

(2014) 02 KAR CK 0392

In the Karnataka High Court

Case No : Writ Petition No. 63372 of 2012 (GM-CPC)

Akkubai

APPELLANT

Vs

Venkatrao

RESPONDENT

Date of Decision : 21-02-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 23 Rule 3, Order 27 Rule 5, Order 39 Rule 1, Order 39 Rule 2

Citation : AIR 2014 Kar 92 : (2014) 2 AKR 810 : (2014) ILR 2051 : (2014) 3 KarLJ 509 : (2014) 3 KCCR 2656

Hon'ble Judges : N. Kumar, J

Bench : Single Bench

Advocate : Shaila Bellikatti, Advocate for the Appellant; Sriyuths Santosh B. Mane and Sachin S. Magadum, Advocate for the Respondent

Judgement

N. Kumar, J.—This writ petition is filed seeking quashing of the compromise decree made in O.S. No. 278 of 2002 on 13-12-2002 on the file of Principal Civil Judge (Senior Division), Jamakhandi. This is an another classic case of abuse of the wonderful concept of "Lok Adalat" which is used as an instrument to deprive an uneducated and poor lady of her valuable right to an immovable property which the Parliament has conferred on her by enacting Hindu Succession Act, 1956 as well as by amendment to the Hindu Succession Act, conferring a coparcenary right on a woman.

2. One Ningappa was the propositus. He had a son by name Annasaheb. The said Annasaheb married one Awwasaheb and through her he had two daughters by name Indumati and Akkubai. Annasaheb died on 14-1-1994. He married one Gouravva. Through Gouravva he had five daughters and one son by name Venkata Rao. The said joint family owned four items of agricultural land and two house properties. The second daughter Akkubai was married. It appears there was some disharmony between her and her husband and therefore she returned to her parents' house. The said Annasaheb executed a registered Will bequeathing Sy. No. 155/2 measuring 9 acres 22 guntas and half share to VPC

No. 370 and entire VPC No. 371 under a registered Will dated 24-2-1992 in favour of Akkubai. Acting on the said Will even during the lifetime of her father, mutation entries were made out in her name. Her sister Kamalakshi alias Indumati filed suit in O.S. No. 200 of 1998 for partition and separate possession of her legitimate share in the joint family property. The said suit was filed against her father who was arrayed as first defendant, Smt. Gouravva, the second wife of Annasaheb as second defendant, Akkubai her sister as third defendant and purchasers were also made parties as defendants 4 to 7. As one of the subject-matters of the land was subject-matter of acquisition, the Special Land Acquisition Officer was impleaded as 8th defendant. As is clear from the cause title itself, she was not prepared to recognise the second defendant-Gouravva as wife of Annasaheb. Therefore she did not make her children as parties to the suit. In the said suit, Annasaheb, Gouravva and Akkubai were represented by common Advocate by name Sri M.C. Bhandari, Advocate, Jamakhandi. In the said suit, an application was filed for direction to the Land Acquisition Officer prohibiting him from disbursing compensation amount in respect of suit Schedule "B" property to defendants 1 to 7 to the extent of admitted 1/3rd share of the plaintiff. The suit against 8th defendant came to be dismissed as Deputy Commissioner or Chief Secretary to Government were not made parties as contemplated under Order 27, Rule 5 of the Civil Procedure Code, 1908. The aforesaid order came to be passed on 3-10-2002. The case was posted for hearing regarding maintainability of the suit on 17-1-2003.

3. During the pendency of the suit, Annasaheb died on 22-10-2002. Venkata Rao, S/o. Annasaheb through his second wife, filed a suit in O.S. No. 278 of 2002 against Akkubai, Kumari Shanta and Smt. Gouravva on 12-12-2002, for partition and separate possession in respect of property which had been bequeathed in favour of Akkubai by her father. In the genealogy which is set out in para 2 of the plaint, it is clearly mentioned that Annasaheb through Gouravva has five daughters by name Vijayalaxmi, Meenaxi, Sharada, Sumitra and Shanta. Only Shanta has been made party to the suit as defendant 2. It also discloses that Annasaheb through his first wife Awwasahab had two daughters Akkubai and Indumati. Akkubai is made as first defendant and Indumati was not made party, though as on the date of the suit, Indumati had filed O.S. No. 200 of 1998 seeking for partition and Gouravva was the second defendant in the said suit and Akkubai was third defendant. The order sheet in the said suit is produced as Annexure-E to the writ petition. It discloses that along with the plaint, an application under Order 39, Rules 1 and 2 of CPC and an affidavit is filed by the Advocate for the plaintiff praying that ad interim injunction be issued against the first defendant restraining her from alienating the suit land and house. This suit is filed by M.C. Bhandari, Advocate, Jamakhandi who was representing Akkubai, Gouravva and Annasaheb in the pending suit in O.S. No. 200 of 1998. As is clear from the order sheet, the said suit was registered on 3-12-2002. The order sheet reads as under:

