
(2001) 01 KAR CK 0007
In the Karnataka High Court
Case No : Writ Petition No. 2535 of 1999

Kishan Rao and Another

APPELLANT

Vs

Bidar District Legal Services Authority and Others

RESPONDENT

Date of Decision : 05-01-2001

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Legal Services Authorities Act, 1987 — Section 19, 31

Citation : AIR 2001 Kar 407 : (2001) 2 KCCR 95 SN

Hon'ble Judges : Hari Nath Tilhari, J

Bench : Single Bench

Advocate : B.R. Prabhanna and M. Ram Bhat, for the Appellant; B.R. Shiva Prakash and Bharama Gowda, Govt. Pleader, for the Respondent

Final Decision : Allowed

Judgement

Hari Nath Tilhari, J.—By this petition, the petitioner has prayed for the issuance of a writ of certiorari quashing the order dated 28-11-1998 passed by the first and second respondents in O. S. No. 274/1998 on the file of the Civil Judge (Sr. Dn.), Bhalki, vide Annexure-E to the writ petition and grant such other reliefs.

2. The facts of the case in nutshell are; That according to the case of the petitioner, petitioners 1 and 2 are the father and son and they belong to joint Hindu family. They claimed to have joint interest in the suit property. Respondent No. 3 in the present case has filed a suit in O. S. No. 274/1998 in the Court of the Civil Judge (Sr. Dn.). Bhalki, for declaration of joint ownership and joint possession regarding the suit land bearing Sy. No. 210/1 and 2 measuring 35 guntas of Bhalki and for perpetual injunction restraining the defendants from alienating the suit land and also for correction of the Record of Rights by entering the name of the plaintiff as joint owner as well as for other reliefs as mentioned above in the suit. Later, it appears that a compromise petition was filed signed by the plaintiff and defendants 2 to 4. It may also be mentioned here that though defendants 1 to 3 were served and the service of summons was taken to be

sufficient, but they did not appear. Later on, defendant 2 made the application for setting aside the ex parte order made against him which was allowed. Later on, the compromise petition was filed which was signed by the plaintiff and defendants 2 to 4 vide Annexure-D to the writ petition. The order sheet of the case reveals that by order dated 27-11-1998 the Civil Judge (Sr. Dn.), Bhalki, referred the matter to Lok Adalat for disposal according to the Legal Authorities Act and on 28-11-1998 the Lok Adalat passed the order decreeing the suit in terms of the compromise. The decree which has been passed is the part of the order sheet vide Annexure-"E" has been marked as Annexure-F. The petitioners have challenged the decree on the ground that the petitioners have not entered into any compromise, nor did they sign the compromise petition nor produced any compromise memo. The further case of the petitioners is that they did not file any compromise petition and that no notice of reference of the case to the Lok Adalat had been given to the petitioners-defendants. The petitioners case is that they moved the application for setting aside the decree under Order 9, Rule 13 of the CPC and the Court below rejected the said application taking the view that it had no jurisdiction and the petitioners should move the High Court for appropriate orders in view of Section 21 of the Legal Authorities Act. As such, the petitioners have come up before this Court by writ petition under Articles 226 and 227 of the Constitution of India.

3. The learned counsel for the petitioners contended that the decree prima facie shows that the decree is based on the compromise between the plaintiff and defendants 2 and 4. The decree does not provide that the suit is being decreed ex parte against the present petitioners. The learned counsel contended that as such there has been no decision of the suit so far as defendants 1 and 3 are concerned i.e., the present petitioners are concerned. He further contended, the Lok Adalat could pass the order on the basis of the compromise or settlement arrived at between the parties to the suit i.e., all parties to the suit. Therefore, it may be held that the decree which has been passed is illegal, null and void and that it is not binding on the petitioners and it may be quashed as being without jurisdiction as well as illegal. The learned counsel further contended that no notice was issued either from or by the learned Civil Court intimating that the case has been referred to the Lok Adalat, nor did the Lok Adalat issue any notice to the petitioners that the case has been referred for disposal before it by compromise, nor called upon the present petitioners i.e., defendants 1 and 3 in the suit as to what they have to say. The learned counsel contended that as such the decree is void as having been passed without notice to the petitioners and in breach of the principles of natural justice and fair play. Apart from this, the decree is in breach of the provisions of Sections 19 to 21 of the Legal Authorities Act.

