



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.788 OF 2017
WITH
CIVIL APPLICATION NO.1547 OF 2017
IN
SECOND APPEAL NO.788 OF 2017

1. Husen Papa Pathan,
Age-Adult, Occu – Agriculturist,
R/o. Thobade Vasti, Degaon Naka,
Solapur
2. Chand Papa Pathan
Since deceased through legal heirs,
- 2a. Rashida Chand Pathan
Age – 59 years, Occu : Household
R/o. Behind Digole Kiran Shop,
H.N.443/2, Thobade Vasti,
Degaon Naka, Solapur.
- 2b. Aslamkhan Chandkhan Pathan
Age – 43 years, Occu : Labour
R/o. 326, Shivgnanga Nagar, Majrewadi
North Solapur, Solapur.
- 2c. Abdul Chand Pathan
Age – 37 years, Occu : Labour
R/o. Behind Digole Kiran Shop,
H.N.443/2, Thobade Vasti,
Degaon Naka, Solapur.
3. Sujanbi Tajoddin Shaikh
Age – Adult, Occu – Agriculturist
R/o. Thobade Vasti, Degaon
Naka, Solapur

4. Bahaddur Papa Pathan
 Age – Adult, Occu – Agriculturist
 R/o. Thobade Vasti, Degaon Naka,
 Solapur.
 Through their P.O.A. Holder
 Shri Vishal Uddhav Ghodake
 Age – 22 years, Occu : Agri. & Business,
 R/o. 159/160, 90B, Bhairav Colony,
 Damani Nagar, Solapur

... Appellants.

Versus

1. Smt. Jannatbi @ Malanbi Nizam Shaikh
 (since deceased through her LRs.)
 Age-82 years, Occu. Agri. & Household,
 R/o. Near S.T. Stand Zopadpatti,
 Godeshwar, Ta.Mohol, Dist.Solapur.
- 1A. Bashir Nizam Shaikh (Dead) through legal heirs,
- 1AA. Amar Bashir Shaikh
 Age -40 years, Occu.-Agriculture
 R/o. Shripur, Tal-Malshiras Dist-Solapur
- 1B. Nasir Nijam Shaikh
 Age -68 years, Occu.-Agriculture
 R/o. Angar (Mulani Galli), Tal-Mohol,
 Dist-Solapur-413214
- 1C. Rashid Nijam Shaikh
 Age -66 years, Occu.-Agriculture
 R/o. Begumpur (Ghodeshwar),
 Tal-Mohol, Dist-Solapur-413253
- 1D. Shabbir Nijam Shaikh
 Age : 64 years, Occu- Agriculture
 R/o. Begumpur (Ghodeshwar),

Tal. Mohol, Dist-Solapur-413253

- 1E. Jahirabi Abdul Shaikh
Age -62 years, Occu.-Household
R/o. Ghari (Slum Area Latur Road),
Near Tukai Mandir, Tal-Barshi,
Dist-Solapur-413404
- 1F. Aabida Yakub Mulani
Age -60 years, Occu.-Household,
R/at. Ghari, Tal-Barshi,
Dist-Solapur- 413404
- 1G. Salima Shiraj Pathan
Age-58 years, Occu- Household
R/at – Barshi (Abhinav School 422,
Khaja Nagar), Tal – Barshi, Dist-Solapur
Pin code -413411
- 1H. Jamela Mubarak Mulani
Age -57 years, Occu.-Household
R/at. Puri, Tal-Barshi, Dist-Solapur
- 1I. Dilshan Jainuddin Shaikh
Age -55 years, Occu.-Household
R/at – Solapur (old Degaon Naka,
Thobade Wasti), Sufiya Wadapav Center
Solapur.
2. Sakina @ Halimabi Musa Mulani
Age – 71 yrs, Occu. Agri. & Household,
R/o. Bitale, Tal. Mohol, Dist.Solapur
3. Babbar Babu Pathan
Age – 53 yrs., Occu. Agri.
R/o. Ghodeshwar, Tal. Mohol
District- Solapur

4. Rafiq Babu Pathan
Age – 46 yrs., Occu. Agri.
R/o. Ghodeshwar, Tal. Mohol
District- Solapur
5. Mumtaj Kasimsha Makandar
Age – 49 years, Occu. Household
R/o. Mandrup, Tal. South Solapur,
Dist. Solapur.
6. Ambir Gulab Pathan
Age – 66 yrs., Occu. Agri.
R/o. Ghodeshwar, Tal. Mohol
District- Solapur

... Respondents.