Registered suit. Heard MCB at this stage RSN files vakalath for defendants 1 to 3.

Case is taken before Lok Adalat in the presence of Conciliator Sri B.S. Chengareddi. It is submitted that parties to the suit have settled the matter. Parties to the suit admit the terms of compromise petition and defendants 1 to 3 submits that they have received Rs. 25,000/- each outside the Court. Suit is decreed in terms of compromise petition and draw final decree directly if necessary non-judicial stamps are furnished by the plaintiff.

4. The said order sheet bears the signature of the Advocates and the parties as well. The compromise petition, which was filed in the said suit is also produced in the writ proceedings. The said compromise recites that a sum of Rs. 25,000.00 is paid to defendant outside the Court in the presence of elders and therefore they are relinquishing their rights in the suit schedule property. Insofar as compensation amount is concerned, the third defendant is entitled to the same and the parties has to bear their own costs. Subsequently, O.S. No. 200 of 1998 came to be dismissed by passing the following order on 17-1-2003:

Plaintiff called out absent. KAJ absent though waited till 3.20 p.m. The daughter has filed a suit against father during his lifetime. It is not the case of the plaintiff that she is married after 1994 Karnataka Amendment Act. Hence, suit itself is not maintainable and is dismissed.

5. The said Indumati filed O.S. No. 11 of 2003 which was subsequently renumbered as O.S. No. 176 of 2005 where she sought for a declaration that the mutation entries made in respect of the two agricultural-properties and two house properties which are more particularly described in the schedule are null and void and for partition and separate possession against her 1/4th share. In the said suit, Akkubai has filed a written statement setting out the entire family history and the compromise entered into in O.S. No. 278 of 2002 and relinquishing her interest in the properties by taking Rs. 25,000.00.

6. The daughter, Indumati filed one more suit in O.S. No. 5 of 2010 against her sister Akkubai, the second wife Gouravva, Venkata Rao and Shanta. In the plaint there is a reference to O.S. No. 200 of 1998 and the dismissal of the said suit as not maintainable. However, Annasaheb died on 22-10-2002. There is also a reference to the suit filed by Venkata Rao in O.S. No. 278 of 2002 and the passing of the compromise decree in the said suit.

7. Thereafter when she was not given her share, she was constrained to file a suit for declaration that, the compromise is collusive, decree passed in O.S. No. 278 of 2002 on the file of the Principal Civil Judge, Senior Division, Jamkhandi is null and void and not binding on her legitimate half share in the said property and for partition and separate possession of her half share in the property.

8. In this entire episode, what is disturbing for this Court is the purpose for which this alternative dispute resolution mechanism of Lok Adalat is used. In the present writ petition, the petitioner has narrated the facts, which according to her constitutes the circumstances, which justified setting aside the award passed by the Lok Adalat. She has made serious accusations against the Advocate M.C.

Bhandari. A reading of the writ petition shows that she did not engage R.S. Ningolli, Advocate and she has accused that she was not the consenting party to the compromise and misrepresentations are made to her. In fact, she also says that her signature was obtained on the compromise by misguiding her and behind her back. She was completely ignorant of all these happenings.

