NC: 2025:KHC:11176
RFA No. 1819 of 2023

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 18TH DAY OF MARCH, 2025

BEFORE

THE HON'BLE MR JUSTICE HANCHATESANJEEVKUMAR

REGULAR FIRST APPEAL NO. 1819 OF 2023 (DEC)

BETWEEN:

RAMAKRISHNA MATH
A RELIGIOUS CULTURAL MATH
ESTABLISHED BY SWAMI VIVEKANANDA,
HAVING ITS HEAD OFFICE AT BELUR MATH,
KOLKATA AND A BRANCH MATH
AT BULL TEMPLE ROAD, BASAVANAGUDI,
BENGALURU-560019,
REPRESENTED BY ITS ADHYAKSHA
SWAMI NITHYASTHANANDA.

…APPELLANT

(BY SRI S.S. RAMDAS, SR. ADVOCATE A/W
SRI PRADEEP S.SAWKAR, ADVOCATE)

AND:

S. YOGA
SON OF LATE SRI S.NARASIMHAIAH,
AGED ABOUT 64 YEARS,
RESIDING AT SOORANAHALLI VILLAGE,
HOLENARSIPURA TALUK, HASSAN
DISTRICT.

…RESPONDENT

(BY SRI G. BASAVARAJ, SR. COUNSEL AND
SRI AJITH H.S., ADVOCATE FOR C/RESPT.)

THIS REGULAR FIRST APPEAL IS FILED UNDER SECTION 96 R/W ORDER XLI RULE 1 OF THE CPC, 1908, PRAYING TO SET ASIDE THE JUDGMENT AND DECREE DATED 17.08.2023 IN O.S. NO.10414/2015 ON THE FILE OF PASSED BY THE LXI ADDL. CITY CIVIL AND SESSIONS JUDGE, BENGALURU (CCCH NO.62) AND DECREE THE SUIT, WITH COSTS; GRANT SUCH OTHER OR FURTHER RELIEFS AS THIS COURT DEEMS FIT TO GRANT ON THE FACTS AND

IN THE CIRCUMSTANCES OF THE CASE; AND GRANT COSTS OF THESE PROCEEDINGS, IN THE INTEREST OF JUSTICE AND EQUITY.

THIS REGULAR FIRST APPEAL, HAVING BEEN HEARD AND RESERVED FOR JUDGMENT AND COMING ON FOR PRONOUNCEMENT OF JUDGMENT THIS DAY, THE COURT DELIVERED THE FOLLOWING:

CORAM: HON'BLE MR JUSTICE HANCHATESANJEEVKUMAR

CAV JUDGMENT

This regular first appeal is filed by the appellant/plaintiff challenging the order dated 17.08.2023 passed in O.S.No.10414/2015 by the Court of LXI Additional City Civil and Sessions Judge, Bengaluru (CCH-62) (hereinafter referred to as 'the Trial Court' for short) on the order passed on I.A.No.19 filed under Order VII Rule 11(d) of Code of Civil Procedure (hereinafter referred to as 'CPC' for short), thereby, the plaint is rejected as barred by law under the provisions of Order XXIII Rule 3A of CPC.

2. For the sake of convenience and easy reference, the parties are referred to as per their rankings before the Trial Court.

THE PLAINTIFF'S CASE:

3. The plaintiff is Ramakrishna Math, established by Swami Vivekananda in Bengaluru. It is pleaded that originally S.Narayana was the absolute owner and in possession of the suit schedule property. He was an ardent devotee of the plaintiff/Ramakrishna Math and was a regular visitor and participant in its various programmes. The suit schedule property was allotted by the Bengaluru Development Authority (hereinafter referred to as 'BDA' for short) on 22.10.1973 and subsequently, the said S.Narayana was put into possession of the suit schedule properties vide possession certificate dated 16.07.1974. Thereafter, the BDA has executed the sale deed dated 23.05.1990 through registered sale deed and thereafter khatha certificate was issued in the name of S.Narayana. Thus S.Narayana became owner of the schedule property.

4. During his lifetime, S.Narayana and his wife Smt.Jayarathna, lived together in the suit schedule property and had no issues. S.Narayana died intestate on

22.07.2013 leaving behind his wife Smt.Jayarathna, as his only legal heir to succeed his estate. The said Smt.Jayarathna is only being Class-I legal heir of S.Narayana, succeeded to her husband's property and got her name mutated in the revenue records of Bruhat Bengaluru Mahanagara Palike (hereinafter referred to as 'BBMP' for short) and started paying taxes regularly and continued to reside in the suit schedule property.

5. It is pleaded that Smt.Jayarathna, like her husband, was also an ardent devotee of plaintiff/Ramakrishna Math. During her lifetime, she executed a registered Will dated 01.02.2014bequeathing the suit schedule property to plaintiff/Ramakrishna Math. Smt.Jayarathna died on 18.10.2014. Based on the Will dated 01.02.2014, the plaintiff/Ramakrishna Math applied and got mutated its name in the revenue records of BBMP and BBMP issued khatha certificate and khatha extract was issued in the name of plaintiff/Ramakrishna Math on

06.07.2015. The plaintiff/RamakrishnaMath,has been paying taxes since then.

6. Subsequent to filing of the suit on 27.07.2016, the Adhyaksha/president of the plaintiff/Ramakrishna Math, who was executor of the Will dated 01.02.2014, filed a petition numbered P & SC No.269/2016 under Section 276 of the Indian Succession Act, 1925 seeking the grant of probate of the Will of the late Smt.Jayarathna dated 01.02.2014. The City Civil Court, Bengaluru granted probate of the Will and testament of Smt.Jayarathna in favour of Adhyaksha/President of the plaintiff/Ramakrishna Math. Thus, in this way, the plaintiff/Ramakrishna Math, became the absolute owner of the suit property.

7. When this being the fact that the defendant, during the month of July 2015 started to claim that the suit schedule property belongs to him and approached BBMP to change khatha in his name based on the compromise decree passed by the Court of Senior Civil

Judge and JMFC, Holenarasipura in O.S.No.23/2014. But the plaintiff/Ramakrishna Math is not party in the said O.S.No.23/2014. It is further pleaded that upon perusing the suit papers in O.S.No.23/2014, one Smt. S.N. Sumithra, wife of K.G. Rangaswamy, filed O.S.No.23/2014 against Smt. R.Prabhavati, wife of late S.Krishnappa and others including the defendant herein claiming partition of properties including the suit schedule property herein by contending that the suit schedule property was also joint family property of late Singrappa and claimed partition.

8. The defendant herein is defendant No.7 in O.S.No.23/2014, who has filed written statement and made a counterclaim, claiming that the suit schedule property herein belongs to S.Narayana. It is pleaded that the defendant was adopted son of S.Narayana as per the alleged Will dated 25.02.2008, hence claimed the defendant succeeded to all the properties of late S.Narayana. Also,it is pleaded that there were no joint family properties of late S.Singrappa, as they had been

partitioned earlier and properties mentioned in item (k) to (r) in the plaint in O.S.No.23/2014 are the self-acquired properties ofS. Narayana.

9. It is further pleaded that on 07.07.2015, the party to O.S.No.23/2014 have requested to refer the O.S.No.23/2014 to Lok Adalat and a purported compromise petition was filed before Lok Adalat on the same day. Accordingly, the suit was decreed in terms of the compromise deed and a final decree was ordered to be drawn up. As per this compromise decree, the suit schedule property was confirmed and declared to be solely owned by defendant. Thus, in this way, the defendant is claiming he is owner of the property. It is pleaded that the compromise decree in O.S.No.23/2014 is a product of sham, fraud, unlawful and collusive and not binding on the plaintiff, just to knock of the suit schedule property herein the said O.S.No.23/2014 was filed and got compromised. The plaintiff has taken various contentions how the said O.S.No.23/2014 was result of fraud.

10. It is pleaded that since defendant has been attempting to interfere with the plaintiff's peaceful possession and enjoyment of the suit property and has started obstructions to the possession of the plaintiff basedon the decree in O.S.No.23/2014 therefore, the plaintiff/Ramakrishna Math has filed the present suit. The plaintiff/Ramakrishna Math has claimed relief to declare that the compromise decree dated 07.07.2015 passed in O.S.No.23/2014 onthe Court of Senior Civil Judge and JMFC, Holenarasipura, is not binding on the plaintiff insofar as it relates to the suit schedule property.

11. Further, the plaintiff has prayed for an order of permanent injunction against the defendant restraining the defendant from making any claims through or under him interfering with the possession of the plaintiff/Ramakrishna Math and from alienating or creating third party rights in favour of others.

WRITTEN STATEMENT OF THE DEFENDANT

12. The defendant, upon entering into the suit through his advocate has filed written statement. In the written statement,it is pleaded in the written statement that the defendant is son of S.Narasimha, who is brother of S.Narayana therefore, S.Narayana is the uncle of defendant herein. The defendant admits that S.Narayana was the absolute owner of the suit schedule property.However, he denied that the said S.Narayana was an ardent devotee of plaintiff/Ramakrishna Math. The defendant admitted that the BDA allotted the suit property to S.Narayana on 22.10.1973 and that a registered sale deed was executed. It is also admitted that khatha was effected in the name of S.Narayana, but the defendant denied that S.Narayana was the absolute owner of the suit schedule propertyas the property belongs to the joint family of S.Narayana and other family members. Also, the defendant admitted that S.Narayana and his wife Smt.Jayarathna, were living together in the suit property and they had no issues.

13. The defendant had contended that S.Narayana and his wife Smt.Jayarathna, had adopted him as their son and executed will in favour of the defendant therefore, denied that S.Narayana died intestate on 22.07.2013. The defendant had contended that S.Narayana executed the Will dated 22.05.2008, bequeathing the suit schedule properties in favour of the defendant. Therefore, Smt.Jayaratna wife of S.Narayana had right to deal with the suit schedule property after death of her husband/S.Narayana. The defendant acquired the suit schedule property by virtue of the Will executed by S. Narayana dated 25.02.2008.

