
(2014) 02 KAR CK 0231

In the Karnataka High Court

Case No : Writ Petition No. 60415 of 2012 (GM-CPC)

Vajravathi and Another

APPELLANT

Vs

Netra and Others

RESPONDENT

Date of Decision : 06-02-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 23 Rule 3, Order 32 Rule 7

Citation : (2014) 2 AKR 524 : (2014) 2 KarLJ 471 : (2014) 3 KCCR 2461

Hon'ble Judges : N. Kumar, J

Bench : Single Bench

Advocate : Sachin S. Magadum, Advocate for the Appellant

Judgement

N. Kumar, J.—This writ petition is filed challenging the award passed by the Lok Adalat on the ground that in the so-called compromise entered into before Lok Adalat, the petitioners have not been allotted any share in the schedule property though each one of them had 1/4th share in it. The material on record discloses that one Manickchand Bhadale and his son Nagaraj Bhadale constituted a Hindu undivided family. Nagaraj Bhadale had two daughters. Manickchand Bhadale also had two daughters. Manickchand Bhadale and his son Nagaraj Bhadale are dead. The suit is filed by the widow and children of Nagaraj Bhadale against the wife of Manickchand Bhadale and her two daughters for partition and separate possession of their legitimate share in all the plaint schedule properties. They claimed 3/4th share in the schedule properties. According to them, the 1st defendant was entitled to 1/4th share and two daughters have no right as they had relinquished their interest in the joint family property on 10-4-1989 by executing a deed.

2. The grievance of the plaintiffs was about three months prior to the date of filing of the suit, the 1st defendant got people, relatives from her place and threw away the plaintiffs from the family house property. When she demanded a share, it was denied. Therefore, the suit was filed. After service of notice, written statement was filed by the defendants contesting the claim. The order sheet in

the suit discloses that defendants 1 to 3 were represented by the same Counsel. An order of injunction restraining the defendants from alienating came to be passed by consent on 3-8-2010. At the same time, plaintiff also undertook not to obstruct the defendants in the enjoyment of the property.

3. On 13-4-2011, I.A. No. 4 was filed under Order 32, Rule 7 of the Civil Procedure Code, 1908 with the certificate of the Counsel. The learned Judge, after perusing the application, was of the view as the compromise is in the interest of minors, he allowed the application and the permission to compromise the suit was given. Thereafter, a memo was filed for transferring the matter to the Lok Adalat. Before the Lok Adalat an application under Order 23, Rule 3 of CPC was filed. The order sheet discloses that the said compromise petition was perused and enquiry was made with the parties; they stated that they had agreed to the terms of the compromise; hence compromise was accepted and an order came to be passed decreeing the suit of the plaintiffs in terms of the compromise petition. Accordingly, an award came to be passed.

4. The grievance of the petitioners is, when the plaintiffs in the suit filed an execution petition, notice was served on them, they approached a Counsel and then they came to know the passing of this compromise award in which no share is given to them. They were advised that if they were aggrieved by the said award, they should prefer a writ petition. Accordingly, the present writ petition is filed.

5. As set out above, defendants 2 and 3 have 1/4th share in the property of their father. Even if it is a coparcenary property, in view of the amendment to the Hindu Succession Act, 1956 they are entitled to a share equal to that of a son. In such an event, they are entitled to 1/4th share each. Plaintiffs in the suit have categorically stated that the defendants have relinquished their interest in the property by executing a deed. The said allegation has been denied by defendants 2 and 3 in the written statement filed by them. It is also the case of the plaintiff that defendant 1 has thrown out the plaintiffs; she even sought for an order of temporary injunction restraining the defendants from alienating the property which was granted. In this background, when we look at the compromise petition. The defendants 2 and 3 who have 1/4th share each in the schedule property are not allotted any share in the property at all. They are also illiterate, they are not wealthy. The same Advocate is representing defendants 1 to 3. There is no deed executed by them relinquishing their interest in the property as contended by the plaintiff. Therefore, prima facie, the compromise entered into is not in accordance with law.