Mr. A.B. Tajane, Advocate for the Appellants.
Ms. Rekha Musale, Advocate for Respondent No.1C, 1D and 6.
Mr. Rupesh Zade, Ms. Priyanka Gupta, Advocate for Respondent
Nos.3, 4 and 5.

CORAM : SHARMILA U. DESHMUKH, J.
Reserved on : FEBRUARY 01, 2024
Pronounced on : FEBRUARY 07, 2024

JUDGMENT :

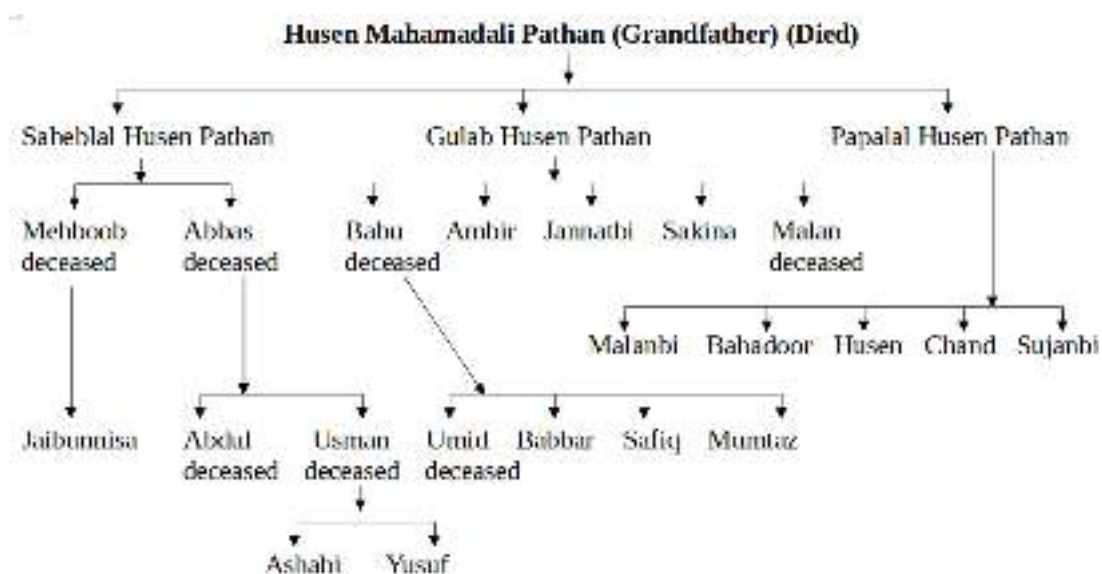
1. Being dissatisfied by the judgment dated 11th July, 2017 passed by the District Judge in Regular Civil Appeal No.208 of 2016, challenging the judgment and order passed by the trial Court in Regular Civil Suit No.6 of 2014 dated 12th March, 2015, the Appellants are before this Court.
2. The facts of the case are that Regular Civil Suit No.6 of

2014 was preferred by the original-plaintiff against the original defendants seeking partition of the suit property described in plaint paragraph no.1. The Appellants were not party to the suit. It was pleaded that the suit property was belonging to one Mr. Gulab Husen Pathan, who was married to Malanbi. Gulab Husen Pathan expired on 2nd September, 1975 and Malanbi expired on 15th March, 1992. Gulab and Malanbi had two daughters i.e. the plaintiffs No.1 and 2 and two sons by name Babu and Ambir. Babu expired on 26th June, 1977 and the defendant Nos.1 to 3 are the children of Babu and the defendant no.4 is the brother of the plaintiffs. It was pleaded that suit property, after the death of Gulab and Malanbi devolved upon plaintiffs, Babu and Defendant No.4 and their names were mutated in revenue records. It was pleaded by the plaintiffs that after the death of Babu, the name of his legal heirs were mutated in the revenue records. That, the plaintiffs and Defendants were Cultivating their share of the suit lands. That partition was demanded from Defendants, however, the same has been refused.

