



IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH

DATED THIS THE 2ND DAY OF FEBRUARY, 2024

BEFORE

THE HON'BLE MR JUSTICE V.SRISHANANDA

MISCELLANEOUS SECOND APPEAL NO.100010 OF 2021



BETWEEN:

SMT. SHANTAWWA W/O. BALAPPA BHAJANATRI,
AGE. 73 YEARS, OCC.HOUSEHOLD,
R/O. KOUJALAGI, TAL. GOKAK,
DIST. BELAGAVI-591227.

NOTE. SHRI. SUBHAS BALAPPA BHAJANTRI,
DIED ON 25-04-2021 AFTER PASSING OF JUDGMENT,
APPELLANT HEREIN IS A MOTHER WHO IS
ALREADY ON RECORD.

...APPELLANT

(BY SRI. LAXMAN T.MANTAGANI, ADVOCATE)

AND:

SHRI. HANAMANT BHIMAPPA BHAJANTRI,
AGE. 47 YEARS, OCC. AGRICULTURE,
R/O. KOUJALAGI, TQ. GOKAK,
DIST. BELAGAVI-591227.

...RESPONDENT

(BY SRI. O.B. JOSHI AND SRI. SANJAY S.KATAGERI, ADVOCATES)

THIS M.S.A. IS FILED U/SEC.43 RULE 1 (u) READ WITH 104 OF CPC., PRAYING TO CALL FOR RECORDS AND BE PLEASED TO SET ASIDE THE JUDGMENT AND DECREE PASSED DTD 30.11.2020 PASSED IN R.A.NO.14/2019 SETTING ASIDE THE JUDGEMENT AND DECREE DTD 30.03.2019 PASSED IN O.S.NO.98/2016 ON THE FILE OF THE I ADDITIONAL CIVIL JUDGE AND JUDICIAL MAGISTRATE FIRST CLASS, SAUNDATTI, AND ALLOW THE MEMORANDUM OF MSA WITH COSTS, IN THE INTEREST OF JUSTICE AND EQUITY.





THIS M.S.A., COMING ON FOR HEARING, THIS DAY, THE COURT DELIVERED THE FOLLOWING:

JUDGMENT

Heard Shri. Laxman T. Mantagani, learned counsel for appellants and Shri. O. B. Joshi, learned counsel for the respondent.

2. Present second appeal is filed challenging the order passed in R.A. No.14/2019 dated 30.11.2020 by learned Senior Civil Judge, Saundatti, whereby the following order came to be passed:

"ORDER

By acting under Order XLI Rule 33 CPC, the prayer made by the appellant in the present appeal is moulded and granted as below:

- (a) The judgment and decree passed in O.S.No.98/2016 dated 30.03.2019 is hereby set-aside.*
- (b) The final order dated 08.12.2015 decree and compromised final decree dated 20.01.2016 drawn in O.S. No.358/2015 is hereby set aside.*
- (c) The suit in O.S.No.98/2016 is remanded back before trial court for fresh adjudication in accordance with law.*



- (d) *The suit in O.S.No.358/2015 is restored to its original file for determine for efficacious remedy, in accordance with law.*
- (e) *The respective plaintiffs of O.S.No.98/2016 and O.S.No.358/2015 are hereby directed to implead all the alienees in their respective suit.*
- (f) *The trial Court is hereby directed to consolidate the suits and determine the right, title and interest of the parties in accordance with law.*
- (g) *The trial court is further directed to extend opportunity to the parties and determine the suits in accordance with law as expediently as possible.*

Accordingly, the appeal preferred by the appellant under Section 96 read with Order XLI Rule 1 CPC, is hereby disposed off.

The parties are hereby directed o bear their own cost and as such no order as to costs.

Draw decree accordingly.”

3. Facts in brief which are necessary for disposal of the present second appeal are as under:



3.1. A suit was filed in O.S. No.358/2015 which came to be disposed off by filing a compromise petition and final decree came to be passed before Lok Adalath.

