

(2009) 01 MP CK 0067

In the Madhya Pradesh High Court

Case No : Writ Petition No. 119 of 2008

Gulam Hussain and Another

APPELLANT

Vs

Arsahad Iqbal and Others

RESPONDENT

Date of Decision : 20-01-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 3B, Order 23 Rule 3, 151, 96(1)

Citation : (2009) ILR (MP) 1642 : (2009) 2 JLJ 367

Hon'ble Judges : Sanjay Yadav, J;A.K. Mishra, J

Bench : Division Bench

Advocate : Ashok Lalwani and Satish Singh Thakur, for the Appellant; K.N. Fakhruddin, for the Respondent

Final Decision : Dismissed

Judgement

Mishra, J.—The instant writ petition has been filed by the Petitioners challenging the order dated 17.12.2007 (Annexure P-15) passed in M.J.C. No. 388/07 by Second Additional District Judge, Bhopal (M.P.) by which the application filed by Petitioners u/s 151 CPC to set aside the judgment and decree passed in Lok Adalat in Civil Suit No. 139-A/07, has been dismissed.

2. Civil Suit No. 139-A/07 was filed by Respondents Arshad Iqbal and Arif Siddiqui against Respondents Hemraj and State of Madhya Pradesh. State of Madhya Pradesh was impleaded as proforma party Defendant No. 2. The said suit was filed for specific performance of the agreement to sale entered into between the parties for a sum of Rs. 47,60,000/-. Out of the amount Rs. 10,00,000/- was already paid. The parties entered into the compromise in the suit and application under Order 23 rules 3 read with Section 151 CPC for passing a compromise decree was filed, which was signed by Plaintiffs as well as by Defendant No. 1 and their counsel. It was certified by the parties present before the Lok Adalat and in terms of the compromise application Lok Adalat passed the consent judgment and a decree on 6.10.2007 directing specific performance of agreement to sale.

3. Present Petitioners Gulam Hussain and Gulzar Hussain filed an application u/s 151 read with Order 23 Rule 3 CPC before the trial Court on 5.11.2007 for setting aside the compromise decree passed in Lok Adalat. It was submitted that they had purchased the land from Hemraj in a sum of Rs. 11,000/- vide registered sale-deed dated 22.4.1977 and they are in possession of the land. They applied for mutation in November, 2006. The Plaintiffs were aware of the dispute between the Petitioners and the Defendant No. 1. They were not impleaded as party to the suit and the compromise decree was passed.

4. The Plaintiffs in their reply contested that consent order passed by the Lok Adalat cannot be assailed by third party. The applicants were not having right, title or interest in the land hence it was not necessary to implead them.

5. Defendant Hemraj in his reply denied the allegations which were made in the application. He submitted that the sale-deed was not executed in fact loan was obtained and sum of Rs. 11,000/- has been repaid to the applicants. As a security of loan the nominal and fictitious sale-deed was executed. He had remained in possession of the land. Land revenue was also paid by him for last 30 years. Sale-deed was not to be acted upon and had it been out and out sale it was incumbent upon applicants to get their name mutated. The compromise has been lawfully entered into between the parties to the suit.

6. The trial Court vide impugned order dated 17.12.2007 (Annexure P-15) has held that application u/s 151 of the CPC is not maintainable. Even otherwise it is open to the applicants to file civil suit as they were not party to the civil suit and compromise decree.

7. Shri Lalwani, learned Counsel for the Petitioners has submitted that compromise was not lawful. The trial Court did not record satisfaction as to the lawfulness of the compromise which is sine qua non under Order 23 Rule 3 of the Code of Civil Procedure. He has further submitted that three recourse are available to assail the fraudulent compromise decree by way of civil suit, appeal or by application before the same Court. He has also relied upon the decisions of the apex Court in A.A. Gopalakrishnan v. Cochin Devaswom Board and Ors. 2008 (1) MPLJ 235 Banwari Lal Vs. Smt. Chando Devi (through L.R.) and another, , and Dwarka Prasad Agarwal (D) by LR. and Another Vs. B.D. Agarwal and Others, To explain what is fraud the learned Counsel has relied upon the decision of the apex Court State of A.P. v. T. Suryachandra Rao 2005 (11) MPWN 145 He has also referred to the decision of State of Punjab and Anr. v. Jalour Singh and Ors. 2008 AC 2874 in which power of Lok Adalat has been dealt with.

8. Shri K.N. Fakhruddin, appearing on behalf of the Respondents No. 1 to 3 has supported the order. He has submitted that no fraud has been played. There is a condition in the sale-deed that after payment of the loan it was not to be acted upon and the land was to be reverted back to the Defendant Hemraj after one year. Mutation was not obtained by the Petitioners which indicate sale-deed was not acted upon. The name of Hemraj continued to be recorded as Bhumiswami in

possession in the revenue records. Consequently, the compromise entered into is lawful. It is open to the applicants in case they want to establish their title, they are free to file independent civil suit. It would not be proper to interfere in the instant case even if the application filed u/s 151 of the CPC before the trial Court is held to be maintainable.

9. In the instant case the sale-deed was executed in favour of the Petitioners with a condition that it was executed for a period of one year. It was executed way back in the year 1977 and para 3 and 5 contains the condition that sale-deed is valid for one year. As such there was no violation of the provisions of Ceiling Act. It also contains the condition that on repayment of the amount of Rs. 11,000/- which was secured till 22nd April, 1978, the land was to be reverted back to Hemraj and on repayment the document shall not be acted upon.