3. The defendants appeared in the matter. The defendant

No.4 admitted the claim of the plaintiffs. Subsequently, compromise pursis was filed between the parties marked Exhibit-44, by which the parties arrived at amicable settlement in the Lok-Adalat and accordingly the decree was passed.

4. The decree came to be challenged by the present Appellants i.e. legal heirs of Papalal by way of Appeal under Section 96 of Code of Civil Procedure, 1908 (for short “CPC”). According to the Appellants the suit property was owned by Husen Mahamadali Pathan, who was having three sons and the genealogy was as under:



5. It was the case of the Appellants that Husen was the original ancestor and after the death of Husen, the name of Gulab only was entered in the revenue records and after his death the

name of his legal heirs were entered in the 7/12 extract. The name of Saheblal and Papalal were not entered in the revenue records, whereas after the death of Husen his three sons i.e. Saheblal, Gulab and Papalal are the owners of the suit lands. The Appellants came with the case that by taking advantage of the names entered into the revenue records, the plaintiffs filed Regular Civil Suit No.6 of 2014 in collusion with the Defendants and compromised the matter in haste on 12th March, 2015 and by the decree got partitioned the whole property between themselves only, discarding the shares of the legal heirs of the Saheblal and Papalal.

6. It was further contended that the Appellants i.e. the heirs of Papalal had initiated proceedings before the Revenue Officer for entering their name in the Revenue Record of which notice was served to the original-plaintiffs and the defendants. Despite thereof, the Appellants were not made party to the proceedings and by committing fraud on the Court, the matter was compromised. It was also contended that the Tahsildar by judgment and order dated 1st December, 2015 had allowed the Review Petition and ordered that mutation entry no.1602 be

certified by which name of the Appellants are entered into 7/12 extracts. It was contended that the present Appellants have executed registered sale-deed dated 19th March, 2015 in favour of one Mrs.Ghodake, in respect of the suit land admeasuring 7 H. 15 R. out of 21 H. 35 R. out of Gat No.290. It was contended that the decree passed by the Lok-Adalat is null and void and has been obtained by committing fraud on the Court.

7. The Appellate Court framed the following points for determination, which read thus:

	<i>“POINTS</i>	<i>FINDINGS</i>
1	<i>Whether under Section 96(3), appeal at the instance of the third party is maintainable ?</i>	<i>No</i>
2	<i>Whether the application under Order 41 Rule 27 of C.P.C. filed by the appellants needs to be allowed ?</i>	<i>Does not survive</i>
3	<i>Whether the impugned judgment and decree of the Ld. Trial Court suffers from any illegality and interference by this Court is necessary ?</i>	<i>No</i>
4	<i>What order ?</i>	<i>As per final order.”</i>

8. The Appellate Court held that the impugned judgment and decree dated 12th March, 2015 is decreed on the basis of compromise between the Plaintiffs and Defendants before the Lok-Adalat and the Award of the Lok-Adalat is not open to challenge under Section 21 (2) of the Legal Services Authorities Act, 1987. The Appellate Court further considered the decision of this Court in the case of *Khalil Haji Bholumiya Salar vs. Parveen w/o. Sayyeduddin*, (Civil Application No.4684 of 2009 in First Appeal No.21 of 2005, decided on 7th August, 2012), in which it was held that ‘a stranger to the suit being a stranger to the agreement of compromise cannot file an application either in the suit or in appeal to challenge a compromise decree, as he is not a party to the suit and therefore, the bar under Rule 3A of Order 23 cannot be extended to him. The Appellate Court in view of the decision of this Court held that the Appellant can file a suit for the purpose and as such held that the Appeal is not maintainable.

9. The Appeal was admitted by this Court on 15th March, 2022, on the following substantial questions of law:

“A. R.C.S. No.6/2014 was filed in the Court of Hon’ble C.J.J.D., Mohol for partition and separate possession without

joining the appellants who are also having right in the suit property and they are also having share in the suit property being the legal heirs of original owner, and by suppressing the said fact consent decree was obtained thereby depriving the rights of the Appellants and hence whether the appellate Court was required to set aside the same.

B. When the Learned Lower Appellate Court has granted permission to file the Appeal and condoned the delay in such a situation after accepting the rights of the Appellant and considering them as aggrieved parties ought not to have dismissed the Appeal on the ground that the same is not maintainable as per Section 96(3) of CPC.”

10. Heard Mr. A.B. Tajane, learned counsel for the Appellants, Ms. Rekha Musale, learned counsel for Respondent No.1C, 1D and 6 and Mr. Rupesh Zade, learned counsel for Respondent Nos.3, 4 and 5.

11. Learned counsel for the Appellants would submit that it is evident that fraud has been played upon the Court inasmuch as, despite being the legal heirs of the original ancestor Husen they have been excluded from the joint family property. He would further submit that the First Appellate Court had granted permission to file the Appeal and had condoned the delay after

accepting the rights of the Appellants and as such could not have dismissed the Appeal on the ground that the same was not maintainable under Section 96(3) of CPC. He submits that the decree of the trial Court being obtained by fraud, the same is nullity and was required to be set aside.

12. *Per contra*, learned counsel appearing for the Respondents No.3 to 5 submits that the Award being passed by the Lok-Adalat, the remedy of the Appellants was to file a Petition before this Court and as such, the Appellate Court has rightly rejected the Appeal as being not maintainable. In support of his submission, he relies upon the decision of the Apex Court in ***K.Srinivasappa & Ors. v. M. Mallamma & Ors.*** in **[2022] 4 S.C.R. 190**.

13. Considered the submissions and perused the judgment of the First Appellate Court as well as the record.

14. The First Appellate Court has answered the issue of maintainability against the Appellants in view of Section 21(1) of the Legal Services Authorities Act, 1987 and the decision of this Court in the case of ***Khalil Haji Bholumiya Salar*** (supra). The Appellate Court has held that the Appellant being stranger to the

compromise can file a separate suit for the purpose. Before proceeding further, it will be profitable to reproduce Section 96 of the CPC, which reads as under:

“96. Appeal from original decree.—(1) Save where otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie from every decree passed by any Court exercising original jurisdiction the Court authorized to hear appeals from the decisions of such Court.

(2) An appeal may lie from an original decree passed ex parte.

(3) No appeal shall lie from a decree passed by the Court with the consent of parties.

(4) No appeal shall lie, except on a question of law, from a decree in any suit of the nature cognizable by Courts of Small Causes, when the amount or value of the subject-matter of the original suit does not exceed ten thousand rupees.”

15. By virtue of Section 96(3) of CPC, there is a statutory bar against filing of an Appeal from a decree passed by the Court with consent of the parties. In the present case, the Appellants are not the parties to the proceeding before the Trial Court. The Apex Court in the case of *V. N. Krishna Murthy and Another v. Ravikumar and Others* in (2020) 9 SCC 501, was considering an issue where a third party had challenged the decree passed by the

trial Court. The Apex Court noted that Sections 96 and 100 of the CPC do not provide for categories of person, who can file an Appeal. The Apex Court held in paragraph Nos.15, 16, 17 and 18, as under:

"15. Sections 96 and 100 of the Code of Civil Procedure provide for preferring an appeal from any original decree or from decree in appeal, respectively. The aforesaid provisions do not enumerate the categories of persons who can file an appeal. However, it is a settled legal proposition that a stranger cannot be permitted to file an appeal in any proceedings unless he satisfies the Court that he falls within the category of aggrieved persons. It is only where a judgment and decree prejudicially affects a person who is not party to the proceedings, he can prefer an appeal with the leave of the appellate court. Reference be made to the observation of this Court in Jatan Kumar Golcha v. Golcha Properties (P) Ltd.: (SCC p. 575, para 3)

"3. ... It is well settled that a person who is not a party to the suit may prefer an appeal with the leave of the appellate court and such leave should be granted if he would be prejudicially affected by the judgment."

16. This Court in State of Punjab v. Amar Singh while dealing with the maintainability of appeal by a person who is not party to a suit has observed thus: (SCC p. 104, para 83)

"83. Firstly, there is a catena of authorities which, following the dictum of Lindley, L.J., Securities Insurance Co., In re' have laid down the rule that a person who is not a party to a decree or order may with

the leave of the Court, prefer an appeal from such decree or order if he is either bound by the order or is aggrieved by it or is prejudicially affected by it.” (emphasis in original)

17. In Baldev Singh V. Surinder Mohan Sharma, this Court held that an appeal under Section 96 of the Civil Procedure Code, 1908, would be maintainable only at the instance of a person aggrieved by and dissatisfied with the judgment and decree. While dealing with the concept of person aggrieved, it was observed in para 15 as under: (SCC pp. 39-40)

“15. ... A person aggrieved to file an appeal must be one whose right is affected by reason of the judgment and decree sought to be impugned.”

18. In A. Subash Babu v. State of A.P. this Court held as under: (SCC pp. 628-29, para 25).

“25. ... The expression "aggrieved person" denotes an elastic and an elusive concept. It cannot be confined within the bounds of a rigid, exact and comprehensive definition. Its scope and meaning depends on diverse, variable factors such as the content and intent of the statute of which the contravention is alleged, the specific circumstances of the case, the nature and the extent of the complainant's interest and the nature and the extent of the prejudice or injury suffered by the complainant.”

16. Considering the enunciation of law by the Apex Court, it is settled that even a stranger to the suit may prefer an appeal with the leave of the Appellate Court and such leave should be granted if he would be prejudicially affected by the judgment. In the

present case, as the leave was granted by the Appellate Court, *prima facie*, the Appellate Court was of the opinion that the rights of the Appellants were prejudicially affected. Considering the decision of the Apex Court as noted above the finding of the Appellate Court that the Appellant is required to file a suit for the purpose is legally unsustainable. It was necessary for the Appellate Court to render a finding as to whether the Appellants can be said to be person aggrieved by the judgment passed by the trial Court and if found to be so, considering the decision of the Apex Court the Appellant would have a right to file an Appeal.

17. However, in the present case, the Award has been passed by the Lok-Adalat upon a compromise which was entered into by the parties and as such, the provisions of the Legal Services Authorities Act, 1987 come into play. Section 21 of the Legal Services Authorities Act, 1987 reads thus:

“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-fees Act, 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.”

. Plain reading of the provision indicates the finality attached to the Award of Lok-Adalat. As such, no Appeal would lie under Section 96 of the CPC against the Award.

18. In the case of ***Bhargavi Constructions and Anr. vs. Khothakapu Muthyam Reddy and Ors.*** in ***(2018) 13 SCC 408***, the Apex Court has held that in such type of cases to challenge the Award passed in Lok-Adalat, the only remedy available to the aggrieved person is to file a Writ Petition under Articles 226 and 227 of the Constitution of India in the High Court.

19. In the present case, Regular Civil Suit No.6 of 2014 was compromised before the Lok-Adalat and was decreed in terms of the compromise pursis. Learned Single Judge of this Court in the case of ***Kusumbai w/o Ramesh Palave and Ors. v. Bhausaheb s/o Barku Palve and Ors.*** in Writ Petition No.10639 of 2018, which was decided on 28th March, 2019, has held in paragraph 12, as under:

“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.”

20. In view of the above, considering that the challenge in the Appeal was to the Award of the Lok-Adalat, the remedy of the Appellants was either to file a separate suit seeking a declaration that the decree of the Lok-Adalat is not binding upon the Appellants or to file a Writ Petition in this Court.

21. Having regard to the discussion above, as the Award was passed by the Lok-Adalat, the Appeal under Section 96 of CPC was not maintainable before the First Appellate Court and as such, the Appellate Court had no jurisdiction to set aside the Award.

22. In other cases, upon being held as an aggrieved person, the Appellate Court would have had jurisdiction to entertain Appeal filed by stranger to the suit. However, considering that the Appeal was against the Award of Lok-Adalat, the remedy of Section 96 of the CPC was not available to the Appellants. The substantial questions of law are answered accordingly.

23. Appeal stands dismissed. In view of the dismissal of the Appeal, Interim/Civil Applications do not survive and same stand disposed of.

(Sharmila U. Deshmukh, J.)

24. At this stage, learned counsel appearing for the Appellants seeks extension of interim relief which has been operating in his favour for further period of four weeks. At his request, interim relief is extended by four weeks.

(Sharmila U. Deshmukh, J.)