3.2. Being aggrieved by the same, the respondent herein filed a suit in O.S. No.98/2016 contending that the defendant by name Hanamant Bhimappa Bhajantri, in O.S. No.358/2015 was impersonated and a compromise decree came to be passed.

3.3. In the suit O.S.No.98/2016 the following is the prayer:

"Wherefore, the plaintiff prays that, this Hon'ble Court may be pleased to pass a judgment and decree;

i) Declaring that, the Compromise Final Decree in O.S. No.358/2015 is a nullity and not binding on the plaintiff as it is obtained by playing fraud, in the interest of justice and equity.

ii) Declaring that, the plaintiff is the absolute owner of the suit property Block No.184 of Itnal village to the extent of 15 Acres 16 Guntas, in the interest of justice and equity.



iii) Pass such other order as this Hon'ble Court deems fit on the facts and circumstances of the case, including the award of costs, in the interest of justice and equity."

3.4. That suit in O.S.No.98/2016 on contest came to be dismissed. Being aggrieved by the same, plaintiff Hanamant Bhimappa Bhajantri filed first appeal before the learned Senior Civil Judge, Saundatti, (hereinafter referred to as the 'first Appellate Court', for brevity) in R.A.No.14/2019.

3.5. The first Appellate Court by a contexted judgment dated 30.11.2020 set aside the judgment and decree passed in O.S.No.98/2016 and decreed the suit as prayed for.

4. Being aggrieved by the said judgment of the first Appellate Court, defendants in O.S.No.98/2016 who were plaintiffs in O.S.No.358/2015 have preferred the present second appeal.

5. Shri. Laxman T. Mantagani, learned counsel for appellants vehemently contended that the suit before the Civil Court challenging the compromise decree a separate suit before the Trial Court in O.S.No.98/2016 challenging the compromise



decree passed in a Lok Adalath was not at all maintainable and the same has been rightly appreciated by the Trial Judge and dismissed the suit in O.S.No.98/2016.

6. He further contended that learned Judge in the first Appellate Court ignoring the bar contend in the Legal Services Authorities Act, 1987 (hereinafter referred to as 'the Act, 1987', for brevity), not only allowed the appeal and reversed the judgment of the Trial Court in O.S.No.98/2016 by moulding the relief passed an order decreeing the suit.

7. He further contended that such a course was not at all open to the learned Judge in the first Appellate Court in view of the clear bar under the Act, 1987 in challenging the award passed in the Lok Adalath and sought for allowing the second appeal.

8. In support of his argument, he placed reliance on the judgment of the Hon'ble Apex Court in the case ***Bhargavi Constructions Vs. Kothakapu Muthyam Reddy***, reported in ***(2018) 13 SCC 480***.

9. Relevant portions of the said judgment are culled out hereunder:



"25) *The question arose before this Court (Three Judge Bench) in the case of [State of Punjab](#) (supra) as to what is the remedy available to the person aggrieved of the award passed by the Lok Adalat under [Section 20](#) of the Act. In that case, the award was passed by the Lok Adalat which had resulted in disposal of the appeal pending before the High Court relating to a claim case arising out of [Motor Vehicle Act](#). One party to the appeal felt aggrieved of the Award and, therefore, questioned its legality and correctness by filing a writ petition under Article 226/227 of the Constitution of India. The High Court dismissed the writ petition holding it to be not maintainable. The aggrieved party, therefore, filed an appeal by way of special leave before this Court. This Court, after examining the scheme of the Act allowed the appeal and set aside the order of the High Court. This Court held that the High Court was not right in dismissing the writ petition as not maintainable. It was held that the only remedy available with the aggrieved person was to challenge the award of the Lok Adalat by filing a writ petition under [Article 226](#) or/and 227 of the Constitution of India in the High Court and that too on very limited grounds. The case was accordingly remanded to the High Court for deciding the writ petition filed by the aggrieved person on its merits in accordance with law.*

