

IN THE GAUHATI HIGH COURT
(THE HIGH COURT OF ASSAM, NAGALAND, MIZORAM
& ARUNCHAL PRADESH)

AIZAWL BENCH : AIZAWL

RFA No. 17 of 2021

PETITIONER:

Smt. Vanlalmawii
D/o Thangliani (L)
R/o Dam Veng, Aizawl

By Advocates :
Mr. C. Zoramchhana
Mr. Zochhuanmawia

- versus -

RESPONDENTS:

Sh. Laltanpuia
S/o Thangliani (L)
R/o Dam Veng, Aizawl & Anr.

By Advocates:
Mr. K. Laldinliana
Ms.Lalramsangzuali for No.1

B E F O R E
HON'BLE MRS. JUSTICE MARLI VANKUNG

Date of hearing : 21.01.2022

Date of Judgment : 01.02.2022

J U D G M E N T & O R D E R (CAV)

Heard Mr. C. Zoramchhana, learned counsel appearing for the appellant and Mr. K. Laldinliana, learned counsel appearing for the respondent No.1.

2. The present appeal is directed against the Judgment Order dated 17.12.2020 and the Decree passed on the same date by the learned Senior Civil Judge-II, Aizawl in Declaratory Suit No.31 of 2019.

3. Upon hearing the parties and on perusal of the documents, the brief facts of the case is highlighted herein:- The parties are brothers and sisters and they used to live together with their mother Thangliani (late)during her life time in the suit land covered under LSC No. AZL-1480 of 1997 which belonged to their mother. However on her death, the dispute arose as to who would inherit the above mentioned property. A 'will' alleged to be executed by the late Thangliani which was in favour of the instant appellant was submitted in the Court for probate and registered as Probate 3/04. However, the parties being siblings the matter was referred to Lok Adalat for amicable settlement. The parties came to an amicable settle at Lok Adalat in its sitting held on 24.06.2004 and subsequently on 13.09.2007. On 24.06.2004 the terms of settlement was that the instant appellant is the heir of the property of her mother and shall possess the house. Her brother Mr. Laltanpuia (instant respondent No.1) has no objection to his sister Vanlalmawii (Appellant) possessing the house of her mother at Damveng (suit

land). He made a vow that henceforth he will no longer make any trouble for his sister Vanlalmawii, the owner of the property, who, if she agrees, will allow her brother Laltanpuia to stay in her house at any time if Laltanpuia is also willing to stay. Thereafter, on 13.09.2007, the matter was again taken up at Lok Adalat for further settlement in respect of the terms of the settlement already arrived at on 24.06.2004. The additional terms added were that the Laltanpuia/respondent No.1 shall moved out from the suit land/building and live in a rented house with effect from 1st October, 2007 and the rent expenditure of Rs.1,200/- per month shall be borne by the appellant. Both the parties thereafter duly complied with the terms of agreement. However, the respondent No.1 then agitated the matter and approached the Lok Adalat again wherein it was noted in the order sheet for Lok Adalat dated 03.08.2019 that "Complainant is present. OP is absent. After perusal of the record as well as on hearing the complainant, the matter is hereby disposed of with a liberty to approach Civil Court for redress." Thereafter, the present respondent no.1 filed the Declaratory Suit No.31/2019 claiming ownership of the suit land covered under LSC No. AZL-1480 of 1997 and the learned Senior Civil Judge-II, Aizawl passed the impugned ex-parte Judgment Order and Decree dated 17.12.2020, wherein the instant respondent No.1 was declared the owner of the

suit land covered under LSC No.AzI-1480 of 1997 and the instant Appellant was directed to vacate the same. Hence being aggrieved, the instant appeal.

4. The learned counsel for the appellant has argued that the terms of agreement of settlement in the Lok Adalat dated 23.06.2004 and 13.09.2007 are binding upon the parties and is a decree of the Civil Court. If aggrieved by the terms of settlement they should have approached the High Court by filing a writ petition under Article 226 and or Article 227 of the Constitution. He further submitted that both the parties had initially duly complied with the terms of agreement made at Lok Adalat. However, the circumstances began to change when the respondent lived in a rent-free house belonging to one Mr. C. Lalramngaia of Damveng, Aizawl w.e.f. April, 2016 who being a family relative, did not demand any rent and the appellant also ceased to pay the rent for the house occupied by the respondent No.1. The respondent No.1 then again agitated the matter afresh and had again approached the Lok Adalat. The Lok Adalat in the absence of the appellant disposed of the matter by passing an order which it is not competent to do so.

