

(2014) 08 KAR CK 0099

In the Karnataka High Court

Case No : Writ Petition No. 466 of 2012 (GM-CPC)

Ananthaiah

APPELLANT

Vs

Gangamma

RESPONDENT

Date of Decision : 22-08-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 23 Rule 3
Constitution of India, 1950 — Article 226, 227

Citation : (2014) ILR 6358 : (2015) 3 KCCR 2106 : (2014) 4 KCCR 3573 :
(2014) 4 KCCR 3127

Hon'ble Judges : N. Kumar, J

Bench : Single Bench

Advocate : Vigneshwar S. Shastri, Advocate for the Appellant; B.S. Sachin,
Advocate for Dharmashree Associates, Advocate for the Respondent

Judgement

N. Kumar, J.—This is yet another case abuse of Alternate Dispute Resolution Mechanism of Lok Adalath to deceive the person having legitimate right over the property. Brief facts of the case are:

Certain Chikkaiah S/o. Huli Chikkaiah was cultivating 3 acre 39 guntas of wet land in Sy. No. 40 of Chikmagalur Kasaba Hobli, Chikmagalur Taluk, Chikmagalur District, an Inam land as the Baravardar. After abolition of the Inams by the Government, he filed an application seeking grant of the said land. The Asst. Commissioner, Chikmagalur after holding an enquiry passed order dated 12.3.1974 vide VOA/RGT/2/71-72 granting the same in Chikkaiah's favour and its katha came to be mutated in his name as per M.R. No. 16/73-74 and RR Entry 1750. Chikkaiah died on 18.5.1980. Gangamma, the first respondent herein, claiming to be the daughter of said Chikkaiah filed a suit before the vacation Court on 26.12.2007 for declaration that she is the absolute owner in possession, enjoyment and cultivation of the suit property and for a permanent injunction restraining the defendants from interfering with her peaceful possession and enjoyment thereof. The suit later came to be numbered as O.S. 10/2008. On 17.01.2008 compromise petition came to be filed before the Court

and thereafter the matter was referred to Lok Adalath. On 11.02.2008, the suit was decreed in terms of the compromise. The petitioner herein claims to be the son of the grantee late Chikkanna and has preferred this writ petition seeking to quash the compromise decree in O.S. No. 10/2008, on coming to know of the same.

2. The learned Counsel for the petitioner assailing the impugned order argued that the suit property did not belong to the parties who settled their dispute before the Lok Adalath; it belonged to the petitioner as he inherited the same from his father. The compromise entered into by the parties to O.S. 10/2008 and the decree passed on such compromise affects the petitioner's rights; the parties to the suit have played fraud and therefore the impugned decree requires to be set aside.

3. Per contra, the learned Counsel for the 1st respondent argued that if the petitioner is aggrieved by the judgment and decree, his remedy is to approach a competent Civil Court and the writ petition is not maintainable.

4. Where an award is made or a compromise decree is passed by the Lok Adalath in terms of settlement arrived at between the parties, it becomes final and executable as fit were a decree of the Civil Court, and no appeal lies against the same to any Court. If any party wants to challenge such an award or decree it could be done only by filing a petition under Article 226 and/or 227 of the Constitution that too on very limited grounds. Therefore, there is no merit in the contention of learned Counsel for the 1st respondent.

5. It is well settled that fraud vitiates everything from the inception. Lok Adalaths are guided by the principles of justice, equity and fair play and if the process of Lok Adalath is abused to obtain an order affecting the interest of a person who is not a party to the proceedings it would be nothing but travesty of justice. To drive a person having substantial interest in the property to the Civil Court to obtain cancellation of compromise decree to which he was not at all a party would be parody of the justice delivery system itself. Such acts not only defeat the very object of Lok Adalath i.e., providing expeditious and inexpensive remedy and lead to multiplicity of proceedings but also drive the litigants away from Lok Adalaths instead of fostering ADR.

6. If prima facie fraud is established and a clear case of abuse of the process of Lok Adalath is made out, then the High Court is bound to quash such orders/awards to ensure that the image of ADR method called Lok Adalath does not get tarnished and also to uphold the rule of law. In this background now it is to be examined whether this is a case where process of the Lok Adalath has been abused by the parties? Whether the learned Counsel for the parties to O.S. 10/2008 and the learned Judge have conducted themselves in such a manner as to protect the interests of the parties?

7. The plaint in O.S. No. 10/2008 shows that the plaintiff Gangamma claiming to be the daughter and the sole legal heir of Chikkaiah filed the said suit for

declaration of her title to the suit property and permanent injunction restraining the defendants from interfering with her possession and enjoyment thereof. From Annexure-H, the order sheet in that suit it is seen that the suit was filed on 27.12.2007 during winter vacation as emergent orders were required. The vacation Court felt notice had to be issued before any interim orders are passed and therefore ordered for issuance of notice and summons but, the same could not be issued for want of process fee as seen from the note in the order sheet dated 17.1.2008. Interestingly on that day itself, even though no notice or summons was issued to the defendants, they appeared though one Sri BRK, Advocate and he along with vakalathnama of defendants 1 to 9 also filed nine affidavits on that day. Then the plaintiffs Counsel filed I.A. 3 under Order XXIII Rule 3 CPC duly signed by all the parties to the suit. However on 17.01.2008 the Court did not choose to record compromise in O.S. 10/2008 on the basis of the compromise petition I.A. 3 though all the parties were present before the Court.

8. From 17.01.2008, the case was adjourned to 23.01.2008 on which day the defendants were present but, the plaintiff was absent. Therefore, the case was again adjourned to 02.02.2008 on which day the plaintiff as well as the defendants were present before the Court and the matter was referred to Lok Adalath. On receipt of the records from the Court, the case was called before the Lok Adalath on the same day and the following order was passed:

"Plaintiff and defendants are present. Already the parties arrived for a compromise and filed compromise petition u/o. 23 Rule 3 CPC. Since the matter has been compromised by the respective parties, Compromise Petition is accepted. Suit is decreed in terms of the compromise petition. Draw decree accordingly."

