

**2023 STPL(Web) 25 HP  
HIGH COURT OF HIMACHAL PRADESH**

(HON'BLE MR. JUSTICE SANDEEP SHARMA, J.)

**RAJINDER KUMAR**

Petitioner

*VERSUS*

**MAMITA @ MITU AND OTHERS**

Respondents

CMPMO No. 429 of 2020-Decided on 13-7-2023

**Civil, CPC**

**Code of Civil Procedure, 1908 – Order 7, Rule 11 - Civil Procedure - Rejection of plaint** – Lok Adalat Award - Rejection of plaint – That matter already settle in Lok adalat and subsequent suit having been filed by the plaintiff on similar set of circumstances to be rejected – Exception – Held: There cannot be any quarrel with the submission that in terms of judgment dated 18.1.2008, passed by Full Bench of Hon'ble Supreme Court of India State of Punjab and another v. Jalour Singh and others, Civil Appeal No. 522 of 2008, decided on 18.1.2008, award passed by a Lok Adalat can only be laid challenge by way of petition under Art. 227 of the Constitution of India but aforesaid law settled by Hon'ble Apex Court would not be attracted in the present case, because, in the present case, Lok Adalat having taken note of the compromise arrived inter se parties, passed a compromise decree dated 29.11.2003, which now is sought to be declared to be null and void on the ground that at the time of passing of said compromise decree, interest of the minor (plaintiff) was not protected by her natural guardian. Plaint rightly not rejected – Petition dismissed.

(Para 3, 11)

Advocate(s): For the Petitioner: Mr. Sanket Sankhyan, Advocate.

For the Respondents: Mr. Rajiv Rai and Mr. Gurdev Negi, Advocates, for Respondents Nos. 1 and 3. Nemo for respondent Nos. 2 and 4.

**JUDGMENT**

**Sandeep Sharma, Judge (oral):** Being aggrieved and dissatisfied with order dated 15.10.2020 passed by learned Civil Judge, Bilaspur, Himachal Pradesh, wherein application under Order VII rule 11 CPC i.e. CMA No. 158/6 of 2020 in Case No. 02/1 of 13 titled Manita v. Rajinder etc., having been filed by petitioner/defendant No.1 (hereinafter, 'defendant No.1') for rejection of plaint filed by the respondent No.1/plaintiff (hereinafter, 'plaintiff') came to be dismissed, defendant No.1 has approached this Court, in the instant proceedings filed under Art.227 of the Constitution of India, praying therein to set aside the aforesaid order and allow the application for rejection of the plaint having been filed by him.

2. Precisely, the facts of the case, as emerge from the record, are that plaintiff filed a suit for declaration that Will dated 4.3.1995 allegedly executed by late Khoto Ram, thereby bequeathing his entire movable and immovable property in favour of defendants Nos. 1 and 2 is null and void and property allegedly bequeathed in favour of defendants Nos. 1 and 2 is required to be distributed amongst all the Class I legal heirs in equal shares as per Hindu Succession Act.

3. After framing of issues on the basis of pleadings of parties,, defendant No.1 filed an application under Order VII rule 11 CPC for rejection of plaint, on the ground that suit as detailed herein above is not maintainable on account of the fact that on same and similar facts involving same parties, civil suit No. 70-1 of 2002 was filed by respondent No.3 Bimla Devi alias Leela Devi wife of late Khoto Ram. It is averred that civil suit titled Leela Devi v. Rajender Kumar was filed on 9.7.2002, wherein aforesaid Leela Devi filed suit on behalf of herself and on behalf of plaintiff being her natural guardian and next friend. Applicants, in the application claimed that in the afore suit Will dated 4.3.1995 executed by Khoto Ram was sought to be declared as null and void. However, before the suit having been filed by mother of the plaintiff could be decided on its own merit, parties entered into compromise in Lak Adalat, which having taken note of the compromise entered into between the parties, passed a compromise decree, Exhibit PX dated 29.11.2003. Applicants averred that since Lok Adalat passed decree dated 29.11.200,3 thereby compromising the suit having been filed by mother of the plaintiff, subsequent suit having been filed by the plaintiff on similar set of circumstances, laying therein challenge to Will dated 4.3.1995 is not maintainable and as such, deserves to be rejected in terms Order VII, rule 11 CPC.