14. Further, the defendant denied that Smt.Jayarathna, being the only Class-I legal heir, succeeded to her husband's property. He contended that change of khatha in the name of Smt.Jayarathna is illegal and opposed to law, thus is contended that Smt.Jayarathna had no rights in respect of suit schedule properties. Further, the defendant also denied that

Smt.Jayarathna was also an ardent devotee of plaintiff/Ramakrishna Math, but the defendant admits that she used to visit the plaintiff/Ramakrishna Math only once in a while.

15. Further, denied that Smt.Jayarathna executed a registered Will dated 01.02.2014 bequeathing the suit property to plaintiff/Ramakrishna Math. It is contended that the said Will is invalid; the defendant denied that upon death of Smt.Jayarathna, the suit schedule property is vested with the plaintiff/Ramakrishna Math as per the Will dated 01.02.2014. It is pleaded that khatha effected in the name of plaintiff is collusive one.

16. The defendant admitted that now the suit property is a commercial building, but he contended that the tenants were inducted during lifetime of S.Narayana, therefore, the tenants are not disturbed by the defendant. Further, contended that since he is a native of Holenarasipura town, the plaintiff/Ramakrishna Math by taking disadvantage of this fact had got changed khatha in

the name of plaintiff. Further, the defendant had contended that he is absolute owner and in possession of the property as per Will dated 25.02.2008 executed by S.Narayana and also as per compromise decree in O.S.No.23/2014. Therefore, the defendant contended that the plaintiff/Ramakrishna Math does not have any right, title or interest over the suit schedule properties.

17. Further, the defendant contended that the suit schedule property is joint family property. Therefore, the suit in O.S.No.23/2014 was filed in the Court of Senior Civil Judge and JMFC, Holenarasipura. In the said suit, as per compromise deed a compromise decree was effected, thereby, the suit schedule property was given to the defendant.Thus, in this way the defendant had become the owner of the suit schedule property on both counts by virtue of Will dated 25.02.2008 and also by virtue of compromise decree in O.S.No.23/2014.

18. Further, it is counterclaim of the defendant that after death of S.Narayana, his wife Smt.Jayarathna was in

the care and custody of the defendant. She was not keeping good health and most of the time, she was in diminished state of mind due to her old ageand various ailments.Under these circumstances, she was not in possession of the property and could not make any prudent decision and was not in a condition to execute any document, including the Will. Further, it is contended that the present suit is not maintainable without making all the parties involved in O.S.No.23/2014as parties in the present suit. Therefore, the suit is barred by non-joinder of necessary parties.

19. Further, contended that the relief claimed in the suit for declaration of ownership of alleged Will dated 01.02.2014 executed by Smt.Jayarathna is not maintainable as Smt.Jayarathna had no right, title or interest to execute the Will. Further, the plaintiff/Ramakrishna Math after obtaining amendment to the plaint has filed additional written statement and denied the pleadings of the plaintiff regarding proving of P and SC

No.269/2016 and probate of the Will. Further, contented that the plaintiff has not approached the probate Court in P and SC No.269/2016 with clean hands and suppressed material facts. Further, submitted that the probate does not confirm any title over the suit property and does not decide the rights to the properties conclusively.Therefore, with all these pleadings in the written statement, prayed to dismiss the suit.

I.A.No.19 FILED BY THE DEFENDANT:

20. On 21.07.2023, the defendant hasfiled I.A.No.19 under Order VII Rule 11(d) of CPC for rejection of plaint, to which the plaintiff has filed objection. It is contention taken in the affidavit filed in support of I.A.No.19that the relief claimed to declare compromise decree dated 07.07.2015 passed by the Senior Civil Judge and JMFC, Holenarasipura, regarding the suit schedule property, is not binding on the plaintiff, is not maintainable in view under Order XXIII Rule 3 of CPC. Therefore, taken ground in I.A.No.19 that the suit for the relief of claiming

declaration that the compromise decree is not binding on the plaintiff by filing another suit is not permissible as per Order XXIII Rule 3 and 3A of CPC, and thus, it is prayed for the rejection of the plaint.

21. It is taken contention in the said I.A.No.19 that if the plaintiff makes allegations of fraud against the defendant in obtaining compromise decree, the remedy available is to question the compromise before the Court that recorded the compromise decree, but not before the Court at Bengaluru. Therefore, I.A.No.19 has been filed for rejection of plaint.

22. The plaintiff has filed objection to said I.A.No.19 raising various contentions as stated in the plaint, hence the plaintiff prays to reject I.A.No.19.

23. Based on the pleadings and contention taken on I.A No.19 and objection to which, the Trial Court has framed the following issue:

i) *Whether, the defendant has made out a cogent case to reject the plaint of the plaintiff as barred by law?*

ii) *What order?*

REASONS OF THE TRIAL COURT FOR REJECTION OF PLAINT:-

24. The Trial Court has rejected the plaint of plaintiff under Order VII Rule 11(d) of CPC on the reason that the judgment of Hon'ble Supreme Court in the case of***MS. SRI.SURYA DEVELOPERS AND PROMOTERS Vs. N.SHYLESH PRASAD AND OTHERS[1](Surya Developers case)*** has held that a mere clever drafting would not permit the plaintiff to make the suit maintainable, which otherwise would not be maintainable and/or barred by law. Therefore, held that the suit is not maintainable in the Court. But the suit could have been filed before the Court, which passed the compromise decree. Further, the Trial Court has followed the judgment of Hon'ble Supreme Court in the case of ***TRILOKINATH***

[1] Civil Appeal No.439/2022 dated 09.02.2022

SINGH Vs. ANIRUDH SINGH[2], by relying upon this judgment, the Trial Court gave the reason that the suit could have been filed before the Court, in which, compromise decree is passed. Therefore, separate suit is not maintainable before other Court. Hence, rejected the plaint. The Trial Court assigned a reason that as per Order XXIII Rule 3A of CPC and by following the judgment of Hon'ble Supreme Court in the case of ***TRILOKINATH SINGH (supra)***, Civil Suit filed by stranger to that proceedings challenging legality of compromise is not maintainable such stranger who was not party to compromise, would not have cause of action to file separate suit to challenge legality of compromise and also followed the judgment of this Court in the case of ***MUTHANAPPA AND OTHERS Vs. REVANNA AND OTHERS***[3]***,*** in which it is observed that separate suit

[2] (2020) 6 SCC 629

[3]Civil Revision Petition No.262/2022 dated 18.7.2023

challenging compromise decree is not maintainable in other Court, but the suit could be filed before the Court, in which, compromise decree is passed. Therefore, on all these reasons, the Trial Court has allowed I.A No.19 filed under Order VII Rule 11(d) of CPC and thus rejected the plaint as barred by law as per Order XXIII Rule 3A of CPC.

SUBMISSIONS OF LEARNED COUNSEL FOR APPELLANT/PLAINTIFF:

25. Being aggrieved by the rejection of plaint, the plaintiff has filed the instant appeal raising various grounds in the memorandum of appeal and the learned Senior Counsel, Sri.S.S.Ramdas, in consonance with the grounds raised in the appeal, has submitted that the Trial Court has misconstrued the provision under Order XXIII Rule 3A of CPC. It is submitted that the bar in Rule 3A of Order XXIII is against a party to the compromise, and not against a person who is not a party to the compromise. A person who is not a party to the compromise, which affects their rights, has no other alternative but to

question the compromise in another suit or seek a declaration that the same is not binding on them. Therefore, the only remedy available to the party aggrieved by the same is to challenge the compromise decree by filing a fresh suit. Since, the plaintiff is not a party to O.S.No.23/2014 and is also not a party to compromise, therefore, the plaintiff cannot seek remedy in O.S.No.23/2014. Therefore, filing of separate suit by the plaintiff is correct and maintainable.

26. Further, the learned Senior Counsel by placing reliance on the decision of this Court in the case of ***M. KRISHNAIAH SHETTY AND OTHERS Vs. KESHAVA MURTHY AND OTHERS***[4] ***(M. Krishnaiah Shetty's Case)***, has held that the appellant therein not being made a party to the compromise decree, could not have sought for recalling of the compromise decree nor could they have filed an appeal against the compromise decree, which resulted in the appellant to seek appropriate remedy by

[4]RFA No.1807/2017 dated 16.02.2019

filing a separate suit before the Trial Court. Further submitted that the appellants therein who are not parties to the compromise have the appropriate remedy of filing a separate suit so as to contend that the compromise arrived at is not binding on them. Therefore, the plaintiff in the present case has taken the very same remedy available to it, since the plaintiff is not a party in O.S.No.23/2014. Hence, he could not have challenged the compromise in that suit or filed appeal against it. Hence, the provision under Order XXIII Rule 3A of CPC is not applicable in the present case. Further, the learned Senior Counsel submitted that the Trial Court has not properly considered the decision relied upon by the plaintiff praying for dismissal of I.A No.19 and the Trial Court has not assigned any cogent reasons in rejecting the plaint.

27. Further, learned Senior Counsel argued by placing reliance on decision of this Court in the case of ***SUSHILA AND OTHERS VS. VIJAYAKUMAR AND***

OTHERS[5] ***(Sushila's Case)***,that this Court in paragraph No.13 has held that a decree passed by a Court on the basis of compromise can only be between the parties to the suit and it cannot be between people who are not parties to the suit. Therefore, whatever compromise decree is between the parties in the suit and is not binding on the plaintiff, since the plaintiff is not a party in O.S No.23/2014. Therefore, Order XXIII Rule 3A of CPC is not applicable in the context of the case.

28. Further submitted that the observations made by the Trial Court that the plaintiff has made a clever drafting by seeking a relief to declare compromise decree is not binding on the plaintiff, instead of specifically praying for setting aside the said compromise decree by placing reliance on the judgment of the Hon'ble Supreme Court in the case of***SURYA DEVELOPERS Case (supra),*** is misconceived and incorrect. Therefore, the Trial Court

[5] ILR 2021 KAR 338

has misconstrued itself the ratio laid down in the case resulting into erroneous rejection of plaint.