26) *This is what Their Lordships held in Para 12:*

"12. It is true that where an award is made by the Lok Adalat in terms of a settlement arrived at between the parties



(which is duly signed by parties and annexed to the award of the Lok Adalat), it becomes final and binding on the parties to the settlement and becomes executable as if it is a decree of a civil court, and no appeal lies against it to any court. If any party wants to challenge such an award based on settlement, it can be done only by filing a petition under [Article 226](#) and/or [Article 227](#) of the Constitution, that too on very limited grounds. But where no compromise or settlement is signed by the parties and the order of the Lok Adalat does not refer to any settlement, but directs the respondent to either make payment if it agrees to the order, or approach the High Court for disposal of appeal on merits, if it does not agree, is not an award of the Lok Adalat. The question of challenging such an order in a petition under [Article 227](#) does not arise. As already noticed, in such a situation, the High Court ought to have heard and disposed of the appeal on merits.”

27) *In our considered view, the aforesaid law [laid down](#) by this Court is binding on all the Courts in the country by virtue of mandate of [Article 141](#) of the Constitution. This Court, in no uncertain terms, has laid down that challenge to the award of Lok Adalat can be done only by filing a writ petition under [Article](#)*



226 and/or Article 227 of the Constitution of India in the High Court and that too on very limited grounds.

39) *As a result, the appeal succeeds and is allowed. Impugned order is set aside and that of the order passed by the Trial Court is restored. As a consequence, the application filed by the appellants (defendants) under Order 7 Rule 11(d) of the Code is allowed resulting in rejection of the plaint.*

40) *We, however, make it clear that the respondents (plaintiffs) would be at liberty to challenge the legality and correctness of the award dated 22.08.2007 passed by the Lok Adalat by filing the writ petition under Article 226 or/and 227 of the Constitution in the High Court in accordance with law."*

10. *Per contra*, Shri. O. B. Joshi, learned counsel for the respondent contended that the plaintiff-respondent has been impersonated in O.S.No.358/2015 who was the sole defendant and a compromise decree came to be passed and when the plaintiff in O.S. No.98/2016 who was the first defendant was not at all party to the compromise decree on account of impersonation, it would not binding on the defendant. Therefore, a separate suit seeking setting aside the award passed by the Lok Adalath was very much maintainable. Said aspect of the matter has been rightly appreciated by the first



Appellate Court and passed the impugned order and sought for dismissal of the second appeal.

11. In support of his argument, he placed reliance on the judgment of the Hon'ble High Court of Punjab and Haryana in the case of **Jagir Singh Vs. Shama** in **Civil Revision Petition No.7250/2014(O and M)**, dated 20.11.2015, wherein it is held as under:

"The bar which the law contemplates is that what will operate 'against parties' if the proceedings had been taken as per law. If a person says that she had not been served as such and the defendant has practiced impersonation, the order so obtained cannot be an order in the eye of law to which the provision could apply, Fraud vitiates the whole of the judicial proceedings and if the plaintiff is able to show that she was not present before the Lok Adalath the defendant is bound to prove that the plaintiff was present and the person who admitted to the defendant's claim, was indeed a plaintiff herself and the signature found in the document produced in the lok Adalat were her. The defendant will have to take therefore, a heavy burden cast on him to prove that there was no impersonation."

12. Further, he also placed reliance on the judgment of the Hon'ble High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh in the case of



Rambha Narayana Murthy Vs. Nimmagada Eswara Venkata Narasimha Rao in **Civil Revision Petition No.1361/2013**, dated 13.12.2016, wherein it is held as under:

"The point for consideration in the said decision was 'Whether a party, to an award passed by the Lok Adalat, is barred by the provisions of the Act and Section 9 CPC, from invoking the jurisdiction of the Civil Court seeking to have the award declared said point was answered as follows: "The point for consideration is answered holding that the remedy of a civil suit is not barred where the jurisdiction of the civil Court is invoked by a party to the compromise, or the award of lok Adalat, alleging that the said compromise or award was obtained by misrepresentation of fraud."