4. Smt. Veena, Advocate holding brief for Sri Shivaprakash appearing on behalf of the respondents 3 to 5 contended that the petitioners have already filed a suit for partition claiming that the decree passed in O. S. No. 274/1998 to be null and void and not binding on the present petitioners i.e., the plaintiffs in O. S. No.

1/1999. So, the present writ petition may be dismissed as the petitioners cannot avail both remedies. The learned counsel further contended that as the suit had to proceed ex parte, there was no need to issue any further notice to defendants 1 and 3 with reference to the jurisdiction; as to the case or reference of the case of the Lok Adalat for decision.

5. I have applied my mind to the respective contentions advanced by the learned counsel appearing for the parties.

6. As regards the question of alternative remedy, it may be pointed out here that in the suit for partition no doubt ancillary relief has been claimed alleging that the decree is null and void and not binding on the plaintiffs in the suit O. S. No. 1/1999. But, here the question is as to whether there is a decree passed against defendants 1 and 3 i.e., the present petitioners which can be said to be assailable and whether the trial Court acted illegally in not proceedings to decide the dispute between the plaintiff and defendants 1 and 3 who had not been party to the compromise and who have filed the application for being permitted to file the written statement. The trial Court has rejected the said application taking the view that as the suit had been decreed by a compromise decree it cannot proceed under Order 9, Rule 13 of the Code of Civil Procedure. The Legal Services Authorities Act, no doubt, has been enacted with the object to provide free legal aid services to the weaker sections of the people. Justice is not to be denied to the citizens by reason of economic or other disabilities and to organize Lok Adalats to secure that the operation of the legal system promote justice on the basis of equal opportunity as per the preamble of the Act. This very object has to be kept in mind when we are called upon to interpret the provisions of the Act, as well as to effect the system of Lok Adalat. Concept of justice is both sided. Justice should not be denied to any of the parties to the case. Section 19 of the Legal Services Authorities Act, 1987 provides for organisation of Lok Adalats and Lok Adalats have been conferred jurisdiction as per Sub-section (3) of Section 19 to determine and arrive at a compromise or settlement between the parties to a dispute in respect of any matter falling within the jurisdiction of any civil, criminal or revenue Court or any Tribunal constituted under any law for the time being in force in the area for which the Lok Adalat is organised. Section 19 of the Legal Services Authorities Act, 1987 reads as under;

19. Organisation of Lok Adalats, (1) The State or District Authorities may organise Lok Adalats at such intervals and places and for exercising such jurisdiction and for such areas as they think fit.

(2) Every Lok Adalat organised for an area shall consist of such judicial officers of the area as may be specified by the State or District Authorities organising the Lok Adalat and such other members possessing such qualifications and experience as may be prescribed by the State Government.

(3) A Lok Adalat shall have jurisdiction to determine and arrive at a compromise or settlement between the parties to a dispute in respect of any matter falling

within the jurisdiction of any civil, criminal or revenue Court or any Tribunal constituted under any law for the time being in force in the area for which the Lok Adalat is organised.

Section 20 of the said Act reads as under:--

20. Cognizance of cases by Lok Adalats :

(1) Where, in any suit or other proceeding which is capable of being taken cognizance of by a Lok Adalat under the provisions of this Act and pending before any Court or Tribunal, if the parties thereof make a joint application to the Court or Tribunal indicating their intention to compromise the matter or to arrive at a settlement, the presiding officer of the Court or Tribunal, as the case may be, may, instead of proceeding to effect a compromise between the parties, or to arrive at a settlement himself, and notwithstanding anything contained in any other law for the time being in force pass an order that the suit or proceeding shall stand transferred to the Lok Adalat for arriving at a compromise or settlement.

(2) Notwithstanding anything contained in any other law for the time being in force the District Authority may, on receipt of an application from any person that any dispute or matter pending for a compromise or settlement needs to be determined by a Lok Adalat, refer such dispute or matter to the Lok Adalat for determination.

(3) Where any suit or proceeding is transferred to a Lok Adalat under Sub-section (1) or where a reference has been made to it under Sub-section (2), the Lok Adalat shall proceed, to dispose of the suit, proceeding, dispute or matter and arrive at a compromise or settlement between the parties.

(4) Every Lok Adalat shall, while determining any proceeding before it under this Act, with utmost expedition to arrive at a compromise or settlement between the parties and shall be guided by legal principles and the principles of justice, equity and fair play.

(5) Where no award is made by the Lok Adalat on the ground that no compromise or settlement could be arrived at between the parties, it shall be open to the parties to a suit or proceeding transferred from a Court or Tribunal under Sub-section (1) to continue such suit or proceeding before such Court or Tribunal, or if it is a dispute or matter referred to a Lok Adalat under Sub-section (1), any of the person may institute a proceeding in an appropriate Court.

(6) Where, under Sub-section (5), the parties to a suit or proceeding intend to continue the proceeding in such suit or proceeding before the Court, or Tribunal from which it was transferred, such Court or Tribunal shall proceed to deal with such suit or proceeding from the stage at which it was before the suit or proceeding was transferred to the Lok Adalat.

7. A reading of the section per se reveals that sine qua non for taking cognizance

of cases by Lok Adalat is filing of joint application by all the parties to the suit or proceeding indicating their intention to compromise the matter or to arrive at a settlement, and when such application is made, then the section mandates that the presiding officer of the Court or Tribunal instead of proceeding to effect a compromise between the parties or to arrive at a settlement himself he may pass an order that the suit or proceeding shall stand transferred to the Lok Adalat for arriving at a compromise or settlement between the parties to the suit. The expression used parties to the suit indicates that the compromise is to be entered into between all the parties to the suit. The tenor of the language of the parties thereof make a joint application to Court or Tribunal indicating their intention to compromise the matter to arrive at a settlement per se reveals that if all the parties to suit or for proceeding make a joint application to compromise or settle the dispute by agreement that Civil Court or Tribunal has to refer the matter to Lok Adalat. It does not indicate that if some of the parties to the suit make a joint application, while the other do not, even then it will get jurisdiction to transfer the matter to the Lok Adalat for decision. Sub-section (2) of Section 20 provides that the District Authority may, on receipt of such application from any person that any dispute or matter pending for a compromise or settlement needs to be determined by a Lok Adalat, refer such dispute or matter to the Lok Adalat for determination. Sub-section (3) of Section 20 provides that on receipt of any suit or proceeding transferred to a Lok Adalat under Sub-section (1) or where a reference has been made to it under Sub-section (2), the Lok Adalat shall proceed to dispose of the suit, proceeding, dispute or matter and arrive at a compromise or settlement between the parties. This clearly indicates that he has to dispose of the matter after making all the parties to arrive at a compromise or settlement. The parties to the suit means all parties concerned. It does not make any exception to the effect that it can proceed on the basis of the compromise entered into between some of the parties, and can dispose of the suit or proceeding on such compromise even if some party has not appeared before the trial Court. When the matter is referred to the Lok Adalat, the Lok Adalat is expected to look into the question whether all the parties to the suit are entering into settlement or compromise, because if all parties to the suit or dispute do not enter into compromise or settlement, then no award can be made on the basis of any compromise or settlement entered into between some of the parties only to the suit. The Lok Adalat is required to see that it shall with utmost effort on or settlement between the parties, be guided by the legal principles of justice, equity and fair play. When it is so, it is required to first examine and see whether all the parties to the litigation have entered into a compromise or settlement. Therefore, it is its duty to see that all parties present before it. If, some parties have entered into compromise and others are not willing for settlement, then the Lok Adalat has no jurisdiction to pass the decree, because the dispute remains uncompromised. In that event, no award can be passed by the Lok Adalat as per Sub-section (5) of Section 20 of the Legal Services Authorities Act, 1987, which provides that where no award is made by the Lok Adalat on the ground that no compromise or settlement could be arrived at between the parties, it shall be