29. Further, learned Senior Counsel submitted that the Trial Court has failed to observe that plaintiff has become the owner in possession and enjoyment of the suit schedule property by virtue of a registered Will dated 01.02.2014 of late Smt.Jayarathna. Subsequently, plaintiff has filed a petition under Section 276 of the Indian Succession Act, 1925, for grant of probate of the Will of Smt.Jayarathna, which is numbered as P & SC No.269/2016 and the District Court has granted the probate of Will. Thus, the judgment of probate Court has attained finality and being the judgment in *rem*, it is binding on the defendant. Further submitted that the revenue records of BBMP, Khata Certificate and extract also reflect the name of plaintiff. Therefore, despite all the evidence on record *prima facie* the Trial Court has wrongly rejected the plaint. Hence, prays to set aside the order

passed by the Trial Court and remand the suit for consideration on merits.

30. Further, learned counsel for the appellants places reliance on the following judgments:

Sl. No.	Particulars
1.	M. Krishnaiah Shetty and Ors. V. Keshava Murthy and Ors **in RFA.No.1807 of 2017. (Krishnaiah Shetty's Case)**
2.	Sushila And Ors. V. Vijaykumar and Ors **Reported In ILR 2021 Kar 338. (Sushila's Case)**
3.	Smt. H.R. Renuka v. Sri. K.H. Umesh and others **in RFA.1104 of 2018. (H.R. Renuka's Case)**
4.	Dalbir Singh and Others v. State of Punjab **reported in (1979) 2 SCC 745. (Dalbir Singh's Case)**
5.	Director of Settlements, A.P. and Others v. M.R. Apparao and Another **reported in (2002) 4 SCC 638. (M.R.Apparao's Case)**
6.	Sadhu Singh v. Gurdwara Sahib Narike and Others **reported in (2006) 8 SCC 75. (Sadhu Singh's Case)**
7.	Haryana Financial Corporation and Another v. Jagdamba Oil Mills and Another **reported in (2002) 3 SCC 496. (Jagadamba Oil Mills Case)**

SUBMISSION OF LEARNED COUNSEL FOR RESPONDENT/DEFENDANT:

31. On the other hand, learned Senior Counsel Sri.Basavaraj submitted that a separate suit challenging the compromise decree in O.S.No.23/2014 is not maintainable, even though the prayer is made, the compromise decree is not binding on the plaintiff as per Order XXIII Rule 3A of CPC. The only remedy is to take recourse of challenging the compromise decree, if the plaintiff is aggrieved before the same Court, which has passed compromise decree in O.S.No.23/2014. The suit is referred to Lok Adalat for compromise and the Lok Adalat is not a judicial authority and not a Court, therefore writ petition is maintainable, but not filing the suit challenging the compromise decree/award passed in Lok Adalat. As per Section 21(2) of the Legal Service Authority Act, 1987 (for short, 'LSA Act'), every award/decree passed in 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/decree. Therefore, if the plaintiff is aggrieved by

the compromise decree in Lok Adalat, when the suitO.S.No.23/2014 is referred to Lok Adalat, then the plaintiff has to challenge the same by filing a writ petition invoking Article 226 and 227 of Constitution of India, but not filing of suit. Therefore, in this way, the suit filed by the plaintiff is barred by law. Thus, the Trial Court has rightly rejected the plaint as per Order VII Rule 11(d) of CPC.

32. Further submitted in MSA No.100010/2021 between Smt.Shantawwa W/o Balappa Bhajantri and Hanumant Bhimappa Bhajantri, argued that even stranger to the compromise decree cannot file a separate suitchallenging the compromise decree is passed. Thus, the suit filed by the plaintiff is not maintainable, this is well considered by the Trial Court by following the dictums of Hon'ble Supreme Court. Therefore, justified the impugned order and prays to dismiss the appeal.

33. Further, learned counsel for the respondents' places reliance on the following judgments:

Sl. No.	List of Authority
1.	M/S Shree Surya Developers and Promoters vs. N. Sailesh Civil Appeal no.439/2022
2.	Triloknath Singh V Anirudh Singh (2020) 6 SCC 629
3.	Muthanappa v Revanna C.R.P.No.262/2022

34. Upon hearing submissions of both the learned counsels and perusing the material on record, the points that arise for my consideration are as follows:

i) Whether, under the facts and circumstances involved in the case, the Trial Court was justified in rejecting the plaint under Order VII Rule 11(d) of CPC as barred by law under Order XXIII and Rule 3A CPC?

ii) What order?

ANALYSIS – REASONINGS:

35. Though it is not necessary to repeat the pleadings in the plaint and written statement, but whatever necessary in brief, is stated herein. It is not disputed that the suit schedule property was originally

acquired by one Sri.S.Narayana as it was allotted by BDA and his wife is Smt.Jayarathna. It is the case of plaintiff that the said Sri.S.Narayana and Smt.Jayarathna were ardent devotees of plaintiff Math and both had no issues. After demise of Sri.S.Narayana, his wife Smt.Jayarathna succeeded to the property, since Smt.Jayarathna as his only legal heir, being clause-I legal heir, she got mutated her name in the property records ofBBMP. The plaintiff is claiming title over the property through the registered Will dated 01.2.2014, stated to have been executed by Smt.Jayarathna and the plaintiff has also obtained probate in P & SC No.269/2016. Thus, in this way, the plaintiff is claiming his right, title and interest over the suit schedule property.

36. But it is the case of defendant that Sri.S.Narayana is brother of father of defendant residing at Holenarasipura. Since,Sri.S.Narayana and Smt.Jayarathna had no issues, therefore Sri.S.Narayana executed the Will dated 22.05.2008. Thus, in this way, the defendant has

become owner of the property and also by virtue of compromise decree in O.S.No.23/2014, in which the schedule property was fallen to the share of defendant. Therefore, it is the contention of defendant that the suit filed by the plaintiff is not maintainable, in view of Order XXIII Rule 3A of CPC. It is the submission made by the counsel for the defendant/respondent that to challenge the compromise decree, the plaintiff is to take recourse either to challenge in the writ petition or approaching the very same Court, which has passed compromise decree in O.S.No.23/2014. Thus, the separate suit is not maintainable.

37. Admittedly, the suit schedule property is situated within the BBMP. The O.S.No.23/2014 was pending before the Court of Senior Civil Judge and JMFC, Holenarasipura. This O.S.No.23/2014 is filed by one Smt.S.N.Sumithra W/o K.G.Rangaswamy against others for the relief of partition and separate possession. The suit schedule property herein is also one of the schedule

properties at schedule No.Q in the said plaint. The defendant herein is arraigned as defendant No.7 in the said suit. The defendant No.7 has filed written statement, but upon perusal of the entire suit in O.S.No.23/2014, the plaintiff-Math herein is not a party to the said suit in O.S.No.23/2014. This factual matrix is not disputed by the defendant. Then the said suit in O.S.No.23/2014 ended in a compromise before the Lok Adalat upon reference made by the Court to Lok Adalat. The Lok Adalat upon accepting compromise petition filed by the parties in O.S.No.23/2014, the suit filed in O.S.No.23/2014 is decreed on 07.07.2015. But before that plaintiff-Math has obtained probate in P & SC No.269/2016 on the Will dated 01.02.2014 stated to have been executed by Smt.Jayarathna. The record discloses that after receiving evidence, the City Civil Court, Bengaluru, has granted probate of Will and testament of Smt.Jayarathna in favour of the plaintiff-Math. Therefore, plaintiff is claiming his title by virtue of the Will and probate in P & SC No.269/2016. On the other hand, defendant is claimingtitle on the base

of adoption taken by Sri.S.Narayana and Smt.Jayarathna. Thus, defendant is claiming title over the property on the base of adoption of defendant by Sri.S.Narayana and Smt.Jayarathna. Therefore, there is a rival claim between the plaintiff and defendant over the suit property as described above.

38. When the plaintiff was not a party in O.S.No.23/2014, on the file of Senior Civil Judge, JMFC, Holenarasipura and plaintiff with allegation that the defendant is claiming title over the suit schedule property by virtue of the compromise decree passed in O.S.No.23/2014, has filed the present suit for declaration that the compromise decree in O.S.No.23/2014 is not binding on plaintiff, so far as it relates to the schedule property herein is concerned. In this context, defendant has filed an application I.A No.19 under Order VII Rule 11(d) of CPC for rejection of plaint as barred by law as per Order XXIII Rule 3A of CPC.

39. Order XXIII Rule 3 of CPC stipulates as follows:

> ***"Compromise of suit*** *– Where it is proved to the satisfaction of the Court that a suit has been adjusted wholly or in part by any lawful agreement or compromise in writing and signed by the parties,or where the defendant satisfies the plaintiff in respect of the whole or any part of the subject-matter of the suit, the Court shall order such agreement, compromise or satisfaction to be recorded, and shall pass a decree in accordance therewith so far as it relates to the parties to the suit, whether or not to the subject-matter of the agreement, compromise or satisfaction is the same as the subject matter of the suit.*
>
> *Providedthat where it is alleged by one party and denied by the other that an adjustment or satisfaction has been arrived at, the Court shall decide the question; but no adjournment shall be granted for the purpose of deciding the question, unless the Court, for reasons to be recorded, thinks fit to grant such adjournment.*"

40. Order XXIII Rule 3A of CPC stipulates as follows:

> *"**Bar to suit**.—No suit shall lie to set aside a decree on the ground that the compromise on which the decree is based was not lawful."*

41. The plaintiff, in the instant suit, has not claimed setting aside the entire compromise decree in O.S.No.23/2014, but had sought for the relief of declaration that the said compromise decree in O.S.No.23/2014 is not binding on plaintiff, so far as it

relates to the schedule property herein. The Trial Court has found fault with this prayer by labelling it as a clever drafting by the plaintiff. The Trial Court while placing reliance on the judgment in the case of ***SURYA DEVELOPERS Case (supra)***,has observed that plaintiff has not at all specifically prayed for setting aside the said compromise decree. Here the plaintiff-Mathis not aggrieved by the entire compromise decree, as the property there in, except schedule property herein, are not concerned with the plaintiff-Math. Therefore, there is no occasion for plaintiff to seek for setting aside the entire compromise decree. To what property the plaintiff-Math is related as the suit schedule property herein, so far as it relates to this property only, the plaintiff had sought for relief of declaration that the compromise decree in O.S.No.23/2014 is not binding on the plaintiff, so far as it relates to the schedule property herein only. Therefore, the Trial Court has misconstrued itself the prayer sought for by plaintiff in the suit. The Hon'ble Supreme Court has observed that there might have been clever drafting in the

case of ***SURYA DEVELOPERS Case (supra),***but the same is not applicable in the present case, so as to term it in the present case as it is a clever drafting. The plaintiff-Math is feeling aggrieved only in respect of schedule property, which was got effected in compromise decree before Lok Adalat, but not other properties. Therefore, there was no need for the plaintiff-Math to seek declaration for setting aside the entire compromise decree in O.S.No.23/2014. In this regard, the Trial Court has misconstrued the prayer made by plaintiff in the instant suit.