10. Prima facie from para 3 and 5 of the sale-deed it appears that under the sale-deed the amount of loan was secured and sale-deed was not intended to be acted upon on repayment of Rs. 11,000/-, which was paid under it. It is also not disputed that applicants Arshad Iqbal and Arif Siddiqui did not get their names mutated on the strength of so-called sale-deed executed in the year 1977. The name of Hemraj, Defendant No. 1, continued to be recorded as Bhumiswami in possession in the revenue record. It appears that after 29 years in October, 2006 the application was filed for mutation by the applicants which has not been allowed so far. It appears that the agreement of sale was entered into between Defendant Hemraj and Plaintiffs of the Civil Suit No. 139-A/07. After making payment of the requisite court fees the civil suit was filed and it is not in dispute that Defendant and Plaintiffs had agreed for passing of a compromise decree before the Lok Adalat. The decree was passed on the basis of compromise application which was signed by the parties. Shri Lalwani has submitted that lawfulness of compromise was not ascertained by the trial Court. The order sheets mention that wishes of the parties were ascertained and the Court was satisfied about the lawfulness and factum of compromise and willingness of the parties. Accordingly the judgment and decree was passed in Lok Adalat.

11. Shri Lalwani has submitted that the State of M.P. had not signed on the compromise application. It was necessary as per the provision of Order 23 Rule 3 of the CPC that the State should have also signed the compromise application. In our opinion the State was only a proforma Defendant in the instant case and it was not necessary for the State to sign the compromise application, which was reached between the Plaintiffs and Defendant No. 1. The State was impleaded to ascertain that the land, held by the parties does not exceed the ceiling limit. It was not necessary for it to sign the compromise application. It was open to the State to inquire the aforesaid aspects under the Ceiling Act as provided under Order 1 Rule 3B and Order 6 Rule 4A of the CPC as per the Madhya Pradesh State Amendment.

12. We agree with the submission that in case fraudulent decree has been obtained recourses are available to the party aggrieved i.e. to file civil suit to

assail it by filing appeal or by application in the same Court. Even this question can be looked into the writ petition. Question is whether in the facts of the instant case it would be appropriate to set aside the compromise decree which has been passed on the application filed by applicants or they should be asked to get their title adjudicated in separate suit. The apex Court in *A.A. Gopalakrishnan v. Cochin Devaswom Board and Ors.* (supra), has held that in case compromise decree has been obtained by fraud on the part of the statutory board which has attained finality challenge to such compromise decree cannot be rejected on technical ground and compromise decree was set aside. We are of the same opinion. However, the question in the instant case is whether it would be appropriate to set aside the compromise decree passed in the case on an application which has been filed u/s 151 of the Code of Civil Procedure. When we consider the facts mentioned in para 3 and 5 of sale-deed of the year 1977, it is required to be proved by present Petitioners that the sale-deed was out and out sale and secured amount of Rs. 11,000/- was not repaid to them. Sale-deed contains a stipulation that it was executed only for one year. It was obviously to secure the loan amount. The fact also remains that for the purpose of mutation on the basis of sale-deed the present Petitioners did not take any step for getting their name mutated for a period of 29-30 years. Until and unless it is proved that it was not executed as collateral security for loan it cannot be said that fraud has been played by Plaintiffs or Defendant in obtaining compromise decree. In our considered opinion it would be open for the Petitioners to file civil suit to establish that it was out and out sale and loan was not repaid to them. In the instant case the Defendant No. 1 has continued to be as Bhumiswami in the revenue record, he was at least ostensible owner. It would be appropriate to relegate Petitioners to file fresh civil suit. The judgment and decree would not be binding upon them as they were not party to the suit.

13. Shri Lalwani has also placed reliance on the decision of *Dwarka Prasad Agarwal and Anr. v. B.D. Agarwal and Ors.* (supra), wherein the question agitated was about lawfulness of the agreement. In that context it was held that as compromise was not lawful, it should not have been recorded. In the instant case prima facie the compromise appears to be lawful and the trial Court has not committed any error in recording it. However, in case right of the present Petitioners is effected, it would be proper for them to establish their right, title or interest on the basis of aforesaid sale-deed by filing an independent suit.

14. Learned Counsel has also relied upon the decision of *Banwari Lal v. Smt. Chando Devi* (through LR) and Anr. (supra), in which it has been held that a party challenging a compromise can file a petition under proviso to Rule 3 of Order 23, or an appeal u/s 96(1) of the Code of Civil Procedure, in which he can question the validity of the compromise. Since the Petitioners were not party, their rights are not going to be effected and it would not be binding on the Petitioners. In the facts the matter can be examined in an elaborate manner in fresh civil suit.

15. Shri Lalwani has also submitted to press into service State of Punjab and Anr. v. Jalour Singh and Ors. (supra), in which the apex Court has laid down that Lok Adalat cannot adjudicate upon and decide without the consent of the parties. In the instant case the decision is of no help to the Petitioners as parties were consensus ad idem and admittedly compromised the matter before the Lok Adalat. There is no dispute that the parties have entered into a compromise and Lok Adalat has not adjudicated the matter on merit but decided it on the basis of the terms of compromise petition entered into between the parties and has looked into the lawfulness part only.

16. In view of the aforesaid we are not inclined to interfere in the impugned order. Resultantly, we find no merit in the petition and the same is dismissed. We leave the parties to bear cost of the petition as incurred.