6. What is surprising is, an application under Order 32, Rule 7 of CPC was filed before the Court because plaintiffs 2 and 3 are minors. Before an application is filed for permission to compromise, the parties should have entered into a compromise. It is only then an application could be filed for permission to compromise. It is only after looking into the compromise petition, the learned Counsel appearing for the minor-plaintiffs can issue a certificate to the effect that

the compromise is in the best interest of the minors. If already a compromise had been entered into before such a application was filed before the Civil Court and when the Court was satisfied that the compromise is lawful, there was no difficulty for the Court to have recorded the compromise and disposed of the suit in terms of the compromise. However, the order sheet shows, after allowing the application under Order 32, Rule 7 of CPC, a memo is filed requesting the Court to refer the matter to the Lok Adalat. Referring the matter to the Lok Adalat pre-supposes (a) existence of a dispute; and (b) possibility of a settlement. If, according to the Court, the compromise, which was entered into between the parties, was in the interest of the minors, then there was no dispute in existence. On the day the matter was referred to the Lok Adalat, the dispute has been settled between the parties and a compromise was entered into and the Court itself was competent to pass a decree in terms of the compromise. It is stated that before the Lok Adalat the terms of compromise was read over before the parties, they had agreed to the same and, therefore, the Lok Adalat recorded compromise. It was also done on the every same day.

7. This mode of disposal of cases by Lok Adalat do not bring any good name either to the judicial institution or to the Lok Adalat which is a limb of the judicial administration. The concept of Lok Adalat is, in the Civil Court, it is time consuming, to resolve the dispute and there would be delay in disposal of the cases. Therefore, the concept of Lok Adalat is accepted as one of the effective alternative mode of resolving the dispute expeditiously and that is the reason why the disputes are referred to Lok Adalat. It is in the Lok Adalat, by process of negotiations between the parties and the members of the Lok Adalat efforts should be made to resolve the dispute. After the dispute is resolved, they could reduce into writing the agreed terms and, in terms of the said agreement, an award could be passed. If parties could agree to compromise in the afternoon, I find it difficult to understand why the same compromise was not entered in the morning before the very Court. It would be more honourable to record the compromise in the suit than sending it to the Lok Adalat for being recorded. These practices would expose the functioning of the Lok Adalat and become the subject of ridicule. The Judges should not become party to this gymnastics, as he or she is presiding in the Court as well as in the Lok Adalat, while recording the compromise. The allegations of the nature in this case reflect on their conduct as Judges. It shows non-application of mind to the terms of the compromise to find out whether the compromise is lawful which is a condition precedent for recording the compromise. That is the reason why Lok Adalat members consists of Judicial and Advocate Conciliators. It is the bounden duty and very sacrosanct responsibility of a Judicial Member to take care of the legal hurdles, which crop up during the conciliation or negotiations before the Lok Adalat. Therefore, it is high time that this type of practice is discontinued in the interest of administration of justice.

8. But, in the end of the day, the defendants 2 and 3 to the suit who had 1/4th share in the property said to have given up their right under the compromise

without any reason. It is only when execution was filed they came to know of the award. The very fact that an execution petition is filed to get what was agreed to under a compromise shows the compromise is not a bona fide one or defendants 2 and 3 are conscious of the terms of the compromise. Therefore, this circumstance reinforces the allegations made by the petitioners in this writ petition about the circumstance under which the compromise has come into existence. Though respondents have been duly served they have not chosen to enter appearance and contest this petition. The reason is obvious. In the circumstances of the case, I am satisfied from the material on record that all is not well. If the compromise is recorded by the Lok Adalat, it is the Lok Adalat which should be satisfied that the compromise is in the interest of the minors. The Civil Court cannot allow the application under Order 32, Rule 7 of the CPC and then refer the matter to the Lok Adalat for recording compromise. If this procedure is permitted it would demonstrate that this concept of Lok Adalat is a farce and the purity and efficacy of the alternative dispute resolution mechanism would be under cloud. Under these circumstances, the award passed by the Lok Adalat cannot be sustained. Accordingly, it is hereby set aside. Hence, I pass the following:

ORDER

- (i) Writ petition is allowed.
- (ii) The award passed by the Lok Adalat is set aside.
- (iii) The suit - O.S. No. 28 of 2010 is restored to its original file. It is open to the parties to agitate their respective rights in the suit and have an adjudication in the manner which is conducive to the interest of one and all.
- (iv) The Registry is directed to send a copy of this order to the Karnataka Legal Services Authority to have a glimpse of how the Lok Adalats are functioning in our State and to take appropriate remedial steps.

Parties to bear their own costs.