



CRP.No.1813 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.11.2024

CORAM

THE HONOURABLE MR.JUSTICE **SATHI KUMAR SUKUMARA KURUP**

Civil Revision Petition No.1813 of 2021

Kalaiselvi

: Petitioner

Versus

1. Aruna
2. Jayanthi
3. Hariselvam
4. Jeevamani
5. Margatham
6. Selvarani
7. Kaliyaperumal
8. Selvakumar

: Respondents

Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the award passed in Lok Adalat Case No.288 of 2018 in O.S.No.164 of 2015 dated 21.08.2018 on the file of the Lok Adalat, Additional Sessions Court, Virudhachalam on the ground of fraud and collusion by 1 to 3 Respondents.

For Petitioner

: Mr.J.Agni Selvaraju

For Respondents

: Left – R-1

No Appearance – R-4 & R-5

Mr.S.Saravana Kumar for R-2 & R-3

Mr.L.Palanimuthu for R-7 & R-8

Mr.N.V.Prassanna for R-6



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ORDER

This Civil Revision Petition has been filed to set aside the award passed in Lok Adalat Case No.288 of 2018 in O.S.No.164 of 2015 dated 21.08.2018 on the file of the Lok Adalat, Additional Sessions Court, Virudhachalam.

2. The learned Counsel for Revision Petitioner submitted that the Revision Petitioner is the fifth Defendant in O.S.No. 164 of 2015 on the file of the learned Additional District Judge, Cuddalore at Virudhachalam.

3. It is the contention of the learned Counsel for the Petitioner that the Suit properties in O.S.No.164 of 2015 originally belonged to Chockalinga Udaiyar, who is the father of the Petitioner and the Respondents 4 to 6. The said Chockalinga Udaiyar had a male child by name Selvamani, who was given in adoption to one Ramasamy Udaiyar, the father of Petitioner's mother Rubalavathi and father-in-law of Chockalinga Udaiyar. The adoption was solemnized as per Hindu Rites and Rituals. The adoption deed was registered at the office of the Sub Registrar at Ulundurpet as Document No. 925 of 1954. After the demise of said Chockalinga Udaiyar, his wife Rubalavathi executed a



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partition deed dated 31.01.2005 along with Selvamani and his minor children viz., daughter/Aruna, and son/Hari Selvam. But not giving any share to her daughters/Petitioner and the Respondents 4 to 6 as co-parceners to the estate left behind by deceased Chockalinga Udaiyar.

4. As per adoption deed vide Doc. No.925 of 1954, the said Selvamani cannot be treated as legal heir of Chockalinga Udaiyar. He had lost his status as a son of Chockalinga Udaiyar.

5. The said Rubalavathi/mother of the Petitioner and the Respondents 4 to 6 had no right to execute such a partition deed along with Selvamani and his children. That partition deed will not bind the daughters of Rubalavathi and Chockalinga Udaiyar. It is the contention of the learned Counsel for the Petitioner that in the partition deed, no amount was paid to the daughters including the Petitioner. The Revision Petitioner was residing at Virugavur Village, Kallakurichi District and Taluk. She was not aware of the said partition deed till the filing of the above suit. Based on the said partition deed, the second and third Respondents refused to give share to the first Respondent/Plaintiff. Therefore, after giving proper legal notice to the second Respondent, the second wife of her father late Selvamani, the first Respondent



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in this Revision Petition who is the Plaintiff in the Suit filed the Suit on 25.11.2015 in O.S.No. 164 of 2015 for partition of her 1/3rd share in the Suit schedule properties and for separate possession. At the time of filing of the Suit, the second and third Respondents alone were parties to the suit. The second Respondent/first Defendant had filed the written statement in the Suit. In her written statement, she had stated that the Respondents 1 to 3 are not the only legal heirs of the deceased Chockalinga Udaiyar. The Petitioner herein and the Respondents 4 to 6 are also legal heirs of Chockalinga Udaiyar. Thereafter, the first Respondent filed the Interlocutory Application in I.A.No.804 of 2017 to implead the Petitioner and her three sisters as Defendants in the Suit respectively as Defendants 3 to 6 and amended the suit claim as 12/40th share in the suit property. The second Respondent/first Defendant had given vakalath to one Advocate namely G.Balachandran. Without knowing about the said fact, the Revision Petitioner herein also gave vakalath to the said G.Balachandran. The said Balachandran had filed vakalath and contested the above Suit in favour of the second Respondent and her minor son/Hari Selvam. However, for this Petitioner the said Advocate filed vakalath along with his junior Advocate Miss.Revathi. But they had not contested the case. The said Advocate had not filed written statement on behalf of this Petitioner. Therefore, on 29.08.2017, the learned Additional