42. The Hon'ble Supreme Court in the case of ***SURYA DEVELOPERSCase(Supra)***, has held that by forming of opinion by the Hon'ble Supreme Court that in that suit plaintiff has asked relief of declaration of title, recovery of possession and cancellation of revocation of Gift Deed, declaration for DGPA and Deed of assignment-DGPA and the said reliefs can be granted only when compromise decree is set aside. Therefore, in this context,

the Hon'ble Supreme Court has observed that by asking such multiple reliefs, the plaintiff wants to get his suit as maintainable, which other heads would not be maintainable questioning the compromise decree. But in the present case on hand, the prayer made by plaintiff is not multiple reliefs, but only seeking declaration that the compromise decree dated 07.07.2015, passed in O.S.No.23/2014, as it relevant to the suit schedule property, is not binding on the plaintiff and the other reliefs are consequential reliefs of seeking permanent injunction. Therefore, this makes difference in the factual matrix as the ***SURYA DEVELOPERS Case (supra)***case is not applicable in the present case. Furthermore, in the ***SURYA DEVELOPERS Case (supra)***case,the High Court has set aside the order of rejection of plaint passed by the District Judge and remanded the matter to the Trial Court by observing that the Trial Court has not considered the provisions of Order XXXII Rules 1 to 7 of CPC and the High Court has not at all dealt with the provisions of Order XXIII Rule 3 of CPC and has not considered at all whether

the suit challenging compromise decree is maintainable or not. But in the present case, the plaintiff is claiming title not on any other parties in the suit in O.S.No.23/2014, but claiming title independently on the basis of Will executed by Smt.Jayarathna. This makes difference in factual matrix in the case of ***SURYA DEVELOPERS Case (supra)*** and the said case is not applicable in the present case. In ***SURYA DEVELOPERS Case (supra)*** case, the Hon'ble Supreme Court is correct in observing that plaintiff has made clever drafting by asking several relief of declaration of title and by asking such multiple reliefs, the plaintiff has tried to establish his suit is maintainable by asking relief of compromise decree is not binding on the plaintiff. Therefore, in ***SURYA DEVELOPERS Case (supra)*** case, it was not only asking the relief of the compromise decree is not binding on the plaintiff, but also making it as an ancillary relief but also claimed other multiple reliefs and declaration, otherwise suit is not maintainable. Therefore, the Hon'ble Supreme Court has observed, by asking multiple reliefs and if it was to be held that the suit would

be maintainable, then only other reliefs of declarations would have been granted. In this context, the Hon'ble Supreme Court in ***SURYA DEVELOPERS Case (supra)*** case has observed drafting of plaint by the plaintiff in that case is clever drafting.

43. But the factual matrix in the present case is different that plaintiff has not asked multiple reliefs of declaration, but straightway has asked relief of declaration that the compromise decree in O.S.No.23/2014 is not binding on the plaintiff, so far as it relates to the schedule property herein. But the Trial Court has straightway chosen the wordings and observations of the Hon'ble Supreme Court in the case of ***SURYA DEVELOPERS Case (supra)***andapplied to the present casewithout understanding the difference in factual matrix and straightway has erroneously observed the prayer of plaintiff in the present case is clever drafting, is not correct observation by the Trial Court. The Trial Court before applying the ratio laid down in the case of ***SURYA***

DEVELOPERS Case (supra), ought to have understood the factual matrix involved in the ***SURYA DEVELOPERS Case (supra)***case. But upon perusing the order passed by the Trial Court in the present case, there was no such attempt made by the Trial Court in understanding the factual matrix and ratio laid down in the judgment relied. Therefore, the approach of the Trial Court is found to be palpably erroneous.

44. When plaintiff was not a party in O.S.No.23/2014, except seeking declaration that the judgment and decree passed in O.S.No.23/2014 is not binding on plaintiff, so far as schedule property is concerned, there is no other prayer to be sought for by the plaintiff. Accepting the submission made by learned counsel for the appellant that plaintiff is not concerned with other properties in the compromise decree in O.S.No.23/2014, it is inevitable for plaintiff to seek declaration that compromise decree so far as relating to suit schedule property, is not binding on the plaintiff.

Therefore, this is not amounting to clever drafting and relief sought for by the plaintiff, what ought to be sought for has been sought for by the plaintiff in the suit. Therefore, in this regard, there is a difference in the factual matrix in ***SURYA DEVELOPERS Case (supra)*** case and in the present case. Hence, the ***SURYA DEVELOPERS Case (supra)*** case is not applicable in the present case. The Trial Court has not followed the ratio laid down in ***SURYADEVELOPERS Case (supra)*** case,before applying it in the present case.

45. Further, in the case of ***TRILOKINATH SINGH's Case (supra)***, the factual matrix is that the suit before Civil Court was filed seeking for a declaratory relief that the compromise decree dated 15.09.1994, passed in Second Appeal No.495/86, by the High Court, is illegal, inoperative and obtained by fraud and misrepresentation. The plaintiff has filed a suit for partition, which was dismissed. A First Appeal No.19/84 was also dismissed. Second Appeal No.495/86 before High Court, in which a

compromise decree was entered into between the Sampatiya and Salehari. The Sampatiya had sold property in favour of plaintiff by a registered Sale Deed dated 06.01.1984 and put the plaintiff in possession over the suit property. Then, defendant in the said suit, started making interference in possession of the suit property of plaintiff and on query it was revealed that it was claimed on the strength of a compromise decree entered between Sampatiya and Salehari (Salehari claiming to be the daughter of Kunjan Singh). Therefore, in this context, plaintiff has filed the suit for declaration that the compromise in Second Appeal No.495/86 before the High Court is illegal, inoperative and obtained by fraud and misrepresentation. In this factual matrix, it was held that separate suit filed by plaintiff is not maintainable and accordingly dismissed. It was observed in the cited decision that plaintiff was claiming title through Sampatiya by virtue of Sale Deed. Though plaintiff was not a party in a compromise decree, but was making claim through Sampatiya and not independent of any other party or

transaction. This makes difference in the factual matrix in the cited decision and in the present case rendering the ratio laid down in the cited case is not applicable in the present case.

46. Further, in the ***TRILOKINATHSINGH's Case(supra)*** case, at paragraph No.15, the Hon'ble Supreme Court has discussed the scope of Order XXIII Rule 3 and Rule 3A of CPC, which reads as follows:

> "***15.*** *What has emerged as a legislative intent has been considered in extenso by this Court in Pushpa Devi Bhagat v. Rajinder Singh[2], after taking note of the scheme of Order 23 Rule 3 and Rule 3A added with effect from 1-2-1977. The relevant paragraphs are as under: (SCC p. 576, para 17)*
>
> *"17. The position that emerges from the amended provisions of Order 23 can be summed up thus:*
>
> *(i) No appeal is maintainable against a consent decree having regard to the specific bar contained in Section 96(3) CPC.*
>
> *(ii) No appeal is maintainable against the order of the court recording the compromise (or refusing to record a compromise) in view of the deletion of clause (m) of Rule 1 Order 43.*
>
> *(iii) No independent suit can be filed for setting aside a compromise decree on the ground that the compromise was not lawful in view of the bar contained in Rule 3A.*
>
> *(iv) A consent decree operates as an estoppel and is valid and binding unless it is set aside by the court which passed the consent decree, by an order on an application under the proviso to Rule 3 Order 23.*

> *Therefore, the only remedy available to a party to a consent decree to avoid such consent decree, is to approach the court which recorded the compromise and made a decree in terms of it, and establish that there was no compromise. In that event, the court which recorded the compromise will itself consider and decide the question as to whether there was a valid compromise or not. This is so because a consent decree is nothing but contract between parties superimposed with the seal of approval of the court. The validity of a consent decree depends wholly on the validity of the agreement or compromise on which it is made. The second defendant, who challenged the consent compromise decree was fully aware of this position as she filed an application for setting aside the consent decree on 21-8-2001 by alleging that there was no valid compromise in accordance with law. Significantly, none of the other defendants challenged the consent decree. For reasons best known to herself, the second defendant within a few days thereafter (that is on 27-8-2001) filed an appeal and chose not to pursue the application filed before the court which passed the consent decree. Such an appeal by the second defendant was not maintainable, having regard to the express bar contained in Section 96(3) of the Code."*
>
> *(**emphasis supplied**)*

