
(2014) 02 PAT CK 0076
In the Patna High Court
Case No : C.W.J.C. No. 8633 of 2005

Kumari Sushmita

APPELLANT

Vs

Rabindra Kumar Singh

RESPONDENT

Date of Decision : 03-02-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151
Constitution of India, 1950 — Article 226, 227
Hindu Marriage Act, 1955 — Section 16

Citation : (2014) 2 PLJR 622

Hon'ble Judges : Ravi Ranjan, J

Bench : Single Bench

Advocate : Ashutosh Ranjan Pandey and Rakesh Narayan Singh, Advocate for the Appellant; Nand Kumar Singh and Rajesh Kumar Singh, Advocate for the Respondent

Final Decision : Allowed

Judgement

Dr. Ravi Ranjan, J.—I have heard learned counsel for the petitioners and the respondent Nos. 1, 2 and 8 to 11. None has appeared on behalf of other respondents. This writ application has been filed, inter alia, for grant of following reliefs:--

(I) The order dated 8.12.2004 passed in Misc. Case No. 1 of 2004 contained in Annexure-13 be set aside.

(II) The judgment and award dated 11.6.2003 passed by learned Presiding Officer, Lok Adalat, Kaimur, Bhabhua T.S. No. 102 of 2003 contained in Annexure-11 be quashed.

(III) Any other relief or reliefs may be allowed which may be just proper and equitable in the opinion of this Court.

2. Petitioners, who are minors and have filed this writ application through their mother and natural guardian Most. Bipul Kuer @ Most. Bipul Devi, claim to be

sons of late Nathuni Prasad Singh from his second wife. A genealogical table instance incorporated in paragraph-3(I) of the writ petition which is being reproduced as under:--

3. It is stated that the respondent No. 6 Ram Adhar Singh had two sons Nathuni Prasad Singh and Sant Prasad Singh (respondent No. 8). First son Nathuni Prasad Singh, who died on 11.7.1999, was having two wives. First wife was Chand Muni Kuer, i.e., respondent No. 2 whereas the second wife was Bipul Kuer. The respondent No. 1 as well as respondents 3, 4 and 5 are son and grandsons of the aforesaid Chand Muni Kuer respectively whereas the petitioners are minor sons and daughter of Nathuni Prasad Singh and Bipul Kuer. Nathuni Prasad Singh was in Government service working as a teacher and was posted at Government High School, Bihiyan when he died on 11.7.1999. It is stated in the writ petition that, after his death, the first wife of aforesaid late Nathuni Prasad Singh alongwith her son, i.e., the respondent No. 1 started hutching conspiracy with a view to deprive the minor petitioners from their legitimate claims being legal heirs of late Nathuni Prasad Singh and upon their false declaration before the Circle Officer, Kudra, they were able to obtain a false certificate as contained in Annexure-1 issued by the Anchal Adhikari disclosing the family members of late Nathuni Prasad Singh. In the said certificate, names of the petitioners were missing from the list of family members. After aforesaid fact came to the knowledge of the mother of the petitioners and when she threatened to file a criminal case against them, the aforesaid Chand Muni Kuer, i.e., the first wife of late Nathuni Prasad Singh, herself filed affidavit that, on being unaware of legal provision, she could not name the second wife of Nathuni Prasad Singh and her children and requested to cancel the certificate. Eventually, the aforesaid certificate was cancelled by the Circle Officer vide an order dated 24.8.1999 then on 15.12.1999, an affidavit as contained in Annexure-3 was sworn by the first wife and the second wife, viz., Chand Muni Kuer and Bipul Kuer accepting the present petitioners as heirs of late Nathuni Prasad Singh.

4. It has further been stated in the writ petition that a dispute again arose regarding receiving the amounts and benefits of Post Retiral-cum-Death Dues payable to the family members and appointment of one of the family members on compassionate ground. It is claimed that a compromise was arrived between the parties. First wife Chand Muni Kuer filed affidavit that all the post retiral / death dues shall be received by the second wife Bipul Kuer whereas the second wife namely Bipul Kuer, i.e., the mother of the petitioners, also filed affidavit, requesting for appointment of respondent No. 1, i.e., the sons of Chand Muni Kuer on compassionate ground. The affidavits have been brought on record as Annexures-4 and 4/A. It is claimed that, thereafter, the respondent No. 1 Rabindra Kumar Singh himself filed a petition before the District Education Officer, Bhojpur recognizing that the present petitioners are children of late Nathuni Prasad Singh, who had got two wives. A Xerox copy of such petition has been appended as Annexure-5.

