

In Re: Khamarjaha Begum

Court: Karnataka High Court (Gulbarga Bench)

Date of Decision: March 21, 2014

Acts Referred: Civil Procedure Code, 1908 (CPC) - Order 7 Rule 1, Order 7 Rule 11(d), Order 7 Rule 2 151 26
Legal Services Authorities Act, 1987 - Section 21 22

Hon'ble Judges: Rathnakala, J

Bench: Single Bench

Advocate: Ameet Kumar Deshpande, for the Appellant; R.S. Sidhapurkar, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

Rathnakala, J.

This CRP is filed to set aside the order dated 19.7.2012 on IA-2 filed under Order VII Rule 11(d) r/w 151 of CPC in

O.S. No. 114/2011 on the file of the Learned Civil Judge at Lingasugur. The facts briefly stated; that on 15.4.2011, Lok Adalath passed the

decree based on the compromise in O.S. No. 60/2011, subsequently the affected party Smt. Khamarjaha Begum filed a suit i.e. O.S. No.

114/2011 seeking to declare the compromise decree as null and void. Petitioner herein/Azagar Begum being the defendant put her appearance and

filed an application under Order VII Rule 11(d) r/w 151 of CPC to reject the plaint on the ground that the plaintiff/Khamarjaha Begum only after

reading the terms and conditions of the compromise petition had presented the same before the Lok Adalath, consequently, the compromise

petition was allowed and the award was passed. The suit is nothing but for cancellation of the compromise decree which is against provision of

law. The learned trial Court after hearing both has rejected the application.

2. Sri Ameet Kumar Deshpande, learned Counsel for the revision petitioner submits that the respondent/Azagar Begum being a signatory to the

compromise petition and personally present before the Lok Adalath and having admitted the contents of the compromise petition now can not

maintain a separate suit challenging the validity decree passed in Lok Adalath, if at all she is aggrieved by the said decree passed in pursuance of

the compromise petition, she has to file an application u/s 151 of CPC before the very same forum and challenge the compromise petition. In view

of the judgment of the Apex Court reported in Pushpa Devi Bhagat (D) th. LR. Smt. Sadhna Rai Vs. Rajinder Singh and Others, , a separate suit

is not maintainable and the impugned order is not legal and same is liable to be set aside.

3. Sri R.S. Sidhapurkar, learned Counsel for the respondent in reply submits that she is seeking for declaration in O.S. No. 114/2011 to declare,

the decree passed in O.S. No. 60/2011 as null and void since fraud was played on her while taking her signature on the compromise petition. The

defendant in the said suit under misrepresentation and fraud managed to obtain her signature on the compromise petition. Except filing an original

suit she has no any other recourse to challenge the decree obtained by playing fraud on her.

4. Having heard the both sides the sole point which arises for my consideration is;

Whether a party to a compromise decree can challenge the same by filing a separate suit?

The dispute between the parties is in respect of an immovable property. The respondent herein claims to be the owner in possession of the

property. She had dispute in respect of the said property with the respondent herein. By the intervention of the elders of the village the matter was

settled. To comply the terms of settlement, the respondent/Azagar Begum filed a suit in O.S. No. 60/2011 before the Court. Since petitioner was

an illiterate lady she yielded to the misrepresentation made by the mediators and signed the compromise petition before the Lok Adalath, the

contents of the compromise was never read over to her. After obtaining the decree Khamarjaha Begum and her husband remained absent from the

village. Under the guise of the compromise decree the respondent encroached her land hence she filed declaratory suit in O.S. No. 114/2011.

5. The matter is squarely covered by the judgment of the Apex Court reported in Pushpa Devi Bhagat (D) th. LR. Smt. Sadhna Rai Vs. Rajinder

Singh and Others, , The Apex Court while elaborating the amended provision of O.23 has summed up thus;

The position that emerges from the amended provisions of O.23, can be summed up thus: (1) No appeal is maintainable against a consent decree

having regard to the specific bar contained in S. 96(3), CPC; (ii) No appeal is maintainable against the order of the Court recording the

compromise (or refusing to record a compromise) in view of the deletion of C1. (m). R.1, O.43: (iii) No independent suit can be filed for setting

aside a compromise decree on the ground that the compromise was not lawful in view of the bar contained in R. 3-A: (iv) A consent decree

operates as an estoppel and is valid and binding unless it is set aside by the Court which passed the consent decree, by an order on an application

under the proviso to R.3 of O.23. Therefore, the only remedy available to party to a consent decree to avoid such consent decree, is to approach

the Court which recorded the compromise and made a decree in terms of it, and establish that there was no compromise. In that event, the Court

which recorded the compromise will itself consider and decide the question as to whether there was a valid compromise or not. This is so because

a consent decree, is nothing but contract between parties superimposed with the seal of approval of the Court. The validity of a consent decree

depends wholly on the validity of the agreement or compromise on which it is made.

This Court in a judgment reported in M.L. Vijaya Vs. T. Srinath, M.L. Sridhar, (Since dead by L.Rs., Smt. Saroja Sridhar, Naveen Narashima

and Smt. Lalana Krishnamurthy) and M.L. Narasimhaswamy, , has also held that a fresh suit is barred to challenge the compromise in a separate

suit.

6. In the matrix on hand, the challenge is not the compromise decree drawn by the civil Court but an award passed by the Lok Adalath which is

deemed to be a Decree of civil Court as per Section 21 of the Legal Services Authorities Act, 1987. In view of the settlement reported by the

parties Section 22 of the Legal Services Authority Act, 1987, contemplates the powers of the Lok Adalath or permanent Lok Adalath for the

purpose of holding any determination under Legal Services Authorities Act, 1987. If the respondent is aggrieved by the award passed by the Lok

Adalath the forum for her to agitate her grievance is either before the very same Lok Adalath, which passed the award or any other forum available

to her in accordance with law. In that view of the matter, the order of the Court below in rejecting the application filed under Order VII Rule 11(d)

r/w 151 of CPC is erroneous and not in consonance with the position of law. Accordingly, CRP is allowed. The impugned order passed by the

learned Civil Judge, at Lingasugur in rejecting the application filed by petitioner herein under Order VII Rule 11(d) r/w 151 of CPC is set aside.

Consequently the plaint filed by the respondent herein under Order VII Rule 1 and 2 r/w 26 of CPC stands rejected as not maintainable.

However, if the respondent intends to challenge the Decree passed in O.S. No. 60/2011 dated 15.4.2011, the period spent by her before the

Trial Court and this Court i.e. from the date of presentation of the plaint in O.S. No. 60/2011, till today shall be excluded while computing the

period of limitation. All the contentions are left open.