47. But in the present case, the compromise decree is not held before the Court of Senior Civil Judge, Holenarasipura, but was held before the Lok Adalat, Holenarasipura. Admittedly, the suit O.S.No.23/2014, was referred to Lok Adalat by moving an application on 07.07.2015 and on the same day, the matter was referred to Lok Adalat and Lok Adalat was made to conduct proceedings and the suit was taken up on the same day

for settlement. On the same day i.e., on 07.07.2015, the Lok Adalat, has declared that the matter is settled between the parties. Therefore, basically the compromise decree is not before the Court of Senior Civil Judge, Holenarasipura, butwas before the Lok Adalat at Holenarasipura. The two forums, which the Civil Court and the Lok Adalat are different. When the suit is pending before the Civil Court and parties makes a request to Civil Court for referring the matter to Lok Adalat for settlement, then it is a task of Lok Adalat to put effort to settle the matter between the parties, by holding negotiations. But in the present case, upon considering the records in O.S.No.23/2014, admittedly on 07.07.2015, when the matter is referred to Lok Adalat, on the very same day, the Lok Adalat has declared that suit is compromised between the parties, which is nothing but an artificial settlement before the Lok Adalat in an unnatural way. The fact that on the very same day, dated 07.07.2015, the Lok Adalat has passed the compromise decree, the parties have already arrived at for settlement and were ready with

compromise petition, when the suit O.S.No.23/2014 was pending before the Court and only for the purpose of putting seal by the Lok Adalat and for statistical purpose the suit was referred to Lok Adalat. This is not a real settlement in the eye of law. This Court, in RFA No.100154/2015, dated 25.04.2024, ***(ABHISHEK AND ANOTHER VS. CHOURADDY AND OTHERS)***has observed under the similar circumstances at paragraph Nos.30 and 31, which reads as follows:

> "30. This Court in the case of ***SRI. ANANTHAIAH VS. SMT. GANGAMMA & OTHERS (2015) 3 KCCR 2106*** at Para 12 has held as follows:
>
> > *"12. The functions of Lok Adalats relate purely to conciliation. A Lok Adalath determines a reference on the basis of a compromise or settlement at its instance, and puts its seal of confirmation by making an award in terms of the compromise or settlement as observed by the Apex Court in State of Punjab v. Jalour Singh. Thus, if the parties have already entered into a compromise and report the same by filing a compromise petition before the Court, nothing else is required to be done in the matter and therefore the Civil Court is not justified in referring the same to the Lok Adalat. There was no dispute existing at the time of reference to the Lok-Adalat, which is a condition precedent for reference. When the compromise petition is filed before the Court, it is the obligation on the part of the Court to look into the compromise, find out whether the same is lawful or not. If the compromise is lawful, the Court has to record the same. In a situation like the one on hand if the Judge refers the matter to Lok Adalat, it is a*

clear case of abdication of responsibility of considering the compromise petition by the Judge and refusing to pass an order thereon."

"31. A trend is developed in recent years that just to show statistics that such number of cases are disposed of though already the matters are compromised and nothing remains for negotiation/conciliation for settlement but the compromise petitions filed before the Court are referred to Lok Adalath and then obtained decree in Lok Adalath for statistical purpose. In this way the institution of Lok Adalath is being misused. This is not the purpose of Lok Adalath. It can be said in a simple way that the institution of Lok Adalath means for negotiation and making the parties to arrive at settlement and to pass compromise decree. Therefore, before arriving at compromise in the Lok Adalath there should have been negotiation between the parties in presence of Members in the Lok Adalath. The task of Lok Adalath is making effort to connect the parties to make them to arrive to just conclusion and with the consent of parties in the Lok Adalath the decree can be passed. But in the present case all these principles are flouted."

48. In the present case also, when the suit O.S.No.23/2014 was pending on 07.07.2015, by consent of both the parties, the matter was referred to Lok Adalat and on the very same day i.e., on 07.07.2015, the Lok Adalat has declared that the matter is settled between the parties upon accepting the compromise petition. Therefore, from the very order sheet in O.S.No.23/2014, dated 07.07.2015, the parties in the suit have already

settled the matter and nothing remains in the suit for negotiation in Lok Adalat. Simply the Lok Adalat has accepted the said compromise petition and declared that the suit is compromised between the parties. All these events go to prove that just to put seal on the compromise petition by Lok Adalat, the suit is referred to Lok Adalat. In this way, in the present case, the compromise is effected in Lok Adalat. In this context, this Court in the decision of ***Sri.ANANTHAIAH VS. SMT.GANGAMMA AND OTHERS***[6] ***(Ananthaiah's Case)*** and in RFA No.100154/2015 (supra) has held that a separate suit challenging compromise decree in Lok Adalat is maintainable. Thus, in this way, the separate suit filed by plaintiff is very well maintainable. In RFA No.100154/2015 dated 25.04.2024 (supra) in context of factual matrix of the case at paragraph No.34 observed which reads as follows:

> *"34. The above facts are pleaded and the plaintiffs have produced evidence in this regard. Exs.P-18 to P-58 are the medical records pertaining to deceased Venkareddy proving that the deceased Venkareddy was taking treatment being inpatient in the*

[6] (2015) 3 KCCR 2106

various hospitals. Furthermore, two doctors are examined as PW3 and PW4 proving these facts. As discussed above, PW3 has given evidence that the deceased Venkareddy was taken from the hospital on 26.09.2003 and it is evidence of the PW3 doctor that from that day onwards the deceased Venkareddy has disappeared and accordingly he has lodged complaint before the police. These facts prove the defendant Nos.1 to 3 have hatched a plan on the guise of getting compromise decree through judicial process and Lok Adalath have managed in getting compromise decree at stage by stage. This shows conduct of the defendant Nos.1 to 3 and is relevant as per Section 8 of the Indian Evidence Act proving how the defendant Nos.1 to 3 have played fraud on the Court and before Lok Adalath."

49. The Order XXIII Rule 3A of CPC bars filing a separate suit questioning compromise decree effected in the Civil Court, but not in Lok Adalat. The ratio laid down by the Hon'ble Supreme Court that a party challenges the compromise decree shall approach the very same Court, which has recorded a compromise. But here soon after referring the matter to Lok Adalat and Lok Adalat has passed the compromise decree, then the Court of Senior Civil Judge, Holenarasipura, has become functus officio. Therefore, the remedy lies neither before the Court of Senior Civil Judge, Holenarasipura nor before the Lok Adalat, Holenarasipura. The Court of Senior Civil Judge,

Holenarasipura., has not passed the compromise decree, but Lok Adalat has passed the compromise decree. Before the Lok Adalat,in the present case there was no adjudication of controversial facts. Therefore, the plaintiff is precluded to approach the very same Lok Adalat, as there is no power to Lok Adalat to make adjudication upon the controversial facts. Therefore, in this way, the only remedy available for the plaintiff is to file a separate suit before the Civil Court, in whose jurisdiction the schedule property is situated. In the present case, the suit schedule property is situated in BBMP, Bengaluru, therefore, the plaintiff has rightly filed the suit in the City Civil Court at Bengaluru. This factual matrix in the present case makes a difference with the factual matrix in the cases of ***SURYA DEVELOPERS Case (supra)*** and***TRILOKINATH SINGH Case (supra).*** Therefore, the above cited two decisions are not applicable in the facts and circumstances involved in the present case.

50. Further, learned counsel for the respondent places reliance on the judgment of this Court in CRP No.262/2022, dated 18.07.2023, in which, the facts are that the plaintiffs have filed the suit O.S.No.113/2020 for partition and separate possession. But the defendants therein have filed an application under Order VII Rule 11 of CPC stating that there was already a suit in O.S.No.24/2013 and parties therein have entered into compromise decree and plaintiffs' mother was already party in O.S.No.24/2013. Therefore, mother of plaintiffs was parties in O.S.No.24/2013 and plaintiffs, being children, cannot maintain another suit by challenging the compromise decree effected in O.S.No.24/2013. In that factual matrix it was held that the Order VII Rule 11(d) is allowed and plaint is rejected, thereby given liberty to the plaintiffs to approach the very same Court, in which compromise decree was passed in the suit in O.S.No.24/2013. Therefore, having difference in factual matrix involved in the above cited decisions and in the present case, the above decision is not applicable in the

present case, for the reason that in the said cited decision, the mother of plaintiffs was already party in O.S.No.24/2013 and entered into compromise and decree is passed by the Civil Court, but not before Lok Adalat. Therefore, this makes difference in the factual matrix between cited case and in the present case. Thus, the above said decision is not helpful for the respondent herein in the present case.

51. The Hon'ble Supreme Court, in the catena of decisions, has laid down principle of law, how a ratio decidendi and *obiter dicta* can be applied in the case and what are the criteria to be followed while applying the principle of law laid down in the decision of the Hon'ble Supreme Court in the context of law of precedent. It is worth to bank upon the ratio laid down in this regard by the Hon'ble Supreme Court.

52. The Hon'ble Supreme Court, in the case of ***DALBIR SINGH'S*** **Case (Supra)**[7] at paragraph No.22, has held as under:

> **"***With greatest respect, the majority decision in* ***Rajendra Prasad*** *case (supra) does not lay down any legal principle of general applicability. A decision on a question of sentence depending upon the facts and circumstances of a particular case, can never be regarded as a binding precedent, much less 'law declared' within the meaning of Article 141 of the Constitution so as to bind all Courts within the territory of India. According to the well-settled theory of precedents every decision contains three basic ingredients:*
>
> > *(i) findings of material facts, direct and inferential. An inferential finding of facts is the inference which the Judge draws from the direct or perceptible facts,*
> >
> > *(ii) statements of the principles of law applicable to the legal problems disclosed by the facts; and*
> >
> > *(iii) judgment based on the combined effect of (i) and (ii) above.*
>
> *For the purposes of the parties themselves and their privies, ingredient (iii) is the material element in the decision for it determines finally their rights and liabilities in relation to the subject matter of the action. It is the judgment that estops the parties from reopening the dispute. However, for the purposes of the doctrine of precedents ingredient (ii) is the vital element in the decision. This indeed is the ratio decidendi*[8] *(l). It is not every thing said by a Judge when giving judgment that constitutes a precedent. The only thing in a Judge's decision binding a party is the principle upon which the case is decided and for*

[7](1979) 2 SCC 745

[8]R.J.Walker&M.G.Walker:THE ENGLISH LEGAL SYSTEM, BUTTERWORTHS, 1972, 3rdEd..pp. 123-124

this reason it is important to analyse a decision and isolate from it the ratio decidendi. In the leading case of ***Qualcast (Wolverhampton) Ltd. v. Havnes***[9] *it was laid down that the ratio decidendi may be defined as a statement of law applied to the legal problems raised by the facts as found, upon which the decision is based. The other two elements in the decision are not precedents. The judgment is not binding (except directly on the parties themselves), nor are the findings of facts. This means that even where the direct facts of an earlier case appear to be identical to those of the case before the Court, the Judge is not bound to draw the same inference as drawn in the earlier case."*

53. The Hon'ble Supreme Court, in the case of ***M.R.APPARAO's*****Case (supra)**[10], paragraph No.6,7 and 8 reads as follows:

*"**6.**In view of the rival submissions the following questions arise for our consideration:*

(a) Can the decision of this Court dated 6-2-1986, upholding the constitutional validity of the Amendment Act of 1971 reversing the judgment of the Andhra Pradesh High Court in CAs Nos.398 and 1385 of 1972 (State of A.P. vs. Venkatagiri) and further indicating that the period during which interim payments are payable under the Act ends with the date of the original determination made by the Director under Section 39(1) of the Act, be held to be a law declared by the Supreme Court under Article 141 of the Constitution, or can it be said to be per incuriam, as contended by Mr. Rao, learned counsel appearing for the respondents?