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District and Sessions Judge, Virudhachalam had set her *ex parte*. Thereafter,

the Petitioner herein filed Petition to set aside *ex parte* order and the same was allowed on 09.02.2018 in I.A.No.5 of 2018. The said set aside application was allowed on condition that the Petitioner has to pay Rs.500/- as costs on or before 15.02.2018 to the Respondent. This Petitioner continuously approached her Advocate G.Balachandran to file written statement. But he had not filed so far. Hence, again on 27.04.2018, the learned Additional District and Sessions Judge, Cuddalore at Virudhachalam had set this Petitioner *ex parte* for the second time. At this juncture, the first Respondent/Plaintiff had filed a memo stating that she is not pressing the Suit against the Defendants 3 to 8. She also prayed that the case be referred to Lok Adalat. The trial Court allowed the memo filed by the first Respondent/Plaintiff, without giving notice to the Defendants 3 to 8 and dismissed the suit against Defendants 3 to 8. Thereafter, the Suit was referred to Lok Adalat for amicable settlement between the Plaintiff and the Defendants 1 and 2. The trial Court failed to note that the Respondents 1 to 3 and the Petitioner's Counsel G.Balachandran had colluded and helped the Respondents to get an order from the Lok Adalat in fraudulent manner. Further, the trial Court failed to note that the Petitioner/5th Defendant and Defendants 3, 4 and 6 as co-sharers are also entitled to a share in the suit property, but dismissed the



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partition suit against Defendants 3 to 8. Subsequently, the Plaintiff and

Defendants 1 and 2 fraudulently filed a compromise memo as though arriving at a compromise, whereby the entire suit properties were to be taken by Defendants 1 and 2 and the Plaintiff to be given Rs.68,00,000/- (Rupees Sixty Eight Lakhs) in cash for releasing her share in the suit property. Based on the said compromise memo, a decree was passed by the Lok Adalat. The award passed by the Lok Adalat is not in accordance with law and it will not bind the Petitioner herein. In the meanwhile, she got change of vakalat from the said Balachandran and appointed one Vinayagam as her Counsel. The said Petitioner's Advocate Vinayagam also passed away. Therefore, the Petitioner had not received any information or notice from her Advocate as well as the Court below. The Petitioner came to know about the death of her Counsel only on 15.12.2020, through her present Counsel. The Petitioner filed copy application on 18.01.2021 as a party-in-person. The part of the document was only received on 09.02.2021. Hence, the Petitioner has sought assistance of another Counsel to get remaining copy of the documents. Till the date of filing of the Revision Petition, the Petitioner had not received any copies. The Petitioner is a widow and aged about 62 years and having three married daughters. The Petitioner is the only breadwinner of the family and there is a delay of 72 days to contact the present Counsel to file this Civil Revision



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Petition. Therefore, the Petitioner seeks to prefer this Civil Revision Petition

to set aside the award of the Lok Adalat Case No.288 of 2018 passed on 21.08.2018 in O.S.No.164 of 2015 on the file of the learned Additional District and Sessions Judge, Virudhachalam. The Lok Adalat passed award without notice to the Petitioner as well as Respondents 4 to 6 is a clear violation of the principles of natural justice. Therefore, the impugned award passed in Lok Adalat Case No.288 of 2018 in O.S.No.164 of 2015 is liable to be quashed.

The trial Court had recorded the memo as follows:

“ Plaintiff Counsel filed a memo stating that he is not pressing the Suit against D-3 to D-8. Memo recorded. On view of Memo this Suit is dismissed as against D-3 to D-8. Refer the matter to Lok Adalat call on 21.08.2018.”

Therefore, the learned Counsel for the Petitioner seeks to set aside the award passed by the Lok Adalat on 21.08.2018.

6. The learned Counsel for the Respondent vehemently objected to the submission of the learned Counsel for the Revision Petitioner stating the Petitioner blaming her Counsel cannot at all be accepted. The Suit was dismissed on 20.08.2018 as against Defendants 3 to 8. Till date, the Petitioner as fifth Defendant did not challenge the said order. Therefore, the Petitioner has no *locus standi* to file this Revision. The rights of the Respondent over the



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properties were not questioned by the other Respondents 3, 4 and 6 who are

the sisters of the Petitioner herein. Here, the Revision Petitioner is not a co-

parcener and she is not entitled to any relief as per the Hindu Succession Act.

