

Mahadevi and Another Vs. Kenchavva and Others

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Court : Karnataka Dharwad

Decided On : Jan-31-2014

Judge : N. Kumar

Appeal No. : Writ Petition No. 65543 of 2011 [GM-CPC]

Appellant : Mahadevi and Another

Respondent : Kenchavva and Others

Judgement :

(Prayer: This Wp Is Filed Under Articles 226 and 227 of Constitution of India Praying To Set Aside The Order Dated: 14/08/2009 Vide Annexure-C Passed By The Additional Civil Judge (Jr.Din!.) Gokak In Lok Adalat And Consequential Final Decree Dated:03/10/2009 Vide Annexure-D As A Null And Void.)

1. This writ petition is filed challenging the award passed by the Lok Adalath.
2. The plaintiff"Kenchavva, who is the wife of defendant No.5, filed a suit claiming her 1/7th share in the deceased son "Dundappa's service benefits. She arrayed her daughter-in-law as defendant No.1 and grand-children as defendant Nos.2, 3, 4 and 6. Defendant No.7 was the Life Insurance Corporation and defendant No.8 was the Regional Fire Fighter Officer, where the deceased was employed.
3. Her grievance was her son"Dundappa had insured his life for a sum of Rs. 1,00,000/-, Rs.50,000/-, Rs.50,000/- Rs.50,000/- and Rs.50,000/- under different

L.I.C. policies. Defendant Nos.1 to 6 colluding with each other are trying to withdraw the said amount, behind her back. As her share is denied, she filed the suit. The suit was instituted on 03.07.2009.

4. After service of summons, the defendants entered appearance. As an application was also filed in the said suit under Section 80(2) of CPC for dispensation of notice to defendants 7 and 8, it was allowed. No written statement was filed. However, on 11.08.2009, I.A. No.VI was filed under Order I Rule 10(2) of CPC, for impleading defendants 9 and 10. As no objection was submitted, application was allowed. Notice was ordered on I.A. No.VI to the proposed defendants, a procedure which is wholly erroneous and the case was adjourned to 14.08.2009. The order- sheet discloses that no notice was served on defendants 7 and 8 at all.

5. On 14.08.2009, the plaintiff and her counsel, defendants 1 to 6, 8 and 10 were present. Sri.MHG advocate filed vakalath for defendants 2 to 5 and 8 to 10 and Sri.GRP advocate for defendant 1 and 6 was present and he filed an application under Order XXXII Rule 7 of CPC praying permission to defendant No.1 to compromise on behalf of defendant No.6. The advocate for the plaintiff submitted no objections. Hence, I.A. under Order XXXII Rule 7 of CPC was allowed. Both the parties filed a joint memo to refer the matter to Lok-Adalath. Considering the submissions made by both parties and as the Court felt that there appears an element of settlement, the matter was referred to Lok- Adalath. A memo was filed seeking dismissal of the suit against defendants 7 and 8. Accordingly, the suit against defendants 7 and 8 was dismissed.

6. On the very same day, the matter was taken up by the Lok-Adalath. The order-sheet discloses that the plaintiff, defendant 1 to 6, 9 and 10 and their respective counsel were present. The matter was taken up before the Lok-Adalath and through conciliation, the parties have got settled the dispute amicably among themselves. Both the parties to the suit filed a compromise petition under Order XXIII Rule 3 of CPC. The contents of the compromise petition were read over to both parties in Kannada and they voluntarily agreed for the same. As the Lok-Adalath found the compromise petition lawful, the compromise was accepted and

recorded and an order was passed for drawing up of final decree accordingly, subject to payment of non-judicial stamp within 20 days.

7. Defendant Nos.1 and 6 filed an application before the Court seeking recalling of the award passed by the Lok-Adalath. The said application came to be rejected on the ground of want of jurisdiction by the Civil Court. Therefore, the petitioners are before this Court, by way of a writ petition.

8. Before going to the merits of the writ petition, I deem it proper to state, the manner in which the cases are referred to Lok-Adalath and the manner in which the cases are dealt with by the Lok-Adalath is subject matter of concern and criticism, which is bringing a very bad name/ disrespect to this alternative dispute resolution mechanism. Therefore, it is utmost necessary and important that the sanctity of this Lok-Adalath process has to be maintained and lawyers and Judges are to be sensitised in this regard.

9. As could be seen from the facts set out above, the suit is filed by a mother against her daughter-in-law and grand-children, claiming her share in the monetary benefits, to which her deceased son was entitled to on his death. She was not claiming any share in the joint family properties nor any share from her other sons who are very much alive. Therefore, the subject matter of the suit was the monetary benefit accrued on the death of her son only. She was claiming 1/7th share. If a compromise had been entered into, she was entitled to the benefit of 1/7th share in all the monetary benefits.

10. In the compromise, which is now before the Court, no benefit has been given to her. If she was not claiming any share in that benefit, the very suit which is filed is an engineered one by the other two sons. The order sheet in the case discloses that no summons was sent, still the parties have engaged a counsel. An application was filed to implead sons who were not parties to the earlier proceedings. The application is allowed. Notice was sent and it being served on them, they appeared with the compromise. In the said compromise, properties belonging to the Joint Hindu family are also distributed. The plaintiff, who has instituted the suit, is not given a share even in those properties. Strangely, the counsel for the 6th respondent, who is a minor, files an application under Order

XXXII Rule 7 of Civil Procedure Code which is a statutory requirement. The said provision reads as under:

" 7. Agreement or compromise by next friend or guardian for the suit" (1) No next friend or guardian for the suit shall, without the leave of the Court, expressly recorded in the proceedings, enter into any agreement or compromise on behalf of a minor with reference to the suit in which he acts as next friend or guardian.

(1A) An application for leave under sub- rule (1) shall be accompanied by an affidavit of the next friend of the guardian for the suit as the case may be, and also, if the minor is represented by a pleader, by the certificate of the pleader, to the effect that the agreement or compromise proposed is, in his opinion, for the benefit of the minor:

Provided that the opinion so expressed, whether in the affidavit or in the certificate shall not preclude the Court from examining whether the agreement or compromise proposed is for the benefit of the minor.

(2) Any such agreement or compromise entered into without the leave of the Court so recorded shall be voidable against all parties other than the minor."

11. A perusal of the aforesaid provisions makes it clear that no next friend or guardian shall, without leave of the Court expressly recorded in the proceedings, enter into any agreement or compromise on behalf of a minor with reference to the suit in which he acts as next friend or guardian. Therefore, there is a total bar for entering into a compromise imposed on the guardian or the next friend where minor's interest is involved. However, sub-rule (1A) sets out what are the requirements to be fulfilled if such a compromise is really necessary and entered into. It provides that if a pleader is representing a minor, he should go through the agreement or compromise proposed and, thereafter, if he is of the opinion that it is for the benefit of the minor, he shall issue a certificate to that effect and the said certificate is to be produced before the Court along with the application filed under Order XXXII Rule 7 of CPC for permission to compromise. Even if such a certificate is issued by the counsel or an affidavit is filed to that effect, it shall not preclude the Court from examining whether the agreement or compromise

proposed is for the benefit of the minor. Therefore, it is clear that, first, the proposed agreement should be looked into by the Court, satisfy itself as to the terms of the compromise, whether it benefits the minor and then decide whether to act on the certificate issued by the counsel and to permit the parties to enter into a compromise. Therefore, the said proposed compromise or agreement should accompany the application under Order XXXII Rule 7 of CPC. The order-sheet dated 14.08.2009 reads as under:

14.08.2009: Put up before J.O. for Settlement.	Plaintiff and counsel present and defendant No.1 to 6, 8 and 10 are present. Shri MHG, Adv filed vakalat for defendant No.2 to 5, 8 to 10 and Shri GRP, Adv for defendant No.1 and 6 present and he filed application U/O 32 Rule 7 of CPC praying permission to the defendant No.1 to compromise on behalf of defendant No.6. The Advocate for plaintiff submitted no objections. Hence I.A. U/O 32 R 7 of CPC is allowed. Both parties submitted joint memo to refer the matter to Lok Adalat. Considering the submissions made by the parties there appears an element of settlement. Hence the matter is referred to the Lok Adalat. Memo filed and suit against 7 and 8 dismissed. Sd/- Addl.CJ, (Jr.Dn.), Gokak
LTM of Kenchavva Lakkappa Sanpaganvi Sd/- (æLANGUAGE?) (M.N.Chagappagol Adv. for Pltf.) Sd/- (æLANGUAGE?)	

Sd/- (G.R.Pujar) Adv. for D1-6 14.08.2009 Sd/- (œLANGUAGE?)	
LTM of Lakkappa Dundappa Sanpaganvi Sd/-	Plaintiff, Defendant No.1 to 6, 9 and 10 and their respective counsel present. The matter is taker, up before the Lok Adalat and through conciliation, the parties have got settled amicably among themselves.
Sd/-(œLANGUAGE?)	Both parties to the suit have filed a compromise petition U/o 23 rule 3 of CPC. The contents of the compromise petition are read over to both the parties in Kannada and they have voluntarily agreed for the same, the compromise is accepted and recorded.
Sd/- (œLANGUAGE?)	
Sd/- [M.H.Gandawaga!] Adv. for D2-5 and 9-10	Draw final decree accordingly subject to payment of NJ stamp within 20 days.
	Adv. for Jdl. Conciliators Conciliators

12. From the aforesaid order-sheet, it is clear that an application is filed under Order XXXII Rule 7 of CPC. There is no reference to any certificate issued by the counsel. The Court allowed the application because plaintiff had no objection. What is interesting to note is, after the application is allowed, the parties gave a memo to refer the matter to Lok Adalat. Considering the submissions made by both the parties, the Court felt that there appears an element of settlement. Therefore, the matter was referred to Lok Adalat. In other words, on the day the

application under Order XXXII Rule 7 of CPC was filed, the parties had not entered into a compromise or any agreement, it was not produced before the Court. The counsel appearing for the minor did not file certificate certifying that the compromise is for the benefit of the minor. If there was a compromise, if the counsel had certified, if the Court wanted to allow the application under Order XXXII Rule 7 of CPC, it ought to have looked into the compromise, record its satisfaction regarding the requirements under the provision and if the dispute is resolved by the compromise, the Court should have passed a decree in terms of the compromise. The question of referring the matter to the Lok Adalat would not arise because the condition precedent for referring the matter to Lok Adalat is (i) there should be a dispute between the parties; and (ii) there is a possibility of settlement of the said dispute by the process of Lok Adalat. Unfortunately, the learned Judge, who passed the aforesaid order, is not conscious of this statutory provision and the legal implications. Without application of mind, learned Judge has allowed the said application and passed the said order which is contrary to the express provisions contained in Civil Procedure Code.

13. What is interesting to note is, after the learned Judge referred the matter to Lok Adalat, on the very same day, the matter is settled before the Lok Adalat. What I am unable to understand is, if the parties had entered into a settlement and they were ready with an application under Order XXIII Rule 3 of CPC, the proper course was to file the same before the Court and get a decree passed in terms of Order XXIII Rule 3 of CPC. In a day, an award is passed by the Lok Adalat. A decree passed by the Civil Court is far far superior to an award passed by the Lok Adalat.

14. The object of Lok Adalat is, in a Civil Court if a matter is to be adjudicated it takes time; the need of the hour is speedy disposal of the cases, therefore, matters, which could be settled by negotiations, conciliation and agreement, could be referred to Lok Adalat so that the valuable time of the Court is saved, the parties would have the satisfaction of resolving their dispute expeditiously and when that particular case goes out of the Court, the Court can spend its valuable time in deciding the case which has to be adjudicated. If a request is made in the morning hours of the Court for referring the matter to Lok Adalat and in the

afternoon, the dispute could be compromised in the Lok Adalat by filing an application under Order XXIIJ rule 3 of CPC, the role of Lok-Adalath is nil in the resolution of the dispute. But, the credit is given to the Lok- Adalath at the cost of judicial adjudication. That is not the object with which Section 89 of CPC is introduced. That is not the object with which the Parliament has enacted the Legal Services Authority Act, 1987. The very object is defeated and, as in this case, the law is not followed and contrary to law, both, the Court and the Members of the Lok Adalat, have acted which will bring a very bad name to the institution of Lok Adalat. If the matter is settled before the Lok Adalat, as is clear from Order XXXIX Rule 7 of CPC, along with the application under Order XXIII Rule 3 of CPC a certificate issued by the counsel appearing for the minor ought to have been enclosed. The Lok Adalat should have applied its mind to the compromise and the certificate and then it should have granted permission to compromise. That is the reason why the members of Lok Adalat consist a Judicial Member who can take care all the legal hurdles and guide the Lok Adalat in rewarding legally acceptable compromise. The Court granting permission to compromise under Order XXXII Rule 7 of CPC and the Lok Adalat recording compromise is unheard of and runs counter to the statutory provisions and all of them are making a mockery of the judicial proceedings. Therefore, the order passed by the Civil Court referring the matter is vitiated. The order passed by the Lok Adalat recording compromise and passing an award is also vitiated. Both are not in accordance with law. As stated earlier, what is surprising is, the mother, who initiated the proceedings is not given any money or share in the property. Now, the grievance of defendants No.1 and 6 is, when the talks for settlement were going on, they were not made aware of the fact that the brothers, who were not parties in the earlier proceedings were impleaded and in the compromise, properties belonging to the joint family were also distributed. They were under the impression that there is a settlement arrived at in respect of the monetary benefits to which the deceased "Dundappa was entitled to. It is a clear case of abuse of the process of Lok-Adalat to perpetrate fraud on helpless widow and minor children. The fraud is inherent in the terms of the compromise. The mother, who initiated the legal proceedings, gets nothing in the compromise but she is not complaining about the injustice done. It only shows how the fraud is well thought of, planned and executed through a judicial process.

Unfortunately, the learned Judge and the other members of the Lok-Adalath are innocent and ignorant to understand the mechanisation adopted, to deprive rightful share to the widow and minor children.

15. Immediately after coming to know about the terms of the compromise, they did move the Court for recalling the order which application is rightly rejected by the Civil Court as the civil Court did not record a compromise and it is the Lok Adalat which had recorded a compromise. Therefore, the writ petition filed challenging the award passed by the Lok Adalat is maintainable.

16. In the light of the discussion made above, in order to see that this movement of Lok Adalat does not get a bad name, diminish the sanctity attached to it and this wonderful concept is not abused, it is necessary to set aside the said award passed by the Lok Adalat. Accordingly, I pass the following:

ORDER

(i) The writ petition is allowed.

(ii) The impugned award passed by the Lok Adalat is hereby set aside.

(iii) Liberty is reserved to the parties to agitate their rights in the suit in accordance with law.

(iv) A copy of this order also be sent to Karnataka Legal Services Authority, so that they would know how the Lok Adalats are functioning and for taking remedial action.

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