judgment is of little assistance to this Court.

14. Learned Counsel for the petitioner submitted that the writ petition under Article 226 and 227 of the Constitution of India is the only remedy and filing of separate suit is impermissible. The reliance

is placed upon the judgment of the Division Bench of the Hyderabad High Court in the matter of P. Naresh Kumar (supra). She has referred to paragraph no.13 and 14. Though the judgment of the Division Bench of Andhra Pradesh High Court in the matter of Batchu Subba Lakshmi (supra) was referred in paragraph no.9 of the judgment, it is neither relied nor distinguished by the subsequent Division Bench.

15. The facts of the subsequent Division Bench of Hyderabad High Court reveals that the petitioner was not party to the proceeding but had a right of inheritance. In that case, the petitioner had also challenged alienation of the suit property, in addition to award passed by the Lok Adalat. On peculiar facts of that case, it was found that the petitioner was having subsisting title and interest over the suit property. The award passed by the Lok Adalat was declared to be null and void and for the relief of declaration, the petitioner was diverted to avail the remedy of the suit. On facts, I find that this judgment of Hyderabad High Court does not assist this Court.

16. It would not be out of context to refer to the judgment of learned Single Judge (Coram : Ravindra V. Ghuge, J.) in the matter of Kusumbai Ramesh Palve and Others Vs. Bhausaheb Barku Palve and Others in Writ Petition No.10639/2018 decided on 28.03.2019. Paragraph No.12 of the judgment reads as follows :

“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.”

17. I am of the considered view that the remedy for the third party to challenge award passed by the Lok Adalat on the ground of fraud is to either prefer independent civil suit or to approach High Court.

18. The petitioner has challenged award on the ground of fraud, misrepresentation, violation of statutory procedure etc. The petition involves disputed questions of facts. Though the petitioner is claiming right of inheritance, the respondents have contested the same. There are debatable questions of facts which cannot be adjudicated in writ jurisdiction.

19. Interestingly, it has been brought on record that the petitioner has already instituted RCS No.101/20222 against the respondents before the Civil Judge, Junior Division, Ausa for declaration and

injunction. Though specifically award passed by the Lok Adalat on 17.03.2019 has not been challenged and prayed to be set aside, but following reliefs are sought :

“23. The plaintiff craves leaves to amend, alter or delete the contents of the plaint with prior permission of this Hon'ble Court. An affidavit of Plaintiff in support of above contents is attached herewith.

Hence prayed : suit of the plaintiff may kindly be decreed as under :

- (1) The suit property may kindly be partitioned and Plaintiff may kindly be given his lawful/legitimate ½ share in respect of suit property/ land described in schedule A and B of Para No.3 of the plaint.***
- (2) Decree of this suit may kindly be sent to Collector for it's execution under Section 54 of C.P.C.***
- (3) It may kindly be declared that the said Hibba of Ramzan Eid 2018 between defendant no.1 and deceased Amirsab Ansari is bogus and illegal.***
- (4) It may kindly be declared that the Mutation Entry No.764 of dated 30/07/2020 is prima facie illegal, Non-Est and not binding on the rights of plaintiff.***
- (5) It may kindly be declared that the said Kul Adhikar Patra (Power of Attorney) on stamp paper of Rs.100/- of dated 01/02/2019 is bogus and illegal.***
- (6) It may kindly be declared that compromise deed (Tadjod-Patra) in R.C.S. No.174/2019 is bogus and illegal and against the law.***
- (7) It may kindly be declared that the Mutation Entry No.764 dated 30/07/2020 is illegal, Non-Est and not binding on the legal rights of plaintiff.***
- (8) That any other relief which plaintiff is entitled may kindly be given in favour of her, in the interest of Justice, Equity and Good Conscience.***

20. Thus the petitioner has already instituted a suit and has option either to amend the suit or prefer fresh suit challenging award

passed by the Lok Adalat on the various grounds. For that reason also I am not inclined to grant relief to the petitioner.

21. For the reasons stated above, I find no merit in the writ petition. The writ petition is dismissed. However, petitioner shall be at liberty either to challenge award passed by the Lok Adalat on 17.03.2019 by amending the plaint of RCS No. 101/2022 or to file independent suit. Rule is discharged.

22. Civil application stands disposed of.

[SHAILESH P. BRAHME, J.]