

(2013) 05 MAD CK 0009

Madras High Court (Madurai Bench)

Case No: C.R.P. (MD) Nos. 2744 to 2747 of 2012 (NPD) and M.P. (MD) No. 1 of 2012

Usharani and Others

APPELLANT

Vs

Rajaram and Others

RESPONDENT

Date of Decision: May 8, 2013

Citation: (2013) 3 CTC 770

Hon'ble Judges: S. Vimala, J

Bench: Single Bench

Final Decision: Allowed

Judgement

S. Vimala, J.

"My word is my bond irrespective of whether there is consideration to support it. Once a man gives a promise or assurance to his neighbour on which the neighbour relies he should not be allowed to go back on it.... It is a Principle of Justice and Equity." - Lord Denning, thus, explained the Principle of Estoppel in the book, "Discipline of Law". "Settlement" is termination of Legal proceedings by mutual consent. When the brothers and sisters entered into a settlement and obtained an Award from the Lok Adalat by mutual consent/consus-ad-idem and later during execution whether the brothers can be allowed to retract from the Compromise and whether they are not estopped from disputing the validity of Compromise is the issue raised.

2. People approach Court to get life for the right, title or interest either in respect of the property/person. But, whether the right to partition obtained by way of a compromise Award, have life or not is the issue raised in these cases.

3. The Plaintiffs in the Suit in O.S. No. 84 of 2010/the Petitioners in E.P. No. 43 of 2012 and the Respondents in Execution Application Nos. 163, 164, 165 & 166 of 2012 in E.A. No. 141 of 2012 in E.P. No. 43 of 2012 are the Revision Petitioners.

4. The properties which are claimed to be the trust properties were acquired by the Government and the compensation amount was deposited in the Court. Claiming

partition over the partition amount, Sisters filed the Suit against their Brothers in O.S. No. 84 of 2010. The Suit claim was settled between the parties, which resulted in passing of the Award by the Lok Adalat on 22.2.2012.

5. Execution Petition No. 43 of 2012 was filed by the Petitioners/Plaintiffs for attachment of the decree amount passed in L.A.O.P. No. 32 of 1998 on the file of Principal Subordinate Court, Dindigul, for a sum of Rs. 57,00,000/-, which is due to them as per the Compromise Award.

6. E.A. No. 141 of 2012 was filed to send for the amount of Rs. 57,00,000/-, from out of Rs. 1,51,45,827/-, deposited in L.A.O.P. No. 32 of 1988, from the file of Principal Sub-Court, Dindigul, to the file of Additional District Court, Dindigul. The Counsel for the Respondents has made an endorsement of no objection. Despite endorsement of no objection, the Additional District Court, Dindigul, passed an order to the effect that he has no power to send for the amount from the file of Principal Sub-Court, Dindigul. Therefore, the Additional District Court has returned the Petition saying that the amount is not deposited with that Court. That made the Petitioners/Plaintiffs to move this Court seeking numbering and expeditious disposal of "send for" Application.

7. Contention was raised by the learned Counsel for the Respondents that as the property is a trust property, under which women are not given any right, the compromise is not binding upon the Respondents. Holding that the Respondents can agitate the rights before the Executing Court, this Court ordered the Executing Court to take the Execution Application (which was returned), back to file and after numbering it (if in order), to proceed in accordance with law.

8. C.R.P. (MD) No. 2020 of 2012 was filed by the Plaintiffs/Petitioners seeking expeditious disposal of E.P. No. 43 of 2012 on the ground that the Respondents are deliberately filing vexatious Petitions to delay the execution.

8.1 This Court, by order dated 24.9.2012, directed the E.P. to be disposed of within a period of two months from the date of receipt of a copy of that order.

9. The Respondents in the Execution Petition filed E.A. No. 163 of 2012 seeking re-opening of the Execution Application in E.A. No. 141 of 2012, whereunder the Executing Court, by order dated 7.11.2012, ordered "to send for" the amount from the Principal Sub-Court, Dindigul.

9.1. E.A. No. 164 of 2012 was filed seeking condonation of delay of 21 days in filing the Counter to the Execution Application.

9.2. E.A. No. 165 of 2012 was filed seeking stay of proceedings passed in E.A. No. 141 of 2012.

9.3. E.A. No. 166 of 2012 was filed seeking permission of the Court to accept the Counter filed belatedly.

10. It is imperative to put the facts in nutshell in order to facilitate the discussion of issues raised in these Revision Petitions.

