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Andhra Pradesh High Court

Case No: W.P. No. 30051 of 2013

Vadiga Amose	APPELLANT
Vs	
Vadiga Anjaneyulu and Others	RESPONDENT

Date of Decision: Dec. 12, 2013

Citation: (2014) 2 ALD 676 : (2014) 3 ALT 763

Judgement

1. This writ petition is filed seeking a writ of mandamus to declare the impugned Award dated 20.8.2005 passed by the fifth respondent in LAC No. 1049 of 2005 u/s 21 of the Legal Services Authorities Act, 1987, as illegal, void and opposed to Articles 14, 19, 21 and 300A of the Constitution of India, on the ground that respondents 1 to 4 played fraud on the Judiciary by suppressing the joint family members of late Veeraswamy and partition settlement deed dated 31.4.2005. The facts leading to filing of this writ petition, in brief, are as follows. The petitioner''s mother by name Emelamma is the legally wedded wife of late Veeraswamy. The petitioner and third respondent are the sons of Emelamma and Veeraswamy. His mother went to her parents'' house for second delivery in the year 1976. Taking advantage of the same, Veeraswamy high-handedly married his sister''s daughter by name Rama Lakshmi, who is the second respondent herein. Respondents 1 and 4 are the sons of Veeraswamy and Rama Lakshmi. The petitioner and respondents have been residing jointly by enjoying the ancestral property admeasuring Acs.26.17 guntas in Survey No. 425, Acs. 12.27 guntas in Survey No. 427/A, and Acs.13.30 guntas including house bearing No. 3-9-8 with a vacant site of Ac. 1.00 situated at Guddimalla Village (Venkatagiri), Khammam Rural Mandal and District. All the properties are ancestral properties and the parties have equal shares. Venkataswamy died in the year 1999. Respondents 1, 2 and 4 are residing in the village. The petitioner, who is working in Police Department, is being transferred from one place to another place, as part of his job. At the time of filing the writ petition, he is working as Sub-Inspector of Police, Kushaiguda Police Station. The third respondent, who is his natural elder brother, is a Doctor in Kothagudem Town. The petitioner and respondents I to 4 have partitioned their joint family properties in the presence of village elders, as per partition deed dated

13.4.2005. The said document is signed by him and respondents 1 to 4. The petitioner leased out his share to his brothers and they used to pay Rs. 20,000/- per month towards rent till 2011. In the month of May, 2012, his brothers refused to pay the rents on the ground that he has no right in the property.

2. The petitioner came to know about filing of a suit and settlement of the same in Lok Adalat. He obtained certified copy of the impugned award dated 20.8.2005 passed by the fifth respondent. The respondents 1 to 4 together colluded and initiated the civil suit by playing fraud against the Court and obtained the impugned award behind his back by suppressing partition deed dated 13.4.2005. The impugned award passed by the fifth respondent is non est in the eye of law and it is liable to be set aside.

3. The third respondent filed counter-affidavit on behalf of all the respondents inter alia contending that the petitioner, by suppressing the factum of his birth, pleaded that he is the son of late Veeraswamy as if he was born through him. The petitioner has produced a fabricated and forged deed dated 13.4.2005 for getting an order in this writ petition. The said action is nothing but perjury and plying fraud on this Court and petitioner deserves to be punished for the said offence. The petitioner has no right to claim the property in question, as he has nothing to do with their family. It is absolutely false to state that the petitioner is the son of late Veeraswamy. If the petitioner has any grievance, he has to approach jurisdictional civil Court and he cannot invoke the jurisdiction of this Court under Article 226 of the Constitution of India. The contention that the respondents 1 to 4 have obtained the impugned award by playing fraud on Court is false.

4. Heard Sri Mummaneni Sreenivasa Rao, learned Counsel for petitioner and Sri K. Chidambaram, learned Counsel for respondents 1 to 4.

5. The contention of learned Counsel for petitioner is that the only remedy available to him is to challenge Lok Adalat Award by invoking jurisdiction of this Court under Article 226 of the Constitution. Per contra, learned Counsel for respondents 1 to 4 contended that the petitioner is no way related to respondents 1 to 4, and therefore, the writ petition is liable to be dismissed.