(b) The judgment of the Andhra Pradesh High Court in favour of the respondents passed in Writ Petition Nos. 3293 and 3294 of 1975 not

[9] LR 1959 AC 743 : (1959) 2 AII ER 38
[10](2002) 4 SCC 638

being challenged by way of appeal to the Supreme Court even though it merely followed the earlier decision of the High Court in Venkatagiri case whether has conferred an indefeasible right on the respondents notwithstanding the reversal of the judgment of the High Court in Venkatagiri case by the Supreme Court?

(c) Whether the High Court would be justified in issuing a mandamus in the changed circumstances, namely, Supreme Court reversing the judgment of the High Court in Venkatagiri case inasmuch as for issuance of a mandamus one of the conditionsprecedent, which is required to be established is that the right subsisted on the date of the petition?

(d) Whether the judgment of this Court in Shenoy case[11] requires any re-consideration?

7.*So far as the first question is concerned, Article 141 of the Constitution unequivocally indicates that the law declared by the Supreme Court shall be binding on all Courts within the territory of India. The aforesaid Article empowers the Supreme Court to declare the law. It is, therefore, an essential function of the Court to interpret a legislation. The statements of the Court on matters other than law like facts may have no binding force as the facts of two cases may not be similar. But what is binding is the ratio of the decision and not any finding of facts. It is the principle found out upon a reading of a judgment as a whole, in the light of the questions before the Court that forms the ratio and not any particular word or sentence. To determine whether a decision has "declared law" it cannot be said to be a law when a point is disposed of on concession and what is binding is the principle underlying a decision. A judgment of the Court has to be read in the context of questions which arose for consideration in the case in which the judgment was delivered. An "obiter dictum" as distinguished from a ratio decidendi is an observation bytheCourt on a legal question suggested in a case before it but not arising in such manner as to require a decision. Such an obiter may not have a binding*

[11] 2 (1985) 2 SCC 512

precedent as the observation was unnecessary for the decision pronounced, but even though an obiter may not have a binding effect as a precedent, but it cannot be denied that it is of considerable weight. The law which will be binding under Article 141 would, therefore, extend to all observations of points raised and decided by the Court in a given case. So far as constitutional matters are concerned, it is a practice of the Court not to make any pronouncement on points not directly raised for its decision. The decision in a judgment of the Supreme Court cannot be assailed on the ground that certain aspects were not considered or the relevant provisions were not brought to the notice of the Court (see BallabhadaMathurdasLkhani v. Municipal Committee, Malkapur[7]and AIR 1973 SC 794[8]). When Supreme Court decides a principle it would be the duty of the High Court or a subordinate Court to follow the decision of the Supreme Court. A judgment of the High Court which refuses to follow the decision and directions of the Supreme Court or seeks to revive a decision of the High Court which had been set aside by the Supreme Court is a nullity. (See Narinder singh v. surjit singh[9] and kausalya Devi Bogra v. Land Acquisition officer[10].)We have to answer the first question bearing in mind the aforesaid guiding principles. We may refer to some of the decisions cited by Mr. Rao in elaborating his arguments contending that the judgment of this Court dated 6-2-1986[1] cannot be held to be a law declared by the Court within the ambit of Article 141 of the Constitution. Mr. Rao relied upon the judgment of this Court in the case of M.S.M. Sharma v. Sri Krishna Sinha[11]wherein the power and privilege of the State Legislature and the fundamental right of freedom of speech and expression including the freedom of the press was the subject-matter of consideration. In the aforesaid judgment it has been observed by the Court that the decision in GunupatiKeshavram Reddy v. Nafisul Hasan[12] relied upon by the counsel for the petitioner which entirely proceeded on a concession of the counsel cannot be regarded as a considered opinion on the subject. There is no dispute with the aforesaid proposition of law.

8.*The next decision relied upon by Mr Rao is the case of Supdt. &Remembrancer of Legal Affairs, W.B. v. Corpn. of Calcutta[13].. The observation of Subba Rao, J. in the aforesaid case, in relation to the decision of the Privy Council in the case of Province of Bombay v. Municipal*

Corpn. of the City of Bombay[14] which had been pressed into service by the learned Advocate-General of State of West Bengal, has been pressed into service by Mr Rao. After quoting a passage from the judgment of the Privy Council, this Court held: (SCR p. 181-F)

> *"The decision made on concession made by the parties even though the principle conceded was accepted by the Privy Council without discussion, cannot be given the same value as one given upon a careful consideration of the pros and cons of the question raised."*

The aforesaid observation indicates the care and caution taken by the Court in the matter and therefore, merely because the pros and cons of the question raised had not been discussed the judgment of this Court cannot be held to be not a law declared, as contended by Mr. Rao."

54. The Hon'ble Supreme Court in the case of***JAGADAMBA OIL MILLS* Case (Supra)[12],** has observed at paragraph Nos.19, 20, 21 and 22, which reads as under:

> ***"19.*** *Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of courts are not to be read as Euclid's theorems nor as provisions of the statute. These observations must be read in the context in which they appear. Judgments of courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for Judges to embark upon lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes, their words are not to be interpreted as statutes. In London Graving Dock Co. Ltd. v. Horton[9] (at p. 761) Lord MacDermot observed: (All ER p. 14C-D)*

[12](2002) 3 SCC 496

"The matter cannot, of course, be settled merely by treating the ipsissima verba of Willes, J., as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished Judge."

20. *In Home Office v. Dorset Yacht Co.[10] Lord Reid said (at All ER p. 297g-h), "Lord Atkin's speech … is not to be treated as if it were a statutory definition. It will require qualification in new circumstances". Megarry, J. in (1971) 1 WLR 1062 observed:"One must not, of course, construe even a reserved judgment of even Russell, L.J. as if it were an Act of Parliament." And, in Herrington v. British Railways Lord Morris said: (All ER p. 761c)*

"There is always peril in treating the words of a speech or a judgment as though they were words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case."

21. *Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper.*

22. *The following words of Hidayatullah, J. in the matter of applying precedents have become locus classicus: (Abdul Kayoom v. CIT[12] ,AIR p. 688, para 19)*

"19. … Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect. In deciding such cases, one should avoid the temptation to decide cases (as said by Cardozo) by matching the colour of one case against the colour of another. To decide, therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive."

***

"Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in

thickets and branches. My plea is to keep the path to justice clear of obstructions which could impede it."

55. The Hon'ble Supreme Court in the case of ***MEHBOOB DAWOOD SHAIKH Vs. STATE OF MAHARASHTRA[13],*** has held at paragraph No.12, which reads as under:

".....A decision is available as a precedent only if it decides a question of law. A judgment should be understood in the light of facts of that case and no more should be read into it than what it actually says. It is neither desirable nor permissible to pick out a word or a sentence from the judgment of this Court divorced from the context of the question under consideration and treat it to be complete law decided by this Court. The judgment must be read as a whole and the observations from the judgment have to be considered in the light of the questions which were before this Court. [See CIT v. Sun Engg. Works (P) Ltd. – (1992) 4 SCC 365."

56. The High Court of Delhi in the case of ***SUKRUTI DUGAL Vs. JAHNAVI DUGAL AND OTHERS[14]***, in the context of Order XXIII Rule 3A of CPC, has held at paragraph Nos.12 and 13, which reads as under:

"12. *The aforesaid provision bars a challenge to the consent decree passed under Order 23 Rule 3 CPC. Admittedly, in the present case, the Plaintiff was neither party to the suit bearing CS (OS) 1175/2010, nor a party to the compromise/settlement that has been arrived at between Defendant No. 1 and Defendant No. 3. The*

[13] (2004) 2 SCC 362
[14] 2019 SCC ONLINE DEL 10226

proposed amendments seek a declaration that the compromise between Defendant No. 1 and Defendant No. 3 does not affect the rights of the Plaintiff. To my mind, the reliefs sought to that extent, are superfluous. A compromise between parties cannot affect the rights of a third party, who is not a party to the compromise. Such an aggrieved party can file a suit for appropriate relief disregarding the compromise decree and the same would not be barred by principles of res judicata or estoppel. The Allahabad High Court in the case of Smt. Suraj Kumari v. District Judge Mirzapur, 1990 SCC Online All 459 held as under:-

> *"22. The petitioner's second submission regarding the applicability of O. 23, R. 3A of the Code of Civil Procedure is misconceived the provision is confined only to the parties to the suit. The said provision is not applicable to a stranger to the said compromise decree.* ***A suit by stranger to set aside the compromise decree, which affects his rights is not barred by the said provision****. Order 23, Rule 3A of the Code of Civil Procedure cannot be read dehors its earlier provision of the same chapter. The said provision is only a part of the entire Chapter of Order 23 of the Code of Civil Procedure which prescribes provisions for withdrawal and adjustment of the suit. Order 23, Rule 3 of the Code of Civil Procedure provides for a situation where the parties have arrived at a compromise. Order 23, Rule 3 and Rule 3A of theCode of Civil Procedure as added by Amending Act No. 104 of 1976 read together, makes it clear that a party to the suit is debarred from filing suit for setting aside compromise decree on the ground of being unlawful. Such a party has remedy by moving appropriate application before the Court concerned which has passed the compromise decree.*
>
> *23.* ***The said provision does not bar the present petitioner who was not a party to the said compromise decree to file a suit. As such there is no force in the petitioner's contention that a suit for setting aside the compromise decree entered into between Sri Nagarmal and Smt. Paradevi was barred by O. 23, R. 3A of the Code of Civil Procedure. The suit at the***

instance of present petitioner for setting aside compromise decree entered into between Smt. Paradevi and Sri Nagarmal is maintainable in law. *In support of this contention the petitioner has placed reliance on AIR 1985 KAR 270, Smt. Tarabai v. Krishnaswamy Rao. Since the said provision does not bar the petitioner from filing the suit the decision is of no help to the petitioner."*