5. The District Education Officer asked both the wives to produce succession certificate for the purpose of receiving Post Retiral Dues and other benefits with respect to late Nathuni Prasad Singh. Thereafter, the respondent No. 2 Chand Muni Kuer approached this Court by filing C.W.J.C. No. 11211 of 2001 in which the petitioners were not impleaded but their mother was impleaded. It is claimed that she could not appear before the Court and the case was disposed of vide order dated 13.11.2001 directing for payment of Post Retiral Dues to the first wife Chand Muni Kuer and by further observing that if the second wife feels aggrieved she would have liberty to move before the competent Civil Court for her share. The mother of the petitioners namely Bipul Kuer preferred L.P.A. No. 1509 of 2001 drawing attention of the Division Bench of this Court towards the existence of the present petitioners. The appeal was allowed in part vide the order contained in Annexure-7 holding that out of family pension payable on account of late Nathuni Prasad Singh, 50% would be paid to the minor children of the appellant Most. Bipul Kuer as the mother would not be entitled for such benefit.

6. Thus, part of the order of the learned Single Judge holding that the marriage of the second wife during the lifetime of first wife would be void, was upheld.

7. The petitioners, thereafter, approached this Court in C.W.J.C. No. 3257 of 2003 against the denial of their share in the retiral dues. The writ petition was disposed of by holding that the petitioners would be entitled for family pension in their individual capacity till they attained majority. As regards their claim for entitlement of share in other retiral benefits, in view of a decision of the Apex Court in Rameshwari Devi Vs. State of Bihar and others, , it was held that they would be entitled for the same alongwith wife and children of first marriage as per the law of succession.

8. Aforesaid facts have been discussed only for the reason that the dispute, as aforesaid, was already existing between the petitioners and the respondents and admittedly the same was known to each other in which decisions were passed in favour of the petitioners by a Division Bench of this Court as well as Single Bench of this Court in L.P.A. No. 1509 of 2001 and C.W.J.C. No. 3257 of 2003 respectively. However, it appears that the respondents 1st set filed a pre-litigation case before the Permanent Lok Adalat, Bhabhua impleading the respondents 2nd set as defendants for partition in the joint family which was numbered as Pre-Litigation Title Suit No. 102 of 2003. A certified copy of the plaint has been produced by the petitioners at the time of hearing of the writ petition. It appears from its perusal that a genealogical table was incorporated in the plaint but that does not bear the names of the petitioners or their mother Most. Bipul Kuer. Obviously, this plaint/petition was filed by the first wife as well as the respondent No. 1 before the authority as mentioned above suppressing the existence of the parties.

9. It is submitted on behalf of the petitioners that, though the respondents 1st set were knowing full well regarding the existence of second wife and her

children as they themselves got filed counter affidavit before, the Anchal Adhikari, as well as the authority concerned as stated above and that the L.P.A. No. 1509 of 2001 was disposed of on 25.2.2003 holding that the minor sons of the second wife were entitled for 50% of pension, mischievously and fraudulently the names of the second wife and the petitioners were omitted from the genealogical table and a joint petition of compromise was collusively filed by the parties before the Permanent Lok Adalat which was accepted and Award was prepared vide Annexure-11 upon alleged conciliation having been reached between the parties. It is well settled that the children even out of illegitimate wedlock would also be entitled for their share in their parents' property but they have been deprived by the aforesaid fraudulent act of the respondents. It is submitted that fraud has not only been played upon the petitioners but also upon the Permanent Lok Adalat by suppressing necessary fact and getting the collusive Award prepared by it. That had compelled the petitioners filed Misc. Case No. 1 of 2004 for cancellation of the Award.

10. After issuing notices upon the respondents and calling for the records of the pre-litigation of Title Suit No. 102 of 2003 the Permanent Lok Adalat, though being of the opinion that the petitioners are entitled to take share in the property of late Nathuni Prasad Singh as legal heir but the opposite parties entered into compromise without impleading them and Award was made in terms of compromise, finally held after perusal of the provisions of the Legal Services Authorities Act, 1987 that, the compromise having been reached between the parties of the suit only, that would not be binding upon the persons who were not impleaded as party, therefore, liberty was granted to them to take a recourse of the civil suit.