10.1. The Plaint in O.S. No. 384/2000 has been filed by the Plaintiffs seeking for a preliminary decree for partition in respect of the property i.e., the award amount with solatium and interest ordered in L.A.O.P. No. 32 of 1988 and L.A.O.P. No. 81 of 1986 on the file of Principal Subordinate Judge, Dindigul. The landed properties covered in S. No. 631/6 (7.02 acres), 631/7 (1.74 acres) & 634/1 (1.80 acres) and others properties originally belonged to Ethirajulu and subsequently to his son Rangarajulu and other legal heirs. It is the claim of the Plaintiffs that they are entitled 17/27 shares in the said properties.

10.2. Rangarajulu while alive, for the purpose of performing poojas, during the Mandagapadi of Arulmigu Soundararajaperumal of Thadikombu (conducted in Chithra Pournami in every Tamil Chithirai month) and to perform pooja in Purattasi month in Abirami Amman Temple, and also wanting the continuance of pooja, executed a Trust Deed dated 17.4.1945. The amount to be sent in respect of the Poojas as per the document is only Rs. 137.50.

10.3. This property was acquired by Tamil Nadu Government and the compensation amount was deposited into the Court along with the enhanced compensation prayed for. Over this compensation amount, the Plaintiffs filed a Suit for partition. Plaintiffs are not parties to the acquisition proceedings.

10.4. The contention of the Plaintiffs was that:

(a) just because some Poojas were ordered to be performed, the properties cannot be termed as Trust properties and as per the recitals, the income alone would devolve on the male heirs and the right and title over the properties were not divested in favour of anybody in the family,

(b) The Clause in the document imposing the total and permanent restriction on alienation, is void.

10.5. In the Suit for partition, parties entered into a Settlement and the terms under which preliminary decree for partition should be passed is signed by parties on both sides along with their respective Counsel. The Clause 2 in the Settlement is very important. As per Clause 2, there is an admission that the properties which are subject matter of acquisition are not the Trust properties and the Plaintiffs are entitled to compensation in the amount deposited towards land acquisition. Based on the Settlement Memo, the Lok Adalat organised by the District Legal Services Authorities has passed an Award dated 22.2.2012. The award is signed by the panel consisting of the Chief Judicial Magistrate, Senior Advocate and a social worker. This Award is under challenge in the Execution proceedings.

11. When an Award is made by a Lok Adalat, in terms of a Settlement arrived at between the parties, it becomes final and binding on the parties, and the Award is

executable as if it is a decree of the Civil Court. When such is the legal position, whether the challenge made to the Compromise decree deserves acceptance is the issue to be decided in these Revision Petitions.

12. If any party wants to challenge the Compromise Award based on settlement, it can be done only by filing a Petition under Article 226/227 of the Constitution of India, and that too on very limited grounds as per the decision [State of Punjab and Another Vs. Jalour Singh and Others](#) .

12. It is true that where an award is made by 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.

13. As the Award is passed with the consent of the parties, the Award becomes final and that no further remedy by way of Appeal has been provided for. u/s 21(2) of the Legal Services Authorities Act, every Award made by a Lok Adalat shall be final and binding on all parties to the dispute and no Appeal shall lie to any Court against the Award. Even u/s 96(3), C.P.C., "no Appeal shall lie from a decree passed by the Court with the consent of the parties". The Award of the Lok Adalat is an Award based upon consent of parties and therefore, there is no scope for Appeal.

14. The intention of the Legislature in prohibiting an Appeal against the Award of the Lok Adalat is to give finality to the Award, so that unnecessary further litigation would be avoided.

15. The limited circumstances under which the scope for interference is only when the Award is void ab initio, because the parties who entered into Compromise, had no power to enter into the compromise or the compromise has been entered by playing a fraud, in such circumstances, the Award can be said to be void. [Mahila Bhanwari Bai Vs. Kashmir Singh and Others](#) .

16. Now the question is whether the Award passed by the Lok Adalat can be said to be an Award void ab initio, and therefore, it is non-est in the eye of law is the question raised.

17. Learned Counsel for the Respondents contended that the Compromise Award suffers from illegality and therefore, it is liable to be ignored, without even the necessity of being set aside.