(Emphasis supplied)

13. *Similar view has been expressed by the co-ordinate bench of Calcutta High Court in Ashis Kumar Ghosh v. Gopal Chandra Ghosh, 2004 SCC OnLine Cal 173 wherein it was held as under:-*

"9. In the present case, the right was claimed on the strength of an alleged Will purported to be executed by Manmotha Kumar and that too in respect of the two properties out of several of which are accepted by the plaintiffs, seeking to restrain the defendants from proceeding against the third parties with whom no relation or interest of the plaintiff has been established. The alleged Will is to take effect after the demise of the testator, even if the Will was purported to have been executed before the compromise. The persons claiming through the alleged Will purported to be executed by the testator are claiming through the testator, party to the compromise. Therefore, plaintiffs cannot claim to be a stranger. Section 11 CPC restricts re-opening of the case in between the parties or between the parties claiming through the parties to the suit. Therefore, nothing prevented the plaintiffs to take steps within the forum as provided in CPC within the time. However, absence of knowledge having been pleaded, it was open to the plaintiffs to establish their right taking aid of the provisions contained in the Limitation Act. ***The decision in Suraj Kumari (supra) has no manner of application in the present case, inasmuch as in thesaid case, it was held that a person coming to the Court withunclean hands is not entitled to any relief. It does not help Mr.Bhattacharyya inasmuch as in the said decision, it was held that Order 23 Rule 3A is not applicable to a stranger to challenge the compromise decree. Therefore,***

> ***the suit by a stranger to set aside a compromise decree on the ground that compromise was not lawful was held to be maintainable.*** *In the present case, we have already observed that the plaintiff was not a stranger to the compromise decree since the plaintiffs were claiming through Manmotha Kumar Ghosh who was a party to the compromise. The decision in Gosto Behari Pramanik (supra) also does not help in the present case, which, in fact, did not notice the distinction in the various provisions as discussed above."*
>
> ***(Emphasis supplied)***

57. The decision of Division Bench of this Court in ***M. KRISHNAIAH SHETTY's Case (Supra)***, has held that a separate suit challenging compromise decree is maintainable. Some facts in the said decision are necessary to be stated here,under which context, a separate suit challenging a compromise decree is maintainable. That one Anusuya had entered into an agreement of Sale dated 12.1.1998 with plaintiff and defendants No.7 to 10 on 23.06.1998. In respect of the very same schedule properties, respondents No.7 to 10, who was arraigned as defendants No.7 to 10, has filed O.S.No.6350/1999 seeking specific performance of agreement of sale dated 23.06.1998. The said Anusuya

consented to the prayers and reliefs sought for by plaintiffs and O.S.No.6350/1999 was decreed by a compromise. The said compromise decree was sought to be executed in Execution Petition No.2525/2002. But, by then, the said Anusuya has conveyed the suit schedule properties in favour of the plaintiffs under the registered Sale Deeds dated 28.11.2001 and 21.08.2004 in respect of 'B' and 'C' schedule properties respectively. Therefore, plaintiffs filed the applications under Order XXI Rules 97 and 101 R/w Section 151 of CPC in the form of objector application, which was dismissed by the executing Court on 06.03.2013. Then RFA No.502/2013 was filed by the plaintiffs and also filed RFA No.1307/2013.

58. RFA Nos.502 of 2013 and 1307 of 2013 were disposed of by this Court, but no challenge was made to the judgment passed in these two appeals. This Court allowed the appellants to withdraw the appeals reserving liberty to avail appropriate remedy available under the law against the impugned order dated 01.02.2000 passed in

O.S.No.6350/1999, which is a compromise decree. Therefore, RFA No.502/2013 was also permitted to be withdrawn. These two appeals are between the same parties and same properties. Based on the liberty reserved, the appellants filed a suit in O.S.No.7337/2016. Since appellants were not parties to the compromise decree, this Court had observed that they could not have sought to recall the said compromise decree and also, they could not file appeal against the said compromise decree. In this context, this Court findsrightful action of the plaintiff to file O.S.No.7337/2016. Hence the suit is maintainable.Therefore, this Court found fault with the Trial Court in rejecting the plaint as per Order VII Rule 11(d).

59. This Court in the case of ***M. KRISHNAIAH SHETTY's Case (Supra)*** has observed at paragraph No.21 as follows:

> *"21. But in the instant case, the appellants herein are not parties to the said compromise and they have the appropriate remedy of filing a separate suit so as to contend that the compromise arrived at in*

> *o.s.no.6350/1999 dated 01.02.2000 is not binding on them. Hence, the judgments relied upon by the learned counsel for respondent nos.7 to 10 are of no assistance to them."*

60. Therefore, on the facts and circumstances therein and in the present case, the common element is that the plaintiffs were not parties in the suit, which was ended in compromise. Therefore, the ratio laid down in ***M. KRISHNAIAH SHETTY's Case (Supra),*** is applicable in the present case.

61. Further, this Court in the case of ***SMT.SUSHILA'sCase (Supra)***has observed at paragraph Nos.15 and 16 as follows:

> *"15. R.3A states that no suit shall lie to set aside on the ground that the decree based on the compromise was unlawful. Obviously, the compromise referred to in R 3A can only be referable to the compromise envisaged in R.3. As stated earlier, under R.3. a compromise can be recorded only between the parties to the suit and not between persons who are not parties to the suit.*
>
> *16. Thus, the bar contemplated under Rule 3A would be applicable only to the persons who were parties to the compromise thereby meaning parties to the suit and it would have not application to the persons who are not parties to the suit."*

62. In ***SMT.SUSHILA's Case (Supra)*** also the facts are that defendants No.1 to 4 filed O.S.No.545/2014 for partition and separate possession and the plaintiff has been arrayed as defendant No.5. During pendency of the suit, the suit was dismissed against him on the basis of memo filed by defendants No.1 to 4. Therefore, he was deleted from array of parties and thereafter, defendants No.1 to 4, who filed O.S.No.545/2014 entered into compromise behind back of defendant No.5 and the said compromise decree did not bind on him. Thereafter, the plaintiff (the defendant No.5 in O.S.No.545/2014) has filed a suit challenging the said compromise decree, then application is filed under Order VII Rule 11(a) of CPC and the Trial Court has rejected the said application on the reason that the provisions of Rule 3A of Order XXIII could be applied only to a person who was party to the compromise decree and the said provision would have no application to a person who was not party to the suit and hence held that there was no bar to file fresh suit challenging the compromise decree. Then, upon revision

petition being filed by the defendants, this Court has laid down law as above stated that when the plaintiff was not party in the compromise decree that does not bind on him. Hence, Order XXIII Rules 3 and 3A of CPC are applicable only to the parties in the suit. Therefore, upheld the order passed by the Trial Court.

63. Under the facts and circumstances in ***SMT.SUSHILA's Case (Supra)***, the ratio laid down therein is applicable also to the present case. In the present case also, the plaintiff was not party in O.S.No.23/2014. Therefore, the compromise decree in O.S.No.23/2014 is not binding on the plaintiff and accordingly filed suit for declaration declaring that the compromise decree in O.S.No.23/2014 is not binding on him so far as suit property is concerned.

64. This Court, in ***SMT.SUSHILA's Case (Supra)*** has distinguished the judgment in ***TRILOKINATHSINGH'sCase (Supra)*** at paragraph Nos.22 and 23,which is held as follows:

> *"22. As far as the reliance placed on the decision of the Hon'ble Supreme Court is concerned, as could be noticed, in the case of TRILOKI NATH SINGH vs. ANIRUDH SINGH (D) THR. LRs. AND OTHERS (supra) itself, in that case, the person who had filed a suit challenging the compromise was claiming his rights under a person who was a party to the compromise that had been entered into in the said suit and in that context the Apex Court had held that even if the plaintiff was not a party, the bar under Rule 3A would apply.*
>
> *23. As could be seen from the above, that is not the scenario in this case. In the instant case, the plaintiff was not claiming any rights under any of the persons who were parties to the compromise petition. His claim was based on his independent right to seek for a share in the suit properties, which he had acquired by birth, and not from or through any of the parties to the compromise. I am therefore, of the view that the judgments relied upon by the Learned Counsel do not support his submissions. As a consequence, this revision lacks merit and is accordingly dismissed.*
>
> *In view of the dismissal of the appeal, IA.No.1/2016 does not survive for consideration."*

65. Therefore, in the present case also, the plaintiff was not party in O.S.No.23/2014 and the plaintiff is not claiming rights under any of the parties whoever in the suit O.S.No.23/2014, but he is claiming independently on the basis of the Will. Therefore, the ratio laid down in ***SMT.SUSHILA's Case (Supra)***, is applicable in the present case also.