open to the parties to the suit or proceeding transferred from a Court or Tribunal under Sub-section (1) to continue such suit or proceeding before such Court or Tribunal, or if it is a dispute or matter referred to a Lok Adalat under Sub-section (1), any of the persons may institute a proceeding in an appropriate Court. This section clearly indicates that the jurisdiction of a Lok Adalat is to pass the award on the basis of the settlement or compromise arrived at between all the parties to a suit. Therefore, all parties must be present before it and notice need be issued to all the parties or it has to verify if that compromise or settlement has been arrived at between all parties to the litigation. Subsection (6) of Section 20 of the Act also provides that where the parties to a suit or proceeding intend to continue the proceeding in such suit or proceeding before the Court or Tribunal from which it was transferred, such Court or Tribunal shall proceed to deal with suit or proceeding from the stage at which it was before the suit or proceeding was transferred to the Lok Adalat. Sub-section (2) of Section 21 of the Act no doubt declares that 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. When it provides to be binding on all the parties to the suit, it means all the parties getting the matter determined by a Lok Adalat by a compromise entered into or settlement arrived at between all the parties. It cannot be deemed to include -- in view of provisions of various sub-sections of Section 20 -- even those parties who have not entered into a compromise. So, the award cannot be said to be binding on those parties who have not entered into a compromise or settlement. No doubt, after the award had been made and some parties had not entered into compromise, it was open to the Civil Court to pass order to the effect that the suit is decreed ex parte against defendants 1 and 3 and in respect of defendants 2 and 4 on the basis of the compromise the award was made by the Lok Adalat. I am doubtful in such a case the Civil Court itself could not pass a decree to the above effect as passed by Lok Adalat. In my opinion, the Civil Court could pass a decree to the effect that the suit is decreed ex parte against defendants 1 and 3 and the suit is decreed on the basis of the compromise against defendants 2 and 4, but the award given by a Lok Adalat by itself; could not be taken to have determined the dispute between the parties who had not entered into a compromise. In this view of the matter, in my opinion, even if defendants 2 and 4 have entered into a compromise and the Lok Adalat has given the award and the said award may be binding on the plaintiff and defendants 2 and 4. But, so far as defendants 1 and 3 are concerned who have not entered into compromise the dispute (sic) the suit has to be decided on merits when defendants 1 and 3 appear and contest the case and a decree had to be passed in accordance with law. This gives further support for my view that the award could not be passed, unless and until all parties to the suit have entered into a compromise or settlement and such award is bad and illegal for not being in accordance with the requirements of law u/s 20 of the Legal Services Authorities Act, 1987, is not binding and is not effective. Further, no notices have been given to defendants 1 and 3 when the matter was transferred to a Lok Adalat. The award, as such, can be said to be illegal, null and void and

inoperative to determine the dispute between the parties.

8. In view of the above, the award of the Tribunal is held to be illegal, null and void and a direction is issued to the Civil Court i.e., Civil Judge (Sr. Dn.), Bhalki, to decide the suit on merits and if defendants 1 and 3 apply afresh for being allowed to participate in the suit/proceedings, then after filing of the written statement, if sufficient cause is shown for their absence on the earlier dates of hearing. It is open to the Court below to condone the absence and allow them to file their written statement, so that cause of justice be served and met. But, if the defendants delay the proceedings, it will be open to the Court to proceed in accordance with law.

9. The writ petition, as such, is hereby allowed. The parties to bear their respective costs of this petition.

10. Let a direction in the nature of writ or direction or in the nature of a writ of mandamus be issued to the Civil Judge (Sr. Dn.) Bhalki, in the terms as indicated above