4. Aforesaid prayer made by the defendants came to be resisted by the plaintiff No.1, who in her reply to the application though admitted factum with regard to passing of judgment and decree dated 29.11.2003 by Lok Adalat, thereby compromising suit inter se parties to lis, but specifically claimed that her interest was not protected at that time by her mother. In reply to the application, plaintiff submitted that she was born on 26.12.1991 and her father allegedly executed Will dated 4.3.1995 but immediately thereafter he expired on 16.5.1995. She alleged that her father was suffering from paralysis at the time of execution of Will and defendants taking undue advantage of ill health of her father, got the Will prepared, which by no stretch of imagination can be said to have been executed by her father in his free and disposing mind. She alleged that the Will reveals that her step-mother and stepsister played foul upon her and her mother, as a result of which entire property stands bequeathed in favour of defendants Nos.1 and 2. She alleged that the suit property being ancestral once, deserves to be divided as per Hindu Succession Act amongst all the Class I legal heirs but by way of Will in question, entire property was bequeathed in favour of the defendants. She alleged in reply that at time of execution of alleged Will, she was merely four years old and after death of her father, there was none to look after her interest. She alleged that her mother was an old lady and was suffering from paralytic attack for the last 21 years. In nutshell, the plaintiff claimed that, while entering into compromise, if any, by her mother, her (plaintiff's) interest was not protected by the natural guardian as such, the compromise decree suffers from illegality and infirmity. It is also submitted in reply that otherwise nothing can preclude a minor from taking leave under law by reason of misconduct or gross negligence on the part of natural guardian or suit resulting in prejudice to the interest of the minor. She further submitted in the reply that otherwise court was duty bound to ensure that the proposed natural guardian protects the interest of the minor adequately.

5. Having taken note of aforesaid pleadings adduced on record by the parties to lis, learned court below passed impugned order dated 15.10.2020 thereby rejecting application filed by the defendants under Order VII rule 11 of CPC for rejection of plaint. In the aforesaid background defendant No.1 has approached this court in the instant proceedings, praying therein to set aside impugned order.

6. Having heard learned counsel for the parties and perused material available on record this vis-à-vis reasoning assigned in the order impugned in the instant proceedings, this court finds no illegality in the impugned order as such, no interference is called for. Precisely the case of defendant No.1 is that the order passed by Lok Adalat cannot otherwise be laid challenge by way of a civil suit, rather same is required to be laid challenge by way of a petition under Art. 227 of the Constitution of India. Learned counsel for defendant No.1, while making this court peruse the plaint, which is subject matter of present petition, vehemently argued that the same is barred by law because admittedly, relief as has been sought in the suit sought to be rejected, was claimed and granted in earlier suit filed by plaintiff through her natural guardian, i.e. her mother. He submitted that the matter was compromised in Lok Adalat and a compromise decree was passed on 29.11.2003. He submitted that since the plaintiff was one of parties to the compromise, findings recorded in the same are binding upon her. He further submitted that the parties cannot be permitted to open an issue, which has been settled and subsequent suit having been filed by the plaintiff is otherwise barred by the principle of res judicata.