9. The allegations against the Counsel in his absence cannot be gone into in this proceedings. The proper forum where it can be gone into is the Bar Council. But what is explicit from the material on record is, the Advocate M.C. Bhandari was representing Annasaheb, Gouravva and Akkubai in the first suit filed by Indumati for partition in O.S. No. 200 of 1998, where all the properties belonging to the joint family were the subject-matter of the suit. During the pendency of the said proceedings, he files a suit on behalf of Venkata Rao in O.S. No. 278 of 2002 against Akkubai, Gouravva and Shanta, the own sister of Venkata Rao. An application for temporary injunction is also filed restraining Akkubai from alienating the suit land and the house. What is surprising is, on 13-12-2002, the suit is registered by the Court. The Court entertained the suit and took cognizance of the presentation of the plaint. At that stage, R.S. Ningolli, Advocate files vakalath for all the three defendants 1 to 3. After vakalath is filed, the learned Presiding Judge says that the case is taken before the Lok Adalat in the presence of Conciliator Basavaraj S. Chengareddi. This is what at any rate, I am not able to understand. The plaint was presented in the Court before the Judge. Before the Judge, the vakalath was filed. Before the Judge, the learned Counsel was present. In the Court, there is no place for the Conciliator. But the order sheet shows that the case, which was presented before the Court is taken before the Lok Adalat in the presence of the Conciliator. This statement is part of the order dated 13-12-2002, which finds a place in the order sheet in the Court. When this matter was taken before the Lok Adalat, parties submitted that they have settled the matter. They filed compromise petition and admitted the compromise. It is recited that defendants 1 to 3 admits that they have received Rs. 25,000.00 each outside the Court. Therefore, the suit was decreed in terms of the compromise petition and a direction was issued to draw final decree. All this finds a place in the order sheet maintained by the Court. Therefore, there is no separation of the proceedings between the judicial proceedings and the Lok Adalat. This has become a two-in-one proceedings.

10. I really wonder, whether the learned Judge who has entertained this matter was aware of the elementary aspects of judicial functioning and the Lok Adalat, A common order sheet cannot be maintained by the Court as well as the Lok Adalat. A Court cannot be converted into a Lok Adalat. In the order sheet maintained by the Court, a portion of the proceedings is referable to the Court proceedings and another portion refers to the proceedings of the Lok Adalat. The Conciliator has no place inside the Court. The very object of accepting this Lok Adalat as an alternative mode of resolution of dispute is that, all matters do not need adjudication. The matter which could be resolved by persuasion, negotiation and understanding should be taken out of adjudication process and

should be resolved by means of Lok Adalat satisfactorily, so that the cases are disposed of expeditiously and the Courts will be saving the time of adjudicatory process, and they can utilise that time which is saved, in adjudicating the cases. If on the day the plaint is presented, the parties are also present before the Court, they are ready with the compromise petition and when they are filing an application under Order 23, Rule 3 of CPC, when they are admitting the terms of the compromise and execution of the terms and condition, then the Court before which it is presented, is the Competent Court to record the compromise and dispose of the suit in terms of the compromise. The question of referring the said dispute to the Lok Adalat would not arise. If it is referred, it is a farce. If this is accepted and encouraged, both the judicial system and this alternative dispute resolution mechanism gets a bad name and would be subjected to ridicule in the eyes of public. All persons who are indulging in this process would be doing great injustice and disservice to the judicial system. They are not conscious of their action and its repercussions and the image of the judiciary, which would create in the mind of the public. That is not the object with which neither Legal Services Authorities Act, 1987 is passed by the Parliament providing for the institution of Lok Adalat nor Section 89 was introduced by the Parliament amending CPC. The essence of these provisions is neither understood by the learned Judge nor by the learned Counsels who are appearing for the parties.

11. It is time that the Legal Service Authority should conduct workshops and seminars and other mode of communications to educate these legal literate persons like Judges, Lawyers and Conciliators to understand the concept of Lok Adalat and how the Courts have to function, what is the duty of the Lawyers and what matters should be resolved by this process.

