

Sajitha vs Baldbose

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Court : Kerala

Decided On : Jul-14-2023

Judge : Honourable Mr.Justice Mohammed Nias C.P.

Appeal No. : WP(C)/31892/2013

Appellant : Sajitha

Respondent : Baldbose

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE MOHAMMED NIAS C.P.
FRIDAY, THE 14TH DAY OF JULY 2023 / 23TH ASHADHA, 1945
WP(C) NO. 31892 OF 2013 PETITIONERS: 1 SAJITHA, AGED 27
YEARS D/O.JANASELVAM, SAJI KUMAR BHAVAN, KOOHALI
VELLARADA VILLAGE, THIRUVANANTHAPURAM 2 ANU, AGED 27
YEARS S/O.BALD BOSE MINOR REPRESENTED BY MOTHER
SAJITHA, AGED 27 YEARS, -DO- -DO- BY ADV SRI.M.R.SARIN
RESPONDENTS: 1 BALDBOSE, AGED 29 YEARS S/O.PAUL
DURAI,SALISE NEST KUZHIKALAMMEKKEVEEDU,NILAMMAMOODU
P.O, KUNNATHUKAL VILLAGE, THIRUVANANTHAPURAM - 695 504 2
LOK ADALAT NEDUMANGAD TALUK LEGAL SERVICE COMMITTEE-

695541 REPRESENTED BY ITS SECRETARY BY ADV
SRI.G.SUDHEER THIS WRIT PETITION (CIVIL) HAVING COME UP
FOR ADMISSION ON 04.07.2023, THE COURT ON 14.07.2023
DELIVERED THE FOLLOWING: MOHAMMED NIAS C.P., J
..... WP(C)No.31892 of 2013
..... Dated this the 14th day of July,
2023

JUDGMENT

The writ petition challenges Ext.P2 award passed by the Lok Adalat, Nedumangad, in Lok Adalath Case No.262 of 2012.

2. The brief facts necessary for the disposal of the writ petition are as follows:

The first petitioner and the first respondent are husband and wife, and their marriage was solemnised on 29.1.2009. It is alleged that the first petitioner had 41 sovereigns of gold ornaments and Rs.50000/- as dowry and household articles worth Rs.75,000/- obtained from her parents as per the demand made by the first respondent. A male child was also born in the wedlock. On 20.9.2010, the first petitioner and her minor son were constrained to go to her parental house due to the first respondent's severe physical attack and aggressive nature. The first respondent filed a petition for divorce and maintenance in the Family Court, Nedumangad, as OP No.262 of 2012. The case was posted before the Lok Adalat, wherein the matter was settled, as per Ext.P2 award. The petitioner alleges that the terms and conditions in

Ext.P2 were not properly communicated to her by her counsel, and it was only after receiving a copy of the award that she realised that she was summoned before the Lok Adalat without knowing that she had objection in lifting the attachment over the respondent's property. Likewise, the first petitioner also filed a petition for maintenance from the first respondent, and she had claimed 41 sovereigns of gold ornaments in the original petition, but she received 26 sovereigns of gold ornaments. On coming to know about the above, she also requested the Tahsildar, Nedimangad not to lift the attachment for the first

respondent's property. The award is challenged, stating that the same is fabricated and that member of the Lok Adalat also did not apply their mind properly. The name of the church wherein the child shall be produced and handed over to the father is not mentioned. It is stated that the temporary Lok Adalat while trying for a compromise of settlement, should be guided by the principles of justice, equity, fair and fair play, and the same was not done in the instant case.

3. Heard learned counsel for the petitioner as well as the learned counsel appearing for the first respondent.

4. Having heard the learned counsel on either side, I hold that there is no infirmity in Ext.P2 award passed for the reasons to follow. There

is no allegation of fraud committed or alleged in the petition. The ground that she was not aware of the contents of the compromise and that she was not communicated about the same by her counsel cannot be accepted. At any

rate, the same cannot be a ground to challenge the award of the Lok Adalat. It is also pointed out by the parties though there is a stipulation that no maintenance would be claimed, subsequently, the petitioner approached the family court for maintenance. This shows that Lok Adalat has not prevented the right of the first petitioner to claim maintenance, and all that could be understood from the relevant term is that, at that point in time, no maintenance was being claimed. It is also to be seen that the petitioner had received the benefit of the first condition regarding the return of gold ornaments, and therefore, she is not aggrieved by all the terms but only against the selective ones. The petitioner cannot be allowed to approbate and reprobate at the same time. It is trite that the award of the Lak Adalath can be challenged only on very limited grounds, as held by the Courts, including the Apex Court reported in K.Srinivasappa v. M.Mallamma [AIR 2022 SC 238], which held as follows:

29. While we recognise that a Writ Petition would be maintainable against an award of the Lok Adalat, especially when such writ petition has been filed alleging fraud in the manner of obtaining the award of

compromise, a writ court cannot, in a casual manner, de hors any reasoning, set aside the order of the Lok Adalat. The award 16 of a Lok Adalat cannot be reversed or set aside without setting aside the facts recorded in such award as being fraudulent arrived at. 34. In Pushpa Devi Bhagat (dead) through LR. Sadhna Rai vs. Rajinder Singh and Ors. - [(2006) 5 SCC 566], this Court held that since no appeal would lie against a compromise decree, the only

option available to a party seeking to avoid such a decree would be to challenge the consent decree before the Court that passed the same and to prove that the agreement forming the basis 22 for the decree was invalid. It is therefore imperative that a party seeking to avoid the terms of a consent decree has to establish, before the Court that passed the same, that the agreement on which the consent decree is based, is invalid or illegal. xxxxx

35. It is a settled position of law that where an allegation of fraud is

made against a party to an agreement, the said allegation would have to be proved strictly, in order to avoid the agreement on the ground that fraud was practiced on a party in order to induce such party to enter into the agreement. Similarly, the terms of a compromise decree, cannot be avoided, unless the allegation of fraud has been proved. In the absence of any conclusive proof as to fraud on the part of the objectors, the High Court could not have set aside the compromise decree in the instant case.

There is nothing in the instant case to set aside the facts recorded in the award as fraudulent. It is to be noted that there is not even a plea in that regard. For the above reasons, I find no merit in the writ petition, which is accordingly dismissed. Sd/-MOHAMMED NIAS C.P., JUDGE dtk/6.7.2023 APPENDIX OF WP(C) 31892/2013 PETITIONERS EXHIBITS EXHIBIT P1: TRUE COPY OF OP NO 262/2012 PENDING BEFORE FAMILY COURT,NEDUMANGAD EXHIBIT P2:

TRUE COPY OF AWARD LOK ADALT CASE NO 262/12 OF LOK ADALAT
NEDUMANGAD EXHIBIT P3: TRUE COPY OF THE NOTICE GIVEN BY
PETITIONER BEFORE THE TAHSILDAR ON 8-11-2013

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