13. Further, he placed reliance on the judgment of the High Court of Karnataka (Dharwad Bench) in the case of **Jayavant Madu Kudtarkar and others Vs. Shivanand and others** in **Civil Revision Petition No.100069/2016**, wherein it is held as under:

"In the present set of facts, the plaintiffs being not parties to the earlier proceedings. The said provision of Order 23 Rule 3A is not applicable and accordingly, the said judgment relief upon by the learned counsel appearing for the petitioners is not applicable. As regards the contentions raised by the petitioners that Section 22(E) of the KSLA Act, contemplates that the award made



by permanent Lok Adalath shall be final is trite law, but the same is applicable to the present facts of the case. The said Section 22(E) of the KSLA Act provides, every award of permanent Lok Adalat under them. Admittedly, the plaintiffs were not parties to the composite petition and as such, the said provision is not applicable to the case on hand, No merit in the petition.”

14. This Court bestowed its attention to the rival contentions of the parties and perused the material on record meticulously.

15. The prime contention for filing a separate suit in O.S. No.98/2016 by the respondent in this appeal who was the first defendant in O.S. No.358/2015 is that on the day when the matter was settled before the Lok Adalatk, first defendant was not present and he has been impersonated and award came to be passed by the Lok Adalath by accepting the compromise petition.

16. As such, compromise decree would not only be binding on the defendant Hanamant Bhimappa Bhajantri, but also award is bad on the ground that the same has been obtained by fraud. As such what is the remedy who has



suffered such an order in such circumstances is no longer *res integra*.

17. The Hon'ble Apex Court in the case ***Bhargavi Constructions*** (supra) has clearly held that when there is a bar under the Act, 1987, the only remedy is to file a writ petition challenging the compromise decree passed in the Lok Adalath.

18. In view of the authoritative pronouncement of the Hon'ble Apex Court, further discussion on the judgments relied on by the respondent which were rendered by different High Courts is unnecessary.

19. Further, when there was no appeal provision, the only remedy that is available to challenge the order by way of writ petition under the Article 226 and 227 of the Constitution of India.

20. At this stage Shri. O. B. Joshi, learned counsel for the respondent contended that in writ jurisdiction to establish the plea of fraud is difficult and therefore, separate suit is maintainable.



21. It is for the Court to find out what is the methodology to be adopted if there is an allegation of fraud.

22. It is no doubt true that if there is an allegation of fraud, no remedy is carved out under the Act, 1987. When such a remedy is available, the only remedy that is available is to challenge the provisions of the statute in an appropriate writ petition.

23. As such, filing a separate suit under Section 9 of CPC when there is a clear bar under the Act, 1987 is thus clearly not maintainable. Therefore, there is no substance in the argument put forth on behalf of the respondent.

24. The only remedy that is available for the respondent who is said to have been cheated by impersonation and a compromise decree is to be passed is to approach the High Court in a writ petition under article 226 and 227 of the Constitution of India.

25. Reserving such liberty for the respondent Hanamant Bhimappa Bhajantri, this Court is of the considered opinion that the judgment passed by the first Appellate Court needs to be



set aside and that of the Trial Court in dismissing the suit in O.S.No.98/2016 is to be upheld.

26. Hence the following order is passed:

ORDER

(i) Miscellaneous Second Appeal is allowed.

(ii) Order passed in R.A. No.14/2019 dated 30.11.2020 by the learned Senior Civil Judge, Saundatti, decreed in setting aside the judgment passed in O.S.No.98/2016 and decreeing the suit is hereby set aside.

(iii) The respondent in the appeal is entitled to challenge the compromise decree in an appropriate writ petition.

(iv) It is made clear that if such writ petition is filed, time spent in filing the separate suit, appeal and the present second appeal may be sought to be excluded by resorting under Section 12 of the Limitation Act, 1963 and appellant herein shall not



oppose the writ petition only on the ground of delay
and laches.

Sd/-
JUDGE

SMM
List No.: 2 SI No.: 47