12. In this background if we look at the facts of the case, the daughter files a suit against her father, sister and others for partition and separate possession, complaining of her father preferring one daughter by executing registered Will. That fortunate daughter, the father and second wife engages a common Counsel. No written statement is filed. During the pendency of the proceedings, the Advocate who was representing defendants 1 to 3 in the said suit, files a suit against them on behalf of son of Gouravva, for partition and separate possession in respect of the property which is the subject-matter of the suit. Therefore, there is conflict of interest between Venkata Rao and Akkubai in respect of the property. On the date the suit is filed, the Advocate appears for the defendants" with the vakalath ready. If this is the indication of the relationship between the parties, the order sheet discloses that along with the suit, an application is filed for temporary injunction restraining Annasaheb from alienating the property. Then it is a farce. Immediately after the appearance of the Advocate, the learned Judge who received vakalath transforms himself as the person presiding over the Lok Adalat, secures the presence of the Conciliator, acts" on the submission of the parries, receives the compromise petition, records compromise and directs the office to pass final decree in terms of the preliminary decree. Accordingly the office has drawn the final decree.

13. A daughter, to whom the entire property was given by her father under a registered Will is now denied her right in the property. Assuming for the argument sake that the property was not the self-acquired property of the father and it was a joint family property, then, the Will which he has executed would be valid only to the extent of his share. The Will is not in dispute. It is a registered document. Now by the compromise, the daughter who had got this right, gives up her right for a sum of Rs. 25,000.00. The amount is not paid before the Lok Adalat, but is paid outside the Lok Adalat. The very object of the Lok Adalat is, if any such settlement has to happen, it has to happen in the Lok Adalat. If Rs. 25,000.00 is to be paid to her, it could be paid before the Lok Adalat, in the presence of the Conciliator and in the presence of the Presiding Judge before the Lok Adalat. When a compromise is filed and parties state that they have received the amount outside the Court, the Conciliator or the Judge should have become alert. Recording compromise is not a mechanical or clerical job. It is a conscious judicial act to be performed by the Judge inside the Court and if it is before the Lok Adalat, by the Presiding Judge and the Conciliator. If the lady is illiterate, in the Lok Adalat, it is presumed that the Conciliators are more familiar with the living conditions of the parties of that particular region and they are expected to take all possible precautions to see that in a compromise, nobody is cheated and nobody is defrauded, lest, the blame will be on them. The way the compromise is recorded shows that the learned Judge nor the Conciliator have applied their minds and have tried to find out whether the compromise is lawful or not, why the amount was not paid before them, inside the Court or before Lok Adalat and blindly accepting the submission, the order is passed. The result is, the lady who got the property under the registered Will, who had a share at a partition, is deprived of the valuable right to immovable property. She is knocking at the door of this Court complaining of irregularities and illegalities and pleading her helplessness.

14. If the object of introducing Lok Adalat as alternative dispute resolution is to avoid the Courts deciding the matters and ease the burden of the Courts, if these things are allowed, it is just having a counter effect. After decision in the Lok Adalat, now we are seeing writ petitions are filed challenging those awards. This is not the first case this Court is deciding. This is not the first case where Judges and Members of the Lok Adalat are conducting themselves in this fashion. There is something seriously wrong in the whole system, which needs immediate corrective steps. In the circumstances, without casting aspersions on the learned Judge or the learned Counsel who appeared for the parties, the way the learned Judge has conducted himself, both inside the Court and as a Member of the Lok Adalat and also the Conciliator before the Lok Adalat, it would be just and appropriate to set aside the award and direct the parties to agitate their rights in the suit and work out their remedy. This Court not only cannot be a silent spectator of these illegalities, it would be the bounden duty of this Court to interfere with such illegal awards and set aside the same and restore the valuable rights of the immovable properties to the parties, which is taken away

through the process of Lok Adalat. Hence, I pass the following order:

Writ petition is allowed.

The impugned award passed by the Lok Adalat on 13-12-2002 in O.S. No. 278 of 2002 is hereby set aside. The suit is restored to its original file.

Send a copy of this order to:

(a) The Bar Council of Karnataka to look into the role played by M.C. Bhandari and R.S. Ningolli, Advocates of Jamakhandi, to enquire whether their conduct in this proceedings is consistent with the professional ethics which is upheld by the Bar Council of Karnataka. It also will enable the Bar Council to take appropriate steps to educate the members of the Bar regarding their conduct before Lok Adalat and to see that such allegations and situation do not recur bringing down the reputation of the profession.

(b) Patron-in-Chief, Karnataka State Legal Services Authority, Hon'ble the Chief Justice, High Court of Karnataka.

(c) Legal Services Authority for appropriate remedial action.