

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1611 OF 2018

Babu Vasu Patil (Since Deceased),]	
Through LRs.:-]	
Nirmala Balkrishna Patil & Ors.] Petitioners
V/s.		
Aba Vasu Patil (Since Deceased),]	
Through LRs.:-]	
Parvati Aba Patil & Ors.] Respondents

Mr. Pradeep D. Dalvi for the Petitioners.

Mr. Chetan G. Patil for the Respondents.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 28TH MARCH, 2018.

P.C. :

1. Heard Mr. Dalvi, learned counsel for the Petitioners, and Mr. Patil, learned counsel for the Respondents.

2. By this Petition, filed under Article 227 of the Constitution of India, the Petitioners are challenging the order dated 24th November 2017 passed by the Civil Judge, Junior Division, Kale-Kherivade, below the applications at “Exhibit-23”, “Exhibit-51” and “Exhibit-52” in Regular Darkhast No.61 of 2012.

3. The applications at “Exhibit-23” and “Exhibit-51” were filed by

Judgment Debtor No.1 and the application at “Exhibit-52” was filed by Judgment Debtor No.3, challenging the execution of the 'Decree' passed in Regular Civil Suit No.70 of 1992. The said Suit was filed for partition and separate possession, in which the 'compromise' was arrived at between the parties before the Lok Adalat and in terms thereof, the 'Compromise Decree' came to be passed.

4. The two fold grievances were raised by the Petitioners before the Executing Court. The first grievance was that, the 'Decree' passed in terms of the 'compromise', cannot be a 'Decree' and, therefore, such terms of 'compromise' cannot be directly put in execution. To substantiate this submission, learned counsel for the Petitioners has relied upon the Judgment of the Apex Court in the case of *Pulavarthi Venkata, Subba Rao and Ors. Vs. Valluri Jagannadha Rao (Deceased)*, by his heirs and legal representatives, and Ors., AIR 1967 SC 591, wherein it was observed as follows :-

“The 'Compromise Decree' was not a decision by the Court. It was acceptance by the Court of something to which the parties had agreed. It has been said that a 'Compromise Decree' merely sets the seal of the Court on the agreement of the parties. The Court did not decide anything. Nor can it be said that a decision of the Court was implicit in it.”

5. Even a cursory glance to these observations makes it clear that the

said observations were made while considering the issue as to whether the decision by 'compromise' will operate as *res judicata* under Section 11 of the Code of Civil Procedure, 1908. Therefore, in my considered opinion, the said Judgment cannot be of any help to the learned counsel for the Petitioners.

6. The next judgment relied upon by learned counsel for the Petitioners is of this Court in the case of *Adelia Dos Remedios Vs. Anand Giri Keni (Deceased)*, by *LRs.*, 2006 (2) *Bom.C.R.* 822, wherein the question before this Court was about the maintainability of the Suit for specific performance of contract based on the 'Consent Decree'. There was no issue as to whether the 'Consent Decree' can be executed directly or not.

7. In my considered opinion, the law laid down by the Apex Court in the case of *P.T. Thomas Vs. Thomas Job*, (2005) 6 *SCC* 478, which is relied upon by learned counsel for the Respondents herein, is squarely applicable to the facts of the present case. In this reported Judgment also, on the basis of the 'Consent Terms' arrived at between the parties, the 'Award' was passed by the Lok Adalat and the time fixed for compliance of the terms and conditions, as stipulated in the 'Consent Terms', was extended by the Executing Court. When it was challenged before the Hon'ble Supreme Court contending that, a 'compromise' or the

'Consent Terms' cannot amount to a 'Decree' of the Court and the Executing Court has no jurisdiction to extend the time stipulated by the parties thereto, which argument is advanced in this case also, the Hon'ble Supreme Court, in paragraph No.16 of the said Judgment, categorically held as follows :-

“16. In our opinion, the award of the Lok Adalat is fictionally deemed to be a decree of court and, therefore, the courts have all the powers in relation thereto as it has in relation to a decree passed by itself. This, in our opinion, includes the powers to extend time in appropriate cases. In our opinion, the award passed by the Lok Adalat is the decision of the court itself though arrived at by the simpler method of conciliation instead of the process of arguments in court. The effect is the same. In this connection, the High Court has failed to note that by the award what was put to an end was the appeal in the District Court and thereby the litigations between brothers forever. The view taken by the High Court, in our view, will totally defeat the object and purposes of the Legal Services Authorities Act, 1987, and render the decision of the Lok Adalat meaningless.”

8. In view of these clinching observations made by the Apex Court, both the contentions raised by learned counsel for the Petitioners, that the Decree passed on the basis of the 'compromise' cannot become an executable decree and the Executing Court has no jurisdiction to extend the time stipulated for compliance of the terms and conditions of the 'compromise', squarely fall on the ground.

9. In the instant case also, the amount was to be deposited, as per the 'compromise', on or before 31st May 2002; whereas, it was being a day of summer vacation, the amount was deposited on 10th June 2002. The Trial Court has not only accepted the amount, but, even the father of the present Petitioners had withdrawn that amount. Therefore, there hardly remains any substance in the contention raised by learned counsel for the Petitioners on this score also.

10. The authorities that have been relied upon by learned counsel for the Petitioners, like the Judgment of this Court in the case of *Hindurao Annasaheb Patil, (since deceased), by legal representatives Bhagirathi Hindurao Patil and Ors., 1982 Mh.L.J. 794*; Judgment of the Delhi High Court in the case of *Pioneer Engineering Co. Vs. D.H. Machine Tools, AIR 1986 DELHI 165*; and Judgment of the Calcutta High Court in the case of *Jaynal Halдар Vs. Khorsed Sheikh, AIR 1982 CALCUTTA 118*, will have no application in the light of the above-said Judgment of the Supreme Court in the case of *P.T. Thomas Vs. Thomas Job, (2005) 6 SCC 478*.

11. The last contention raised by learned counsel for the Petitioners is that, the Petitioners being the daughters of the Judgment Debtor, they have acquired rights in the ancestral property of their father, in view of the amendment to Section 6 of the Hindu Succession Act, which is brought into effect on 9th September 2005.

12. In the first place, this point was not argued before the Trial Court, as can be seen that, the impugned order of the Trial Court is conspicuously silent about the same.

13. Even assuming that such point was raised and it being a point of law, it is considered in this Writ Petition also, in view of the Judgment of the Apex Court in the case of *Pulavarthi Venkata, Subba Rao and Ors. (Supra)*, it is fairly well settled that, in order to apply the amended provisions of Section 6 of the Hindu Succession Act, on the date when the Amendment Act came into effect, i.e. on 9th September 2005, both, the father and daughters, must be alive and the joint family should also be in existence.

14. In the instant case, admittedly, the father of the present Petitioners has expired prior to 2005 i.e. before the Hindu Succession Act came into effect and, secondly, even the 'Decree' of the Trial Court, accepting the 'compromise' between the parties, was also passed in the year 2002 i.e. prior to the Hindu Succession Act came into force. In view thereof, this contention also holds no merits.

15. As a result, the Writ Petition stands dismissed.

[DR. SHALINI PHANSALKAR-JOSHI, J.]