(a) Learned Counsel for the Respondents contended that u/s 44 of the Indian Evidence Act, when the decree is delivered by a Court not competent to deliver it or when it was obtained by fraud or collusion, the decree is void and it is not binding upon the Court. In order to support the contention, the following decisions are

relied upon:--

(i) [K. Narasimhan \(decd.\), K. Venkataraman, Mrs. Prema, N. Gururajan, Mrs. Vijayalakshmi and Mrs. Anuradha Vs. K. Rajagopal, :](#)

The Hon"ble Supreme Court quoted the observation made in the earlier decision [Bishunath Tewari and Others Vs. Mst. Mirchi,](#) , whereunder it is was held as follows:

it is important to remember that fraud does not make a judicial act or transaction void but only voidable at the instance of the party defrauded. The judicial act may be impeached on the ground of fraud or collusion in an active proceeding for rescission by way of Suit. The defrauded party may also apply for review of the judgment to the Court which pronounced it. But the judgment may also be impeached in a collateral proceeding in which fraud may be set up as a defence to an action on the judgment or as an answer to a Plea of Estoppel or res judicata found upon the judgment.....

(b) While recalling the popular observation of the Chief Justice Edward Coke of England i.e., "Fraud-avoids all judicial acts, ecclesiastical or temporal", it is contended that the Plaintiffs are guilty of deliberate deception in order to get unlawful gain and therefore, the decree suffers from deception and therefore, it has to be set aside. The decision [S.P. Chengalvaraya Naidu \(dead\) by L.Rs. Vs. Jagannath \(dead\) by L.Rs. and others,](#) relied upon:

Fraud is an act of deliberate deception with the design of securing something by taking unfair advantage of another - It is a deception to gain by another's loss - It is a cheating intended to get an advantage.

Plea of fraud - A person whose case is base on falsehood has no right to approach the Court and he can be summarily throw out at any stage of the litigation.

(c) Contending that the Principle of Finality of Litigation cannot be pressed to the extent of enduring the engine of fraud operated by the dishonest litigants, the learned Counsel recalled the observation made in the earlier decision in [S.P. Chengalvaraya Naidu \(dead\) by L.Rs. Vs. Jagannath \(dead\) by L.Rs. and others,](#) .

... The Principle of "Finality of Litigation" cannot be pressed to the extent of such an absurdity that it becomes an engine of fraud in the hands of dishonest litigants. The Courts of law are meant for imparting justice between the parties. One who comes to the Court, must come with clean hands.... A judgment or decree obtained by playing fraud on the Court is a nullity and non-est in the eyes of law. Such a judgment/decre by the first Court or by the highest Court has to be treated as a nullity by every Court, whether superior or inferior. It can be challenged in any court even in Collateral proceedings.

(d) Strongly pleading for recalling of the judgment passed by the Court on the ground that the Court has got inherent power to set aside or equal an order passed

in pursuance of fraud played upon the Court, the learned Counsel relied upon the decision in [Indian Bank Vs. M/s. Satyam Fibres \(India\) Pvt. Ltd.,](#).

... Fraud affects the solemnity, regularity and orderliness of the proceedings of the Court and also amounts to an abuse of the process of Court, the Courts have been held to have inherent power to set aside an order obtained by fraud practised upon that Court. Similarly, where the Court is misled by a party or the Court itself commits a mistake which prejudices a party, the Court has the inherent power to recall its order.

18. The Defendants contend that the Compromise Decree was obtained by fraud and therefore, it amounts to abuse of process of the Court and therefore, the Compromise Decree has to be set aside/has to be held void. On the other hand, the Plaintiff contends that the challenge made to the Compromise Decree is an abuse of the process of the Court and therefore, the Defendants should be thrown out of the Court. Whether the Plaintiffs or the Defendants are misusing the process of the Court is the issue to be decided.

19. When the Defendants contend that the Decree was obtained by fraud and the decree is illegal, it is for the Defendants to show that the Decree is illegal. The following circumstances would go to show that the contention of the Defendants that the Decree is illegal is not legal:

(a) The Joint Memo of Compromise has been signed by all the parties along with the respective Counsel and it has been filed into the Court in O.S. No. 84 of 2010.

(b) In order to get the benefits available in respect of the decree passed under Lok Adalat, the Joint Memo of Compromise has been forwarded to the Lok Adalat and the Lok Adalat has passed an Award.