66. Further, this Court in ***H.R. RENUKA's*Case*(Supra)*** as held in the cited case, this Court on the facts and circumstances therein has held separate suit challenged compromise decree wherein the plaintiff was not party in the suit, is maintainable. It is held at paragraph No.8 as follows:

> *"8. After hearing both sides, it is to be stated that the conclusion of the trial court about non maintainability of the suit cannot be accepted. There is no dispute with regard to the fact that she was not a party to the suit O.S.No.6448/2011. It was a suit filed by the daughters of K.S.Hanumanthaiah against their brothers and some others seeking partition. May be that the plaintiff's husband was a party to the suit, but the suit was fought on a different footing altogether. The plaintiffs in that suit might have contended that they were entitled to a share as the suit property belonged to the joint family. Even in the compromise recorded in the said suit, the plaintiff was not a party. Therefore the question that really arises is whether the plaintiff can question the compromise by making an application in a suit to which she was not a party. No doubt order XXIII Rule 3A CPC bars a separate suit and even the Hon'ble Supreme Court in the case of Puspha Devi Bhagat (supra) has clearly stated that a separate suit is not maintainable, but a subtle distinction can be pointed out in a situation as appears in the case on hand. Separate suit is not maintainable when party to the suit wants to assail the compromise. If a person who is not a party to the suit seeks to avoid the compromise based on his or her independent right or title over the property in question, he or she can maintain a separate suit. Making an application under Order XXIII Rule 3A in the same suit may not be necessary. Here in this case, the plaintiff has founded the reliefs on the strength of a will said to*

have been executed by her father-in-law K.S.Hanumanthaiah. If he had executed the will much before the institution of the suit O.S.No.6448/2011 and without the knowledge of the said will, suit was instituted by the daughters and that they entered into compromise, the right of the plaintiff to claim property that has been bequeathed to her does not extinguish. Looked in this view, certainly suit is maintainable. However it is subject to proof of the will and other factors. In these circumstances, I am of the opinion that the trial court should not have held that suit is not maintainable."

67. Therefore, the facts and circumstances in the above cited case are that the appellants were not parties in O.S.No.6448/2011 filed for partition by brothers, which ended in compromise between the brothers.In the said O.S.No.6448/2011 one of the sisters had filed separate suit challenging the said compromise decree and in this context, this Court has held that where the appellant/sister was not party in O.S.No.6448/2011, then said compromise decree is not binding on her and moreover the appellant/sister claiming share independently on the basis of the Will stated to have been executed by her father-in-law/K.S.Hanumantthaiah. Therefore, in this facts and circumstances involved in the cited case, the above ratio is laid down by holding that

separate suit is maintainable. In the present case also the plaintiff is claiming right independently through Will, but not through the parties in O.S.No.23/2014. Therefore, the ratio laid down in ***H.R.RENUKA CASE (Supra)*** is applicable in the present case also.

68. Upon considering the principle of law laid down and the *ratio decedendi* propounded in the above cited decisions, separate suit is maintainable challenging the compromise decree provided.

1. He was not party in the suit ended in compromise decree.
2. His/her claim must be independent right, but not through the parties whoever in the suit ended in compromise although he/she was not party.

69. Therefore, upon considering the Order XXIII Rules 3 and 3A of CPC, if any compromise is effected in the suit, it is only binding on the parties in the suit, but not to others who are not party in the suit. The compromise in the suit is not adjudication or

pronouncement of judgment on merits, but it is having characteristic of a contract between the parties. The Court upon compromise petition filed under Order XXIII Rule 3, is passing the decree on the basis of terms and conditions in the compromise decree, if it is not repugnant to law thus it is pure contract between the parties in the suit. Therefore, if a compromise decree is passed by invoking Order XXIII Rule 3 CPC, it is only binding on the parties not to any other person.In this context,Order XXIII Rule 3A of CPC was inserted barring a person who was party in the suit ended in compromise decree to file once again a suit challenging the said compromise decree. A person who may be party in the suit ended in compromise, but if the said compromise is by playing fraud or misrepresentation or any other unlawful means can file separate suit, but that is not in the present case. Herein the present case, the plaintiff was not party in O.S.No.23/2014 on the file of the Court of the Senior Civil Judge and JMFC, Holenarasipura. Therefore, the bar created under Order XXIII Rule 3A of CPC is only between

the parties who are in compromise decree, but is not applicable to the other persons,who are not parties in the suit ended in compromise. A person who is not party in the suit ended in compromise is claiming his right independently, but not through any other parties in the suit,can maintain separate suit challenging a compromise decree. In this principle, the suit filed by the plaintiff is very well maintainable and the Trial Court has misconstrued the provisions in this regard and the judgment of Hon'ble Supreme Court referred in the impugned order. Therefore, the order passed by the Trial Court requires to be set aside.

70. Further, in the present case the compromise decree is passed in Lok Adalat and not by the Court of Senior Civil Judge and JMFC, Holenarasipura. Therefore, in this regard also Order XXIII Rule 3A of CPC is not applicable in the present case so as to reject the plaint.

71. Sections 19, 20 and 21 of the Legal Services Authorities Act, 1987 (hereinafter referred to as 'the LSA

Act' for short) are reproduced as below for proper understanding of the word "Parties" stated in these provisions.

> *"[3][19. Organisation of Lok Adalats.—(1) Every State Authority or District Authority or the Supreme Court Legal Services Committee or every High Court Legal Services Committee or, as the case may be, Taluk Legal Services Committee may organize Lok Adalats at such intervals and places and for exercising such jurisdiction and for such areas as it thinks fit.*
>
> *(2) Every Lok Adalat organised for an area shall consist of such number of—*
>
> *(a) serving or retired judicial officers; and*
>
> *(b) other persons,of the area as may be specified by the State Authority or the District Authority or the Supreme Court Legal Services Committee or the High Court Legal Services Committee, or as the case may be, the Taluk Legal Services Committee, organising such Lok Adalat.*
>
> *(3) The experience and qualifications of other persons referred to in clause (b) of sub-section (2) for Lok Adalatsorganised by the Supreme Court Legal Services Committee shall be such as may be prescribed by the Central Government in consultation with the Chief Justice of India.*
>
> *(4) The experience and qualifications of other persons referred to in clause (b) of sub-section (2) for Lok Adalats other than referred to in sub-section (3) shall be such as may be prescribed by the State Government in consultation with the Chief Justice of the High Court.*
>
> *(5) A Lok Adalat shall have jurisdiction to determine and to arrive at a compromise or settlement between the parties to a dispute in respect of—*
>
> *(i) any case pending before; or*

(ii) any matter which is falling within the jurisdiction of, and is not brought before,
any Court for which the Lok Adalat is organised:

Provided that the Lok Adalat shall have no jurisdiction in respect of any case or matter relating to an offence not compoundable under any law.]

***[1][20. Cognizance of cases by Lok Adalats.**—(1) Where in any case referred to in clause (i) of sub-section (5) of section 19,—*

(i) (a) the parties thereof agree; or
(b) one of the parties thereof makes an application to the Court, for referring the case to the Lok Adalat for settlement and if such court is prima facie satisfied that there are chances of such settlement; or

(ii) the court is satisfied that the matter is an appropriate one to be taken cognizance of by the Lok Adalat, the Court shall refer the case to the Lok Adalat:

Provided that no case shall be referred to the Lok Adalat under sub-clause (b) of clause (i) or clause (ii) by such court except after giving a reasonable opportunity of being heard to the parties.

(2) Notwithstanding anything contained in any cither law for the time being in force, the Authority or Committee organising the Lok Adalat under sub-section (1) of section19 may, on receipt of an application from any one of the parties to any matter referred to in clause (ii) of sub-section (5) of section 19 that such matter needs to be determined by a Lok Adalat, refer such matter to the Lok Adalat, for determination:

Provided that no matter shall be referred to the Lok Adalat except after giving a reasonable opportunity of being heard to the other party.

(3) Where any case is referred to a Lok Adalat under sub-section (1) or where a reference has been made to it under sub-section (2), the Lok Adalat shall

proceed to dispose of the case or matter and arrive at a compromise or settlement between the parties.

(4) Every Lok Adalat shall, while determining any reference before it under this Act, act with utmost expedition to arrive at a compromise or settlement between the parties and shall be guided by the principles of justice, equity, fair play and other legal principles.

(5) Where no award is made by the Lok Adalat on the ground that no compromise or settlement could be arrived at between the parties, the record of the case shall be returned by it to the court, from which the reference has been received under sub-section (1) for disposal in accordance with law.

(6) Where no award is made by the Lok Adalat on the ground that no compromise or settlement could be arrived at between the parties, in a matter referred to in sub-section (2), that Lok Adalat shall advice the parties to seek remedy in a court.

(7) Where the record of the case if returned under sub-section (5) to the court, such court shall proceed to deal with such case from the stage which was reached before such reference under sub-section (1).]

21. Award of Lok Adalat.—*[1][(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."

72. Upon combined reading of Sections 19 and 20 of the LSA Act, the Lok Adalat shall have jurisdiction to determine and to arrive at a compromise or settlement between the parties to a dispute and wherein any case referred to in clause (i) of Sub Section (5) of Section 19, if the parties agree or one of the parties thereof makes an application to the Court for referring the case to Lok Adalat, then the Lok Adalat shall negotiate and draw a compromise decree/award. Therefore, Lok Adalat shall pass a compromise decree/award between the parties who are before it, but not against other persons, who are not parties in the said suit. Therefore, as per Section 21 of the LSA Act, the award/decree passed in Lok Adalat is final and binding on all the parties in dispute. Here, the word "Parties" stipulated in Sections 19, 20 and 21 as above stated are the only parties in the said suit/case, but not on other persons. Therefore, Section 21 of the LSA Act creates a bar to the party preferring an appeal against the award passed by the Lok Adalat, who has participated in Lok Adalat.

73. When the plaintiff herein is not party in O.S.No.23/2014 pending on the file of the Court of Senior Civil Judge and JMFC, Holenarasipua, then there is no question of preferring the appeal challenging the compromise decree passed in O.S.No.23/2014. Also the plaintiff is not party before the Lok Adalat where O.S.No.23/2014 is compromised, then he could not have approached the Lok Adalat as the Lok Adalat is not a Court and is only a forum for settling the cases without adjudication. Therefore, when there is no power given to Lok Adalat for making the adjudication, then the plaintiff also could not have approached Lok Adalat in which compromise decree came to be passed. Also, the plaintiff could not prefer a writ petition for the reason that when the plaintiff is asserting his right through Will, then on the aspect of the Will the Writ Court could not adjudicate the disputed facts involved in the case. Where plaintiff is asserting his right through the Will that could not be adjudicated in the writ petition under Articles 226 and 227

of the Constitution of India,then the only remedy available for the plaintiff is to file separate suit challenging the compromise decree and that is what is done in this case by the plaