



WP No. 103766 of 2018

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**IN THE HIGH COURT OF KARNATAKA, DHARWAD
BENCH**

DATED THIS THE 31ST DAY OF MARCH, 2022

BEFORE

**THE HON'BLE MR JUSTICE SURAJ GOVINDARAJ
WRIT PETITION NO. 103766 OF 2018 (GM-RES)**

BETWEEN:

1. SMT. RENUKA W/O ANAND @ ANANTSA BAKALE

...PETITIONER

(BY SRI. MAHESH WODEYAR.,ADVOCATE)

AND:

1. SRI. RAMANAND :

2. GAJANAN

...RESPONDENTS

(BY SRI. PADMANABHA MAHALE, SENIOR COUNSEL
FOR SRI.PRUTHVI K.S., ADVOCATE FOR R1 & R2)





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THIS PETITION IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE COMPROMISE DECREE DATED 26.07.2014 PASSED BY THE PRINCIPAL SENIOR CIVIL JUDGE AT HUBBALLI (LOK ADALAT) IN O.S.NO.246/2014 VIDE ANNEXURE-"A" AND THE COMPROMISE PETITION DATED:26.07.2014 VIDE ANNEXURE-"E" AND CONSEQUENTLY RESTORE O.S.NO. 246/2014 ON THE FILE OF PRINCIPAL SENIOR CIVIL JUDGE AT HUBBALLI FOR FRESH CONSIDERATION ON MERITS.

THIS PETITION COMING ON FOR ORDERS, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

1. The petitioner is before this Court seeking for the following relief:

TO QUASH THE COMPROMISE DECREE DATED 26.07.2014 PASSED BY THE PRINCIPAL SENIOR CIVIL JUDGE AT HUBBALLI (LOK ADALAT) IN O.S.NO.246/2014 VIDE ANNEXURE-"A" AND THE COMPROMISE PETITION DATED:26.07.2014 VIDE ANNEXURE-"E" AND CONSEQUENTLY RESTORE O.S.NO. 246/2014 ON THE FILE OF PRINCIPAL SENIOR CIVIL JUDGE AT HUBBALLI FOR FRESH CONSIDERATION ON MERITS.

2. The grievance of the petitioner is that a compromise petition was entered into in O.S. No.246/2014 pending on the file of the Principal Senior Civil Judge at Hubballi in the Lok-Adalat proceedings by a person claiming to be the power of attorney holder of the



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petitioner and as such the petitioner's interest in the suit schedule property therein has been compromised without the knowledge of the petitioner and therefore a fraud has been committed on the petitioner by resorting to an abuse of the process of the Court and filing of a compromise petition in the Lok-Adalat.

3. Sri.Mahesh Wodeyar, learned counsel for the petitioner submits that the suit in O.S. No.246/2014 had been filed by respondent No.2 herein against the petitioner represented by the power of attorney holder seeking for specific performance of an alleged agreement of sale dated 25.04.2014 which is alleged to have been executed by the alleged power of attorney holder of the petitioner.
4. In the said suit upon notice being ordered without service of notice on the petitioner, respondent No.1 who claims to be the power of attorney holder of the petitioner had entered appearance and filed a



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compromise petition even before return of notice. The compromise petition having been filed before the Court, the matter was referred to the Lok-Adalat and in that Lok-Adalat a compromise was recorded by the conciliators and compromise decree was directed to be passed.

5. Sri.Mahesh Wodeyar submits that once earlier a power of attorney which had been issued in favour of the father of respondent No.1 as regards the said properties had been cancelled by a public notice dated 15.12.2012 published in the newspaper Sanjevani on 16th December, 2012.
6. The petitioner not having executed any power of attorney in favour of respondent No.1, the power of attorney claimed by respondent No.1 is fabricated one and as such neither the agreement of sale could be executed by respondent No.1 in favour of respondent No.2 nor could a compromise be entered into by the respondent No.1 with respondent No.2 for



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the Lok-Adalat to record. In the above background, he submits that the petition needs to be allowed and the compromise recorded by the Lok-Adalat be set aside as also the compromise decree drawn up in pursuance thereto.

7. Per contra, Sri.Padmanabha Mahale, learned Senior counsel appearing for the respondents would submit that respondent No.1 is the power of attorney holder of the petitioner and respondent No.1 has entered into a compromise with the knowledge and consent of the petitioner with respondent No.2. The compromise having been filed before the Court and the Court having forwarded the matter to the Lok-Adalat the compromise is one which is filed before the Court and as such the present petition is not maintainable since the trial Court having taken the compromise on record, only a suit challenging the compromise is maintainable.



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8. He further submits that the alleged fabricated power of attorney has not been produced by the petitioner. Therefore the contention of the petitioner that there is fabrication of the power of attorney is not sustainable without production of such power of attorney. There is gross delay by the petitioner in challenging the compromise by filing of the above petition inasmuch as the compromise was entered into in the year 2014 and the present writ petition has been filed in the year 2018 and as such the petition is liable to be dismissed.
9. Further he submits that respondent No.2 has acted on the compromise and entered into further transaction which would get upset if this Court were to intervene in the matter and set aside the compromise.
10. Heard Sri.Mahesh Wodeyar, learned counsel for the petitioner and Sri.Padmanabha Mahale, learned



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Senior counsel for Sri.Pruthvi K.S., learned counsel for the respondents. Perused papers.

11. The suit in O.S. No.246/2014 had been filed for specific performance of an agreement of sale dated 25.04.2014 said to have been executed by power of attorney holder of the petitioner herein namely, respondent No.1 in favour of respondent No.2. The cause title of the said suit leads to an interesting reading inasmuch as the defendant though is named as Smt.Renuka (petitioner herein) her address is shown as resident of Keshwapur and is represented by her GPA holder respondent No.1 with the address of respondent No.1 shown in the cause title. In the cause title, the address of the petitioner has not been shown except for her being named.

12. Notice having been ordered on the defendant the power of attorney holder enters appearance for the defendant therein and enters into a compromise. It fails to reason as to how a party to a proceeding



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namely a defendant can be said to be represented by power of attorney when a person is arrayed as a party defendant, it is for the said person who is arrayed as a defendant to appoint a power of attorney or not. The plaintiff in a suit cannot in my considered opinion array a defendant to be represented by power of attorney showing the address of the said power of attorney without even showing the address of the defendant.

13. The facts of this case are even more peculiar inasmuch as the suit was filed for specific performance of an agreement dated 25.04.2014 which is stated to be executed by the very same power of attorney shown in the cause title. Thus, admittedly the defendant therein has not executed any agreement but the agreement was executed by a person claiming to be power of attorney of the defendant.



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14. The proceedings take curious turn by the power of attorney appearing in the proceedings and filing a compromise petition immediately after issuance of notice and the said compromise is referred to a Lok-Adalat.
15. It is further surprising that the very same counsel appears in these proceedings for both the respondents *i.e.* the plaintiff in O.S. No.246/2014 as also the power of attorney representing the defendant in O.S. No.246/2014. This in no uncertain terms in my considered opinion establishes the collusion between power of attorney and plaintiff in O.S. No.246/2014.
16. The net result of the entire proceedings and procedure followed is that the plaintiff who was not aware of the said proceedings, a compromise decree has been passed against the petitioner who though arrayed as a party to the preceding was never served



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with the notice nor did the defendant contest the said the proceedings.

17. Apart there from there is a procedural irregularity in inasmuch as the compromise petition was filed before the Court and thereafter the matter referred to Lok-Adalat for recordal of the compromise. This Court in ***Smt.Akkubai vs. Shri Venkatrao and Others [ILR 2014 KAR 2051]*** has severely deprecated the said practice. Para 11 of the said judgment is reproduced hereunder for easy reference:

"11. I really wonder, whether the learned Judge who has entertained this matter was aware of the elementary aspects of judicial functioning and the Lok Adalath. A common order-sheet cannot be maintained by the Court as well as the Lok Adalath. A Court cannot be converted into a Lok Adalath. In the order-sheet maintained by the Court, a portion of the proceedings is referable to the Court proceedings and another portion refers to the proceedings of the Lok Adalath. The Conciliator has no place inside the Court. The very object of accepting this Lok Adalath as an alternative mode of resolution of dispute is that, all matters do not need adjudication. The matter which could be resolved by persuasion, negotiation and understanding should be taken out of adjudication process and should be resolved by means of Lok Adalath satisfactorily, so that the cases are disposed of expeditiously and the Courts will be saving the time of adjudicatory process, and they can utilize that time which is saved, in adjudicating the cases. If on the day the plaint is presented, the parties are also present before the Court, they are ready with the compromise petition and when they are



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filing an application under Order 23 Rule 3 CPC, when they are admitting the terms of the compromise and execution of the terms and condition, then the Court before which it is presented, is the competent Court to record the compromise and dispose of the suit in terms of the compromise. The question of referring the said dispute to the Lok Adalath would not arise. If it is referred, it is a farce. If this is accepted and encouraged, both the judicial system and this alternative dispute resolution mechanism gets a bad name and would be subjected to ridicule in the eyes of public. All persons who are indulging in this process would be doing great injustice and dis-service to the judicial system. They are not conscious of their action and its repercussions and the image of the Judiciary, which would create in the mind of the public. That is not the object with which neither Legal Services Authority Act of 1987 is passed by the Parliament providing for the institution of Lok Adalath nor Section 89 was introduced by the Parliament amending CPC. The essence of these provisions is neither understood by the learned Judge nor by the learned Counsels who are appearing for the parties."

18. This Court has held that such a practice of recording compromise before the Court and thereafter referring to Lok-Adalat is not contemplated in the Legal Services Authorities Act, 1987 and such compromise if recorded before the Lok-Adalat is required to be set aside.
19. Applying the Ruling to the present case as also for the reasons aforesaid, I am of the considered opinion that the petition is required to be allowed.



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20. This Court has also been coming across several matters relating to such compromise before the Lok-Adalat which are challenged by way of writ petitions. Hence, I also deem it fit to issue general directions in respect of such matters which are referred to Lok-Adalat and compromise recorded as under:

- (i) When a compromise is filed before the Court in terms of the decision in ***Smt.Akkubai vs. Shri Venkatrao and Others [ILR 2014 KAR 2051]*** (supra) it is for the Court to record the compromise and not refer the matter to the Lok-Adalat.
- (ii) It is only if there is no settlement arrived at before the Court and the parties request for the matter to be referred to Lok-Adalat to enable a settlement then in such event the parties are to be referred to the Lok-Adalat and in the event of a compromise being arrived at before the Lok-



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Adalat, the same could be recorded by the lok-Adalat.

(iii) When the matter is referred to Lok-Adalat, separate order sheets would have to be opened and maintained by the said Lok-Adalat and the order sheet of the Court in the suit cannot be used by the Lok-Adalat.

(iv) The trial Court and or the Lok-Adalat while recording compromise is required to ascertain if the parties are present personally as also to ascertain and verify their identities by production of suitable documentary proof.

(v) In the event of a power of attorney appearing, it would be the bounden duty of the Court or the Lok-Adalat to ascertain if the concerned party has been served with notice.

(vi) The Court as also the Lok-Adalat would always have to be suspicious if the party were to enter



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appearance even before service of notice which is a red flag that there is something that is fishy in the matter.

(vii) When recording a compromise being entered into by a power of attorney, the original of the power of attorney is required to be examined by the Court and the Lok-Adalat and necessary endorsement made in the order to that effect and the original power of attorney returned to the parties.

(viii) As far as possible the trial Court and or the Lok-Adalat to secure the presence of the party and obtain signature of such party rather than the power of attorney.

(ix) The Trial Courts shall ensure that proper and acceptable proof of identity of the parties to proceedings as mandated by the Government for various purposes (such as Aadhar Card, Driving



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Licence, Passport Copy, Election Identity card, etc.,) are obtained as a matter of rule.

21. Hence, I pass the following:

ORDER

- i. The petition is allowed.
- ii. A certiorari is issued. The compromise decree dated 26.07.2014 in O.S. No.246/2014 as recorded by the Lok-Adalat is quashed. O.S. No.246/2014 is restored to the file.
- iii. The petitioner is at liberty to contest the said suit before the trial Court.
- iv. All issues are left open including the aspect of whether power of attorney being genuine or otherwise.

**Sd/-
JUDGE**

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