(c) In the Joint Memo of Compromise, there is a specific admission that the properties were not the trust properties and further admission that the Plaintiffs, as female members, have also got the right over the property. Contrary to this admission, now it is pleaded that as per the terms of the Trust Deed, the properties are trust properties and as per the terms of the Trust Deed, the female members have no right over the properties. This contention cannot be accepted and it is not open to the Respondents to make such a challenge after the Compromise Decree.

(i) As per the terms of the Trust Deed, the income from the properties to an extent of Rs. 137.50 has to be earmarked for doing poojas. Therefore, it is evident that the property is burdened with an obligation to discharge i.e., to spend a sum of Rs. 137.50 for the purposes specified. Therefore, the contention that the property itself is a trust property cannot be accepted.

(ii) The contention that, under the Trust Deed, no title has been conferred upon anybody, that possession alone, is given with right to enjoy the income, and that the condition restraining alienation forever as per the recital in the document is a void

condition is acceptable. Once this contention is accepted, the property is partible. Under such circumstances, the contention that the property is not liable to be partitioned cannot be accepted.

(iii) Even assuming that such contention can be accepted, it is not explained as to how and why an admission was made in the Compromise Memo that the properties are not trust properties. It is not the case of the Defendants themselves that the Plaintiffs were instrumental/played a key role in getting such an admission. In fact, the Plaintiffs are not guilty of suppression of anything and they have given all the details in the Plaint itself with regard to the nature of the property and the details of Trust deed in the Suit. The Defendants with eyes wide open, assisted by the Counsel, the panel members in the Lok Adalat, after having entered into a compromise, is estopped from disputing the nature and character of the property only for the purpose of avoiding the Compromise Decree.

(d) The conduct of Defendants also would go to show that the Compromise Decree is not invalid. In the Execution Petition filed by the Plaintiffs, endorsement of no objection has been made. Even after one year after of the passing of the decree, no legally permissible step has been taken to challenge the Award. The Defendants have only filed a Petition before the Lok Adalat, which has passed the Award and keeping quiet after getting the papers returned.

(e) It is not in any way explained by the Defendants as to how the decree passed is illegal or the decree passed was obtained by fraud. In fact, when the Defendants have also signed in the compromise memo, which is not alleged to be out of coercion/undue influence or fraud, then, the question is under the contingency of the compromise decree being construed as a fraudulent decree, the Defendants being parties to the decree cannot be permitted to say that the decree is a fraudulent decree and therefore, it should be set aside.

Therefore, the contention that the decree is not executable has to be rejected.

20. The next contention of the learned Counsel for the Defendants is that the High Court in C.R.P. (MD) No. 1384 of 2012 has given liberty to raise these issues before the Executing Court, and therefore, the Revision Petitions seeking quashing of Execution Applications cannot be allowed. No doubt, in C.R.P. (MD) No. 1384 of 2012, such liberty has been given, but that liberty has become unnecessary as the Defendants before this Court have raised all pleas, that have been kept under reserve for the purpose of being placed before the Executing Court. Therefore, the contention that there should be one more opportunity to raise the same issue cannot be accepted.

21. Learned Counsel for the Petitioner relied upon the decision in [P.T. Thomas Vs. Thomas Job](#), whereunder it has been held that Judgment by consent is as effective estoppel between the parties as a Judgment, whereby Court exercises its mind on a contested case and the Courts attempt should be to give life and enforce ability.

Compromise Award not to defeat it on technical grounds. In the same decision, the nature, functions and benefit of Lok Adalats have been highlighted.

22. The "Lok Adalat" is an old form of adjudicating system prevailed in ancient India and its validity has not been taken away even in the modern days too. The word "Lok Adalat" means "People Court". This system is based on Gandhian Principles. It is one of the components of ADR System. As the Indian Courts are overburdened with the backlog of cases and the regular Courts are to decide the cases involve a lengthy, expensive and tedious procedure. The Court takes years together to settle even petty cases. Lok Adalat, therefore, provides alternative resolution or devise for expeditious and inexpensive justice.

23. LOK ADALAT is another alternative to JUDICIAL JUSTICE. This is a recent strategy for delivering informal, cheap and expeditious justice to the common man by way of settling disputes, which are pending in Courts and also those, which have not yet reached Courts by negotiation, conciliation and by adopting persuasive, common sense and human approach to the problems of the disputants, with the assistance of specially trained and experienced Members of a Team of Conciliators."

24. Benefits under Lok Adalat:

(i) There is no Court-fee and if Court-fee is already paid the amount will be refunded, if the dispute is settled at Lok Adalat according to the Rules.