11. It is contended that it is well settled principle of law that fraud vitiates very solemnity of the proceedings. Fraud upon the party and the court is writ large from the action of the respondents as, in connivance with each other, they have been able to obtain a collusive Award from the Permanent Lok Adalat. In above view of the matter, the Permanent Lok Adalat being a tribunal, was competent to recall the Award after holding that the same was obtained by fraud. Learned counsel refers a decision of the Apex Court in this regard in Budhia Swain and Others Vs. Gopinath Deb and Others, .

12. No counter affidavit has been filed on behalf of the respondents despite notices having been issued on 4.11.2011 itself even after appearance of the parties.

13. However, at the time of hearing, learned counsel appearing for the respondents submitted that the petitioners would be entitled for merely a meager share out of the share of their father late Nathuni Prasad Singh. Learned counsel also tried to make an endeavor to convince this Court that the existence of the petitioners was not within their knowledge as the order of L.P.A. No. 1509 of 2001 was passed ex-parte and in C.W.J.C. No. 3257 of 2003, they were not even impleaded as party. However, no counter affidavit controverting the claims

made by the petitioners in the writ petition has been filed by them. Learned counsel further submits that since liberty has been granted to the petitioners to file a civil suit and perhaps suit has also been filed by them, there would be no requirement of taking any decision in the writ petition regarding the Award. Learned counsel places reliance upon a decision of a Single Bench of this Court in Panna Lal Prasad Vs. Manoj Kumar Gupta and Another, . It is submitted that, in identical situation, the aforesaid Single Bench of this Court did not quash the Award after holding that the same would not be binding upon the persons who were not made party to the proceeding and a correct view has been taken by the Lok Adalat in the Misc. Case concerned that it has no jurisdiction to settle the present dispute raised by the persons who were not party to the proceeding. As a result, the writ application was disposed of.

14. Prima facie, the aforesaid proposition appears to be attractive but upon deeper scrutiny, this Court finds substance in the submissions made on behalf of the petitioners. It appears from the decision in Panna Lal Prasad's case (supra) that the writ petition was filed for quashing the order dated 4.2.2011 passed by the Permanent Lok Adalat, Buxar in Pre-litigation Case No. 108 of 2011 by which the Permanent Lok Adalat has rejected the application of the petitioners for setting aside the Award on ground of having obtained the same fraud on the ground that Permanent Lok Adalat could not have jurisdiction to entertain the said Misc. Case. However, it does not appear from the decision aforesaid that a relief was also sought for setting aside the Award of the Permanent Lok Adalat itself by this Court on the ground of fraud whereas in the present case vide Relief No. 2(ii), the petitioners also seek setting aside of the Award dated 11.6.2003 made by the Permanent Lok Adalat in Pre-litigation Title Suit No. 102 of 2003.

15. The Single Bench, in the aforesaid case, has noticed a decision of the Apex Court rendered in A.V. Papayya Sastry and Others Vs. Government of A.P. and Others, holding that a person, whose case is false, has no right to approach this Court. He can be summarily thrown out at the stage of litigation. In case, a Judgment or Order has been obtained by fraud, the Court may direct the affected party to file a separate suit for setting aside the decree obtained by fraud. The Apex Court has held that the Courts and the Tribunals, even if not having been statutory power of review, may exercise such power in certain conditions one of them being fraud upon the parties or upon the court or the Tribunal. However, this issue is no longer res integra as in an unreported decision in C.W.J.C. No. 14426 of 2009 (Meena Choudhary & Anr. vs. Dr. Dilip Choudhary & Ors.) a Division Bench of this Court has held that the powers of Lok Adalat are not coextensive with that of Civil Courts which has full power to take evidence including oral evidence and also to exercise necessary powers u/s 151 of the Code of Civil Procedure. The Permanent Lok Adalat has to prepare Award only on the basis of the consent of the parties. The mode of taking evidence is limited for certain purpose only. Thus, in the absence of oral evidence including cross-examination etc., it would not be possible for the Lok Adalat to decide the contentious issue including such as fraud committed by the parties in obtaining

such Award or Settlement. That being the situation, I would definitely agree with the decision of the learned Single Judge rendered in Panna Lal Prasad's case (supra) that the Award of Lok Adalat would be final and binding on the parties to the dispute only, therefore, the same would not be binding upon the petitioners and the petitioners would be at liberty to approach the Civil Court for grant of relief regarding partition of their share etc. for such purpose.