That the learned Senior Civil Judge then without giving a chance to the instant appellant to file her written statement had

passed the impugned ex-parte Judgment and Decree. That learned Senior Civil Judge has no jurisdiction to entertain the same and that the impugned Order dated 17.12.2020 is liable to be set aside. The learned counsel for the appellant had relied upon the Judgment of the Apex Court in Bhargavi Constructions and Another -vs- Kothakapu Muthyam Reddy and Others reported in (2018) 13 SCC 480 para 27 and State of Punjab and Another -vs- Jalour Singh and Others reported in (2008) 2 SCC 660 para 12.

5. The learned counsel for the respondent on the other hand has submitted that since parties could not come to any settlement at Lok Adalat for the reasons that the appellant has refused to pay a monthly rent of Rs. 1,200/- as per the terms of settlement of Lok Adalat, the matter was rightly disposed off. The respondent had then approached the court and the learned Senior Civil Judge had thereafter rightly passed the ex-parte order since the instant appellant inspite of receiving notice issued by the Lower Court, did not appear or submit any written statement in the Court. That the present respondent, being the only son of the deceased Smt. Thangliani is the rightful heir of the suit property and no ground has been made out for setting aside the order dated 17.12.2020.

6. Having considered the submission of the parties and on peruse of the Awards dated 13.09.2007 and 23.06.2004 passed by Lok Adalat it is seen that both the parties have duly signed on the awards with no allegation of duress or fraud. Thus it is evident that a settlement or compromise has been arrived at amicably between the parties as envisaged in section 21 of the Legal Services Authority Act, 1987.

Section 21 of the Act provides that :-

“(1)Every award of the Lok Adalat shall be deemed to be a decree of a civil court or, as the case may be, an order of any other court and where a compromise or settlement has been arrived at, by a Lok Adalat in a case referred to it under sub-section (1) of section 20, the court-fee paid in such case shall be refunded in the manner provided under the Court Fees Act, 1870 (7 of 1870).

(2) Every award made by a Lok Adalat shall be final and binding on all the parties to the dispute, and no appeal shall lie to any court against the award.”

In appreciating the above provision of law, this court is of the considered view that in the instant cases the parties have clearly come to an amicable settlement and the award dated 23.06.2004 & 13.09.2007 is deemed a decree of a civil court which, if not duly executed by any of the parties can be filed in the court concerned with a request to execute it.

7. However, if any of the parties is aggrieved by the award of Lok Adalat for genuine reasons, the remedy available would be by filing a petition under Article 226 and/or Article 227 of the Constitution as has been held by the Apex Court in *State of Punjab and Another -vs- Jalour Singh and Others*(Supra) where it has mentioned that “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.”

The Apex Court in *Bhargavi Constructions and Another -vs- Kothakapu Muthyam Reddy and Others* (Supra) has also reiterated the same by holding that

“24. In our considered view, the aforesaid law laid down by this Court is binding on all the courts in the country by virtue of mandate of Article 141 of the Constitution. This Court, in no uncertain terms, has laid down that challenge to the award of Lok Adalat can be done only by filing a writ petition under Article 226 and/or Article 227 of the Constitution of India in the High Court and that too on very limited grounds. In the light of clear pronouncement of the law by this court, we are of the opinion that

the only remedy available to the aggrieved person (respondents herein/plaintiffs) was to file a writ petition under Article 226 and/or Article 227 of the Constitution of India in the High Court for challenging the award dated 22-8-2007 passed by the Lok Adalat. It was then for the writ court to decide as to whether any ground was made out by the writ petitioners for quashing the award and, if so, whether those grounds are sufficient for its quashing."

8. The court also finds that the order dated 03.08.2019 passed by Lok Adalat was made in the absence of one of the parties therefore, the order disposing the matter while the agreement dated 13.09.2007 and 23.06.2004 made between the parties at Lok Adalat have not been set aside or mutually retracted by the parties is found unsustainable.

9. In view of the above reasons this court allow this appeal and quash the Judgment & Decree dated 17.12.2020 passed by the learned Senior Civil Judge-II, Aizawl in Declaratory Suit No.31 of 2019.

Accordingly, RFA No. 17 of 2021 stands disposed of.

JUDGE