(ii) The basic features of Lok Adalat are the procedural flexibility and speedy trial of the disputes. There is no strict application of procedural laws like CPC and Evidence Act while assessing the claim by Lok Adalat.

(iii) The parties to the dispute can directly interact with the Judge through their Counsel which is not possible in regular Courts of law.

(iv) The Award by the Lok Adalat is binding on the parties and it has the status of a decree of a Civil Court and it is non-appealable which does not causes the delay in the settlement of disputes finally.

In view of above facilities provided by the "Act", Lok Adalats are boon to the litigating public, they can get their disputes settled fast and free of cost amicably.

(v) Despite, the availability of the advantages and benefits available in getting speedy and inexpensive justice, still there are challenges to the decree passed by the Lok Adalat.

25. It would be appropriate to mention the difference between the Judgment obtained from the Court and the Lok Adalat. When the relief is obtained from the Court, it is the relief, which the Court grants irrespective of the wishes of the parties. But, when the relief is obtained from the Lok Adalat, it is the relief, which the parties themselves wanted to obtain. Therefore, even after getting the relief, which the parties themselves wanted, then it is not open to them to place vexatious challenges

to it.

26. As pointed out in the decision, in Lok Adalat proceedings there are no victors and vanquished and, thus, no rancour. Experiment of "Lok Adalat" as an alternate mode of dispute settlement has come to be accepted in India, as a viable, economic, efficient and informal one. The very object and purposes of Legal Services Authority would get defeated, if the decision of the Lok Adalat are made meaningless by entertaining the meaningless contentions raised by the party with oblique motive. Hence, the objections raised by the Defendants are rejected.

27. When the parties expect enforcement of their rights through Constitutional Institutions, it is equally their duty to respect Article 51-A of the Constitution of India, whereunder a duty is cast to abide by the Constitution and respect its ideals and institutions. This duty is onerous when the Hon"ble Supreme Court of India and the National Legal Services Authority/State Legal Services Authority are taking tremendous steps not only to control the docket explosion but, also to bring peace to the Society through expeditious, inexpensive and informal system.

28. Therefore, the challenges made to the Compromise Decree being vexatious, deserves to be condemned.

29. Yet another contention is that the Revision Petition itself is not maintainable because it is as against an Interlocutory Order and not against a Final Order, as contemplated u/s 115 C.P.C. This contention also cannot be accepted in view of the legal position enunciated in the decision [Surya Dev Rai Vs. Ram Chander Rai and Others](#), wherein it has been held as follows:

The power of the High Court under Articles 226 & 227 of the Constitution is always in addition to the Revisional jurisdiction conferred on it. The curtailment of Revisional jurisdiction of the High Court u/s 115, C.P.C. by Amendment Act 46 of 1999 does not take away and could not have taken away the Constitutional jurisdiction of the High Court to issue a Writ of Certiorari to a Civil Court, nor is the power of superintendence conferred on the High Court under Article 227 of the Constitution taken away or whittled down. The power exists, untrammelled by the amendment in Section 115, C.P.C. and is available to be exercised subject to rules of self-discipline and practice, which are well settled.

30. The purpose and object of Compromise and the issues/processes involved in the Compromise, has been highlighted in the decision cited below and it would be apt to apply the same to the facts of this case.

31. Two crucial terms in sub-sections (3) & (5) of Section 20 of Legal Services Authorities Act, 1987, are "compromise" and "settlement". The former expression means settlement of differences by mutual concessions. It is an agreement reached by adjustment of conflicting or opposing claims by reciprocal modification of demands. As per *Termes de la Ley*, "compromise is a mutual promise of two or more

parties that are at controversy. As per Bouvier it is "an agreement between two or more persons, who, to avoid a law Suit, amicably settle their differences, on such terms as they can agree upon". The word "compromise" implies some element of accommodation on each side. It is not apt to describe total surrender. (See Re NFU Development Trust Ltd, (1973) 1 All ER 135 (Ch.D). A compromise is always bilateral and means mutual adjustment. [State of Punjab and Others Vs. Shri Ganpat Raj,](#) .

32. The brothers, who wanted to avoid the law Suit should not be allowed to extend the life of the law Suit by making vexatious defences. Hence, the challenges made to the Compromise Award are rejected. In the result, C.R.P. (MD) Nos. 2744 to 2747 of 2012 are allowed. No costs. Consequently, the connected Miscellaneous Petitions are closed.