And the order sheet bears the signature of the learned Judge as well as the Conciliator.

9. Had the dispute been resolved by the parties to O.S. 10/2008 on 17.01.2008 as per the compromise petition the petitioner herein would have been spared the tribulation of knocking at the doors of this Court. Nothing prevented the Court from passing a decree on the compromise petition on the very day it was filed or on 2.2.2008 when admittedly all the parties to the suit were present before the Court. Strangely the Court did not choose to pass any orders on the compromise petition on both the occasions, instead referred the matter to Lok Adalath on 2.2.2008.

10. Whenever the parties, with the assistance of the conciliators and Advocates, resolve the dispute and arrive at an amicable settlement before Lok Adalaths, there would be no victors and vanquished, and thus no rancour. In either words once dispute is resolved in Lok Adalath, there would be no more litigation by way of appeals and revision. Thus the actual time spent on litigation would be less than the time spent in a Civil Court.

11. The functions of Lok Adalaths relate purely to conciliation. A Lok Adalath

determines a reference on the basis of a compromise or settlement at its instance, and puts its seal of confirmation by making an award in terms of the compromise or settlement as observed by the Apex Court in *State of Punjab and Another Vs. Jalour Singh and Others*, . Thus, if the parties have already entered into a compromise and report the same by filing a compromise petition before the Court, nothing else is required to be done in the matter and therefore the Civil Court is not justified in referring the same to the Lok Adalath. There was no dispute existing at the time of reference to the Lok Adalath, which is a condition precedent for reference. When the compromise petition is filed before the Court, it is the obligation on the part of the Court to look into the compromise, find out whether the same is lawful or not. If the compromise is lawful, the Court has to record the same. In a situation like the one on hand if the judge refers the matter to Lok Adalath, it is a clear case of abdication of responsibility of considering the compromise petition by the judge and refusing to pass an order thereon.

12. It is thus evident from the orders passed in O.S. 10/2008 that the learned Judge did not know what he was expected to do when a compromise petition was filed before the Court U/Order XXIII, Rule 3 of CPC. It appears that he does not know which matter should be referred to Lok Adalath and at what stage the cases are to be referred to Lok Adalath. It is interesting to note that the very judge, who referred the matter to Lok Adalath, sat in the Lok Adalath on 2.2.2008 the very same day of reference and accepted the compromise, passed the order giving credit to the Lok Adalath for speedy disposal of the cases. In the process, he, neither as a judge nor as judicial member presiding over the Lok Adalath, applied his mind to the terms of compromise.

13. The original grantee of the suit land Chikkaiah died on 18.5.1980 and the plaintiff claiming to be the daughter of Chikkaiah filed the suit for declaration of title nearly after 28 years after his death, asserting that she is in peaceful possession and enjoyment of the property. Now, the petitioner herein claims that he is the only son of the grantee of suit land late Chikkaiah and the plaintiff in O.S. 10/2008 Gangamma is not daughter of said Chikkaiah and therefore has nothing to do with him or the property in question. The petitioner along with the writ petition has produced number of documents to show that he is the son of Chikkaiah.

14. Admittedly on the date of filing the suit the plaintiffs name was not entered in the revenue records and she had not produced any documents to show that she is the daughter of late Chikkaiah. The persons who were said to be attempting to dispossess her from the suit property appeared before the Court without notice or summons and filed a compromise petition accepting her title. From this it is clear that the learned judge and the conciliator have failed to apply their mind to the facts and circumstances of the case and the manner in which parties had compromised the matter as well as the terms of compromise. It is a clear case of collusion. A collusive decree/order is non est in the eye of law

and void ab initio.

15. This is a clear case of fraud played on the Court as well as the Lok Adalath. It is this aspect that hurts the administration of justice. It is here the High Court cannot be a silent spectator to the happenings before the Lok Adalath. This case should be an eye opener to learned Judges as to how the parties are abusing the process of Lok Adalath to achieve what possibly could not be achieved in the Court. Whether it is in the Court or before the Lok Adalath, law is well settled "whenever an agreement is entered into it should be lawful." If the agreement is not lawful, there is no question of passing an order accepting the same by the Lok Adalath.

16. It is to be borne in mind that every presiding Judge of a Court or the Lok Adalath shoulders an onerous duty of finding out if the terms of the compromise are lawful and in a suit for declaration of title, to find out whether the person in whose favour declaration is sought has got a valid title to the property or not and only thereafter accept the compromise and pass orders. These things have not been followed in this case and the judge has become an easy prey to the fraud played by the parties. Only for statistical purposes one case is resolved in the Lok Adalath but in reality, such resolution of dispute has given rise to the present Writ Petition thereby reducing the ADR method of Lok Adalath to a farce. Therefore, every one of us has a duty to see that the purity and sanctity of the alternative dispute resolution mechanism called Lok Adalath is not misused or abused. Hence the order dated 2.2.2008 in O.S. 10/2008 passed by the Lok Adalath cannot be sustained and accordingly following order is passed:

(i) Writ Petition is allowed.

(ii) The impugned orders are set aside.

(iii) The suit is restored back to file and the trial Court shall proceed with the suit on merits after adding the petitioner herein as a party.

(iv) Send a copy of this order to Karnataka State Legal Services Authority for information and to educate the conciliators so that such mistakes do not happen in future.

(v) Send a copy of this order to Karnataka Judicial Academy to make it a part of their curriculum while imparting training to the learned judges.

(vi) No costs.