16. However, a question would be whether this Court should stop here itself and should not consider the issue as to whether the Award was obtained by fraud or not specially in the present case, when the existence of second wife and her children of late Nathuni Prasad Singh is a fact admitted by the parties? From perusal of the affidavits filed on behalf of the respondent No. 2 recognizing the existence of the petitioners and their mother showing them in genealogy of the family and the joint affidavit on behalf of the respondent No. 2 and the petitioners and also a petition filed by the respondent No. 1 for release of Death-cum-Retiral Benefits before the District Education Officer, Bhojpur at Ara contained in Annexures-2, 3, 4 series and 5 as well as the communication by the District Education Officer, Bhojpur vide Annexure-6 directing the respondent No. 2 and the mother of the petitioners to produce Succession Certificate for the said purpose and, further, the decision of Division Bench dated 25.2.2003 rendered in L.P.A. No. 1509 of 2001 as contained in Annexure-7 and also a decision of a Single Bench dated 23.6.2003 as contained in Annexure-8 granting 50% pension and share in Death-cum-Retiral Benefits to the petitioners, one can easily come to the conclusion that the factum of existence of second wife and the minor children of late Nathuni Prasad Singh was well known to the respondents 1st set. Though learned counsel for the respondents made an effort to convince this Court that such fact was not within their knowledge but when he was confronted with the fact that the objection filed by the respondents 1st set in Misc. Case No. 1 of 2004 (Annexure-12) itself shows that they were having knowledge of the petitioners having been born out of illegitimate wedlock and also regarding their entitlement to the properties of late Nathuni Prasad Singh is writ large, he was not able to stick to his aforesaid stand. It was mischievous and mala fide act on part of the respondents while filing the plaint/petition in Pre-litigation Title Suit No. 102 of 2003 by omitting the petitioners from the genealogical table attached with the plaint and also not impleading them as party there. The respondents including the 2nd set did not have any courage even to file a counter affidavit controverting the claim made in the writ petition regarding fraud having been played upon them in the aforesaid manner.

17. Thus, in my considered opinion, the respondents knowingly had made such suppression only to deprive the petitioners from their legitimate share in view of the provisions contained in Section 16 of the Hindu Marriage Act which clearly lays down that the children even out of illegitimate wedlock would have their share and right in the properties of their parents. Obviously, knowing the aforesaid facts fully well, both the respondents 1st and 2nd sets connived with each other and were able to obtain a collusive Award from the Permanent Lok

Adalat. That being the admitted position. This Court would not have any hesitation holding that such Award having been obtained by playing fraud by the parties would be liable to be quashed and set aside as it is well settled that fraud vitiates very solemnity of the proceeding.

18. Another Single Bench of this Court in Kashi Nath Pandey Vs. The State of Bihar and Others, has observed that in several proceedings allegation is being made regarding obtaining a sham Award upon partition of family property belonging to others. In that writ petition the final order passed by the Permanent Lok Adalat was quashed.

19. The Supreme Court in State of Punjab and Another Vs. Jalour Singh and Others, has categorically held that an Award made by Lok Adalat in terms of settlement arrived between the parties becomes executable being the decree of Civil Court. However, their Lordships have held that if any party wants to challenge such Award passed on such situation it can take a recourse of filing a petition under Article 226 and/or Article 227 of the Constitution but on very limited grounds.

20. In my considered opinion, one of such grounds would definitely be fraud played upon a party as well as on Lok Adalat. Such fraud being writ large from the materials available on the record, this Court would have no hesitation in quashing such Award.

21. That apart, a Division Bench in L.P.A. No. 1923 of 2009 (Nawal Kishore Prasad Singh & Ors. vs. State of Bihar & Ors.) while setting aside the Pre-litigation Award, has observed as under:--

A direction is issued to all Lok Adalats not to entertain the property disputes or the disputes involving contentious issues in Lok Adalat and not to record compromise in respect of such disputes, especially the property disputes. Violation of this direction will be treated as contempt of this Court.

As a result, this writ application stands allowed and the impugned Award dated 11.6.2003 contained in Annexure-11 is hereby quashed and set aside. Since the Award itself has been set aside, there would be no requirement for setting aside the order passed in Misc. Case No. 1 of 2004 as I have already held that no fault could be found in the aforesaid order in view of the legal provision that the Lok Adalat was not empowered to deal with such issue.