7. Mr. Gurdev Negi, learned counsel for the plaintiffs, supported the impugned order. He submitted that bare perusal of subsequent suit having been filed by the plaintiffs clearly reveals that the same has been filed on altogether different grounds, because, in subsequent suit, plaintiffs have sought declaration that Will dated 4.3.1995 allegedly executed by her father, is null and void on account of fact the same is shrouded by suspicious circumstances. He further argued that the petitioner was minor at the time of passing of compromise decree dated 29.11.2003, and court was duty bound to protect her interest under Order XXXII, rule 7 CPC. He submitted that since interest of the plaintiff was not protected by her natural guardian, who was not keeping well at the relevant time, suit having been filed by the plaintiff is not only maintainable but deserves to be heard and decided on its own merit.

8. In the case at hand, plaintiff has filed suit titled as Manita v. Rajinder etc. for declaring Will dated 4.3.1995, (registered on 7.3.1995) executed by Khoto Ram, in favour of defendants Nos. 1 and 2 to be null and void. Apart from above, plaintiff has also sought declaration that she be declared owner to the extent of 1/3rd share being Class I heir of deceased Khoto Ram. In the suit compromise judgment and decree dated 29.11.2003, has been laid challenge on the ground that the same are against the provisions of Order XXXII rule 7 CPC. Careful perusal of issues framed in suit sought to be rejected, reveals that learned court below, having taken note of pleadings of the parties, has framed specific issue with regard to suit being barred by principle of res judicata. It is only after recording of evidence by the plaintiff, when matter was referred to mediation, an application under Order VII rule 11 CPC was filed by the defendants. Since it is not in dispute that at the time of passing of judgment and decree dated 29.11.2003 by Lok Adalat, plaintiff was a minor and in compromise arrived inter se parties, entire property of deceased Khoto Ram was decided to be given to the defendants, there appears to be merit in the claim of plaintiff that her right was not protected by her natural guardian at the time of entering into compromise on 29.11.2003 before Lok Adalat. Otherwise also, it is well settled that a person after having attained majority can always lay challenge to action, if any, taken on his/her behalf by natural guardian on the ground that his/her interest was not properly protected by his/her natural guardian, subject to limitation

provided under the Limitation Act. Needless to say, question of limitation in filing the suit, if any, raised by the defendants, shall be decided by the learned trial Court in accordance with law.

9. Moreover this court finds that by way of suit sought to be rejected, specific prayer has been made to declare Will dated 4.3.1995, allegedly executed by Khoto Ram in favour of defendants No.1 and 2 to be null and void on the ground that same is shrouded by suspicious circumstances and property allegedly bequeathed In favour of defendants by way of Will executed by Khoto Ram is required to be distributed amongst all the legal heirs in equal shares as per Hindu Succession Act.

10. In earlier suit having been filed by Bimla Devi alias Leela Devi wife Khoto Ram, declaration was sought that they be declared owner of movable and immovable property of Khoto Ram, which is owned and possessed by the defendants, by way of voidable Will registered, allegedly executed by Khoto Ram in their favour. Apart from above, Bimla Devi alias Leela Devi, in earlier suit, prayed for decree of possession after declaring the Will in question to be null and void.

11. There cannot be any quarrel with the submission made by Mr. Sanket Sankhyan, learned counsel for defendant No.1, that in terms of judgment dated 18.1.2008, passed by Full Bench of Hon'ble Supreme Court of India State of Punjab and another v. Jalour Singh and others, Civil Appeal No. 522 of 2008, decided on 18.1.2008, award passed by a Lok Adalat can only be laid challenge by way of petition under Art. 227 of the Constitution of India but aforesaid law settled by Hon'ble Apex Court would not be attracted in the present case, because, in the present case, Lok Adalat having taken note of the compromise arrived inter se parties, passed a compromise decree dated 29.11.2003, which now is sought to be declared to be null and void on the ground that at the time of passing of said compromise decree, interest of the minor (plaintiff) was not protected by her natural guardian.

12. Consequently, in view of the detailed discussion made above, this court finds no illegality and infirmity in the order passed by learned court below and same is upheld. Resultantly, the present petition fails and is dismissed accordingly, alongwith all pending applications. Interim orders, if any, stand vacated.

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