Prior to the Suit, the properties were partitioned among Rupalavathi and

Selvamani and the third Respondent vide registered partition deed dated

31.01.2005. Subsequently, Rupalavathi settled her share of the properties

obtained by way of partition deed in favour of the first Defendant vide a

registered will dated 17.03.2005. Similarly, Selvamani, who obtained

properties vide partition deed dated 31.01.2005 mentioned as 'B' schedule

thereon settled in favour of third Respondent/minor by way of registered Will,

registered as Document No.12 of 2005 dated 17.03.2005. Therefore, the

Petitioner cannot claim any right over the properties. Further, the learned

Counsel for the Respondents state that the Respondents 7 and 8 had purchased

the properties respectively in accordance with the Transfer of Property Act.

The Petitioner without questioning the same cannot maintain the Revision, the

Lok Adalat award was passed in accordance with the due procedure. There is

no collusion and no necessity for collusion. The Petitioner had filed this

Petition without any *locus standi*, by not adopting the due procedure of law. It

is further the submission of the learned Counsel for the Respondent that the

mother of the Petitioner and the Respondents/Rubalavathi possessed and



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maintained the subject properties as her husband/Chockalinga Udaiyar died around 1999. Prior to partition, all her daughters were married by providing necessary means. The learned Counsel for the Respondent invited the attention of this Court to the recitals in the partition deed. The mother of the Petitioner and the Respondents 4 to 6/Rubalavathi was the wife of deceased Chockalinga Udaiyar and she has possessed the Suit properties as a Hindu female, the properties are held by her as absolute owner. She maintained the subject properties and her limited interest got enlarged into an absolute estate and she had every lawful right to dispose of the subject properties as per Section 14 (1) of the Hindu Succession Act, 1956. Also it is stated in the partition deed that the properties are ancestral properties. Since the subject properties are ancestral properties, as per Section 12 (b) of the Hindu Adoption and Maintenance Act, 1956, the right over the properties already vested in favour of Selvamani continued to vest and therefore, the Petitioner cannot question the share allotted in favour of the deceased Selvamani and even minor son Hariselvan through partition deed dated 31.01.2005 registered as Document No.236 of 2005. The Petitioner herein and the Respondent 4 to 6 had signed as witnesses in the partition deed. Therefore, neither the Petitioner nor the Respondents 4 to 6 can have right to question the partition. The Petitioner had not challenged the partition deed till date. The subject matter of



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the property were under mortgage with Virudhachalam Cooperative Bank

executed by Chockalinga Udaiyar. The same was released by Selvamani.

Selvamani repaid the mortgage with interest. The deceased Selvamani also obtained loan from SBI, Virudhachalam Branch vide a Loan Number 11074540416 for a sum of Rs.10,00,000/-. The said amount along with interest was repaid by the Respondent in the Lok Adalat. Similarly, mortgage loan of Rs.1,70,000/- availed by Selvamani was repaid by the Respondent. Also, Rs.8,00,000/- was obtained loan based on the property. The deceased Selvamani repaid the same. If the Lok Adalat is set aside, these Respondents will be put to irretrievable monetary loss and damages. The Petitioner having committed wrong, cannot be permitted to take advantage of said wrong. As per Section 21 of the Legal Services Authority Act, 1987, the Civil Revision Petition is not maintainable. As held in the reported decision **2021 (3) Civil LJ 282 (T.P.Kathiresan (died) Vs. R.Ramadass (died))**. Therefore this Petition is to be dismissed.

Point for Consideration:

**Whether the award passed by the Lok Adalat,
Additional Sessions Court, Virudhachalam in Lok Adalat
Case No.288 of 2018 in O.S.No.164 of 2015 dated
21.08.2018 is to be set aside?**



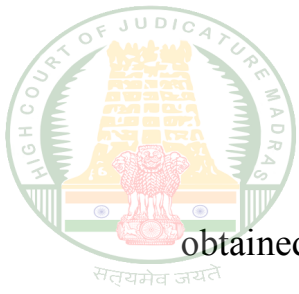
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WEB COPY7. Heard the learned Counsel for the Revision Petitioner and the learned Counsel for the Respondents.

8. Perused the Order passed by the learned Additional Sessions Judge, Virudhachalam and the typed set of papers.

9. On consideration of the rival submissions, it is found that the submission of the learned Counsel for the Respondent that the award passed by the Lok Adalat arising out of the Court of the learned Additional Sessions Judge was properly considered and there is no ground to consider the same as against the Revision Petitioner is not sustainable.

