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(2005) 07 AHC CK 0217

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 8167 of 2005

Smt. Jai Devi Hans — APPELLANT

Vs

Smt. Beena Singh, Dori Singh and State of U.P. — RESPONDENT

Date of Decision : 21-07-2005

Acts Referred:
Legal Services Authorities Act, 1987 — Section 20, 20(1), 21, 21(2)

Citation : AIR 2005 All 349 : (2005) 4 AWC 3871 : (2006) 1 RCR(Civil) 324

Hon'ble Judges : Arun Tandon, J

Bench : Single Bench

Advocate : Jai Shanker Audichya, for the Appellant; G.C. Saxena and S.C., for the Respondent

Final Decision : Partly Allowed

Judgement

Arun Tandon, J.—Heard Sri Jai Shanker Audichya Advocate on behalf of the petitioner, Sri G.C. Saxena Advocate on behalf of respondent Nos. 1 and 2, Standing Counsel, on behalf of. respondent No. 3.

2. One Sri Jitendra Pal Singh expired on 24th March, 2001. Smt. Beena Singh (respondent No. 1) claiming herself to be the wife of the said deceased, filed an application for issuance of succession certificate in respect of the amount due to Sri Jitendra Pal Singh towards pay, gratuity, insurance etc. before the Civil Judge (Senior Division), Farrukhabad. The application so filed was registered as Misc. Case No 75 of 2001.

3. The application was allowed under order of the Court dated 26.4.2001. In the said application, the petitioner namely Smt Jai Devi, who is the mother of the deceased, was not impleaded as one of the defendants. Therefore, on coming to know about the order dated 26.4.2001, passed by the Civil Judge, the mother (petitioner) filed an application for recall of the said order and for impleadment as defendants. The application so filed was allowed by the court below and the petitioner (mother) was impleaded as one of the defendants In the succession

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application.

4. On record is an order passed by the Civil Judge dated 16.4.2004, whereby the matter was directed to processed ex parte against the petitioner (mother). However, an application was filed, by the petitioner for setting aside the ex parte order dated 16.4.2004. The application, which was numbered its Application No. 58C-2, was fixed for orders an 31st July, 2004.

5. On 1.8.2004 misc. Case No. 76 of 2001 filed by the alleged'' wife for Issuance of the succession certificate was listed before the Lok Adalat. The lok Adalat by means of its judgment and order dated.1st August, 2004 directed that Smt. Beena Singh would be entitied to succeed to half share in the property of Jitendra Pal Singh, while in respect of the other half, the: mother was held to be the successor. Since the aforesaid order was passed by the. Lock Adalat in absence of the petitioner and without any Joint application having being filed by the petitioner and since the petitioner was challenging the very factum of marriage of Smt. Beena Singh with Sri Jitendra Pal Singh, she preferred an appeal against the order dated 1.8.2004 before the District Judge, Farrukhabad, the appeal so filed was numbered as Appeal Ho, 52 of 2QM. The. Additional District and Sessions Judge, Farrukhabad has dismissed the appeal vide order dated 8.11.2004 on the ground that the order dated 1.8.2004 has been passed by the Lok Adalat and against such an order no appeal is provided for. The order dated 1.8.2004 passed by the Lok Adaiat and dated 8.11.2004 passed in appeal filed by the petitioner are under challenge in the present writ petition.

6. So far as the order dated 8.11.2004 is concerned, Counsel for the petitioner has fairly conceeded that the appeal, as filed by the petitioner, was legally not maintainable and therefore it is submitted that the merits of the order passed by the Lok Adalat dated 1.4.2004 itself may be adjudicated upon by this Court Inasmuch as no other remedy is available under law against the said order.

7. Counsel for the respondent has not been able to dispute the aforesaid contention raised on behalf of the petitioner and the parties have also agreed that this Court may adjudicate upon the merits of the order passed by the Lok Adatat dated 1.8.2004 itself.

8. Lok Adalats have been constituted under the provisions of the Legal Service Authorities Act, 1987. Section 20 of the Act provides the procedure for taking cognizance of causes by Lok Adalat and disposal of the same. Section 21(2) provides that every award made by a Lok Adalat shall be final and binding on all the parties to the dispute and no appeal shall He to any Court against the award. For ready reference Section 20 and 21 of the Legal Service Authorities Act, 1987 are being quoted herein below:

"20. Cognizance of cases by Lok Adalat.-

(1) Where, in any sit or other proceeding which is capable of being taken cognizance of by a Lok Adalat under the provisions of this Act and pending before

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any Court or tribunal, if the parties thereof make a joint application to the Court or tribunal Indicating their intention tap 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 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 sit or proceedings 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, 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 (l) 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

(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

21. Award of Lok Adalat- (1) Every award of the Lok Adalat shall be deemed to be a decree of a civil Court or order of any other Court or tribunal and where a compromise or settlement has been arrived at, by a Lok Adalat In a suit or proceeding transferred to it under sub-section (1) of Section 20, the Court fee paid in such suit or proceeding shall be refunded in the manner provided under the Court-fees Act, 1870(7 of 1870).

(2) Every award made by a Lok Adalat shall be final and binding on all the parties to the dispute, and no appeal shall tie to any Court against the award.

9. In view of the aforesaid statutory provisions, it is apparent that no appeal is provided for against the award of the Lok Adalat However the award can be

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made by the Lok Adalat only when it is based on a compromise or settlement arrived at between the parties and in the manner prescribed u/s 20 of the Act. Section 20 indicates that there must be an application indicating the Intention to compromise the matter or to arrive at a settlement. Secondly the parties must have entered into a compromise or arrived at settlement before Lok Adalat It is thus apparent that consent of both the parties is a condition precedent for any lawful order can be passed by the Lok Adalat, so as to bind the parties.

10. Since in the facts of the present case it is admitted to the parties that on 1.8.2004, when the impugned order has been passed by the Lok Adalat, the petitioner was not present nor any joint application had been filed on her behalf, asking for settlement between the parties, the order passed by the Lok Adalat dated 1.8.2004 is rendered wholly illegal and in manifest violation of Section 20 of the Legal Service Authorities Act.

11. In view of the aforesaid, the order passed by the Lok Adalat dated 1.8.2004 in Misc. Case No. 76/70/2001 cannot be legally sustained and is hereby quashed.

12. In the facts and circumstances of the case, the Civil Judge (Senior Division), Farrukhabad is directed to decide the application No. 76/70/2001 strictly in accordance with law after affording opportunity of hearing to the parties concerned at the earliest possible, preferably within two months from the date a certified copy of this order is filed before him.

13. Writ petition stands partly allowed.

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