6. To substantiate the argument, learned Counsel for the petitioner relied upon three decisions of this Court. In Smt. Kataru Anjamma Vs. The Chairman, Lok Adalat Bench and Others, , it was held that challenge of the award passed in Lok Adalat is impermissible when consciousness of the petitioner in accepting the terms cannot be doubted and there is no egregious fraud vitiating the award. In Union of India (UOI) and Another Vs. Ch. Gopalakrishna Murthy, , the principle enunciated is that the award passed in Lok Adalat can be challenged on the ground of fraud played by one of the parties to the proceedings. In Smt. Chilukuru Umadevi and Another Vs. Kalidindi Vijaya Lakhsmi and Others, , a Division Bench of this Court held that a third party to the suit can challenge the Lok Adalat Award by filing a writ petition. While holding so, the Division Bench set aside the Lok Adalat Award dated 14.2.2008 and directed the petitioners to

move an application before the trial Court seeking their impleadment as party defendants in O.S. No. 1359 of 2006. The principle in the above case is applicable to the facts of the present case.

7. Learned Counsel for the respondent has drawn our attention to the following Division Bench decisions of this Court. In Sri Durga Malleswara Educational Society (Regd), Vijayawada, Krishna District Vs. The District Legal Services Authority (Lok Adalath) and another, , the principle enunciated is that the award passed in a Lok Adalat can be challenged by way of writ petition under Article 226 or Article 227 of the Constitution of India only by parties to the settlement and not by any one else, on a very limited ground such as passing of award without settlement or that settlement or compromise itself is vitiated by fraud or misrepresentation.

8. In Batchu Subba Lakshmi and Others Vs. Sannidhi Srinivasulu and Others, , a Division Bench of this Court resolving the question, who can file writ petition challenging the Lok Adalat Award, in Paragraph 8, it was held as follows:

8. The parties to the compromise or settlement, which is the basis for award of Lok Adalat, no doubt entitled to challenge the award on any of the grounds referred to herein above grounds. Ordinarily, a third party cannot challenge the award in a writ petition even if such award causes prejudice. The remedy of such party would be to institute a separate suit or proceeding for necessary redressal and seek appropriate decree of declaration by filing a suit within the period of limitation prescribed under law. u/s 34 of the Specific Relief Act, 1963, any person entitled to legal character or any right as to any property, may file a suit for declaration. Under this provision, any person can even institute a suit for declaration that the decree passed by civil Court in an earlier suit is not binding on him. When a civil Court can even declare that an earlier decree of the Court is not binding on the party before it, we do not see any objection for a third party to institute a suit in a civil Court seeking a declaration that the award of Lok Adalat is not binding on him/her subject to the law of limitation. We however hasten to add that there may be extraordinary cases where a third party is meted with injustice at the behest of two or more conniving and colluding parties, who may have obtained an award of Lok Adalat by fraud or misrepresentation only to defeat the rights of such third party. In such cases within a reasonable period such third party may maintain a writ petition. But in such cases, there should be prima facie evidence of fraud or misrepresentation or collusion in obtaining the award of Lok Adalat. Even if such allegations are made and the question involves complicated questions of fact requiring voluminous evidence, third party should be left to seek remedy in a civil Court rather than preferring extraordinary remedy under Article 226 of the Constitution.

9. The case of the petitioner is that himself and respondents 1 to 4 constitute joint Hindu family and therefore, he is entitled to the share in the ancestral property. His further contention is that respondents 1 to 4 obtained the Award, by playing fraud, in order to deprive his right over the property under the Award.

10. In order to claim a share in the property covered under the impugned award, petitioner has to establish that he is the son of Veeraswamy and Emelamma and natural brother of the third respondent. On behalf of the respondents, third respondent filed counter-affidavit specifically denying that the petitioner is not son of Veeraswamy and Emelamma. The third respondent, in unequivocal terms, denied that he is own brother of the petitioner. As per the averments in the counter-affidavit, the petitioner is no way related to the respondents 1 to 4. Various contentions raised, in this writ petition, require a detailed enquiry by affording a reasonable opportunity to both parties. The legality or otherwise of partition deed dated 13.4.2005 cannot be decided, without establishing relationship between the parties. The lis involved in this writ petition is declaratory in nature apart from complexity of disputed facts.

11. An award passed u/s 21 of the Legal Services Authorities Act, 1987, is deemed to be a decree of civil Court. A decree obtained by playing fraud on the Court can be challenged by a third party to the suit by filing a suit for declaration. In order to avoid multiplicity of proceedings and to put an end to the litigation once for all, the best course open to the petitioner is to approach jurisdictional civil Court for redressal.

12. Having regard to the facts and circumstances of the case and the principle enunciated in the cases cited supra, we are of the considered view that the lis involved cannot be decided in a writ petition. However, the petitioner, if so advised, may approach the civil Court for appropriate relief as per law.

13. Without expressing any opinion with regard to validity or otherwise of the impugned award, the writ petition is dismissed There shall be no order as to costs. Consequently, miscellaneous petitions, if any, pending in this writ petition shall stand closed.