10. The claim of the Petitioner that her erstwhile Counsel who also happened to be the Counsel for the second Respondent colluded with the said Respondent and acted against the interest of the Petitioner and against professional ethics by not filing the written statement on behalf of this Petitioner and not informing the status of the case to the Petitioner. The sequence of events that had happened just before the passing of award would give rise to suspicion that the award passed by the Lok Adalat has been



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obtained fraudulently and collusively. In the month of April 2018, the Petitioner was set *ex parte* and in the month of August 2018 the Plaintiff/first Respondent filed a memo before the Court that she is not pressing the suit against the Defendants 3 to 8. The trial Court without issuing notice to all the Defendants particularly the Defendants 3 to 6, who are also co-owners to the suit property and ignoring the fact that the suit is for partition, mechanically without any application of mind dismissed the suit against Defendants 3 to 8 and referred the matter to Lok Adalat. Once before the Lok Adalat, the Plaintiff and the Defendants 1 and 2 arrived at a compromise among themselves to the effect that the entire suit properties are to be taken by the Defendants 1 and 2 and the Plaintiff who agreed to release her share in respect of the said properties after receiving a sum of Rs.68,00,000/- (Rupees Sixty Eight Lakhs) to be paid in cash by Defendants 1 and 2 thus leaving the Defendants 3 to 6 in lurch. Based on the said compromise memo, an award was passed by the Lok Adalat. The award was obtained surreptitiously and discreetly behind the back of the other co-owners and particularly the contesting Revision Petitioner.

11. The Revision Petitioner's contention that she obtained change of vakalat from her erstwhile Counsel Balachandran who colluded with the

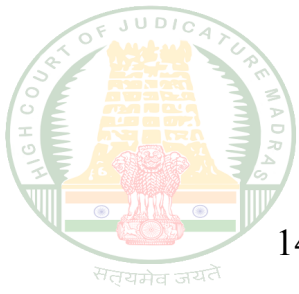


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second Respondent and that her new Counsel also passed away, which fact came to her knowledge only in the year 2020 and that therefore, after applying for the certified copy of all the documents as party in person, the Revision Petitioner has filed the present Revision appear to be convincing.

12. Considering the fact that the grievance expressed by the learned Counsel for the Petitioner is found justified, the Lok Adalat award passed on 21.08.2018 is not as per the guidelines regarding the conduct of Lok Adalat as per the Provision of Legal Services Authorities Act, 1987. The submission of the learned Counsel for the Revision Petitioner that the Revision Petitioner was affected as she was not afforded an opportunity to raise her objection. Therefore, the award passed by the Lok Adalat dated 21.08.2018 is to be set aside.

13. The submission of the learned Counsel for the Respondent that nothing wrong in referring the matter to Lok Adalat by the learned III Additional District Judge, Virudhachalam will not hold good under the principle of fairness, equity and good conscience which governs the Civil Code.

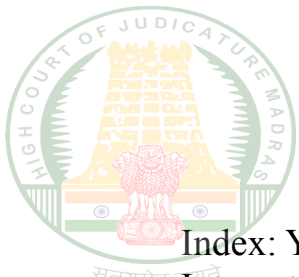


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14. In the light of the above, the point for consideration is answered in favour of the Revision Petitioner and against the Respondent. The award passed in Lok Adalat Case No.288 of 2018 in O.S.No.164 of 2015 dated 21.08.2018 on the file of the Lok Adalat, Additional Sessions Court, Virudhachalam is perverse.

In the result, this ***Civil Revision Petition is allowed.*** The award passed in Lok Adalat Case No.288 of 2018 in O.S.No.164 of 2015 dated 21.08.2018 on the file of the Lok Adalat, Additional Sessions Court, Virudhachalam is set aside. After the award is set aside, the learned III Additional District and Sessions Judge, Cuddalore at Virudhachalam shall afford an opportunity to the fifth Defendant who is the Revision Petitioner herein through her Counsel and then consider the subject matter for amicable settlement in the Lok Adalat. The learned III Additional District and Sessions Judge shall satisfy himself/herself that all the parties are represented by their Counsels and refer the matter for fresh consideration before the Lok Adalat. In the event of non settlement of dispute, the suit in O.S.No.164 of 2015 may be sent back to the regular Court for disposal of the suit on merit as per law.

29.11.2024



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Index: Yes/No

Internet: Yes/No

Speaking Order/Non-speaking Order

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To

1.The Lok Adalat,
Additional Sessions Court,
Virudhachalam.

2.The Section Officer,
Vernacular Records,
High Court, Madras.



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SATHI KUMAR SUKUMARA KURUP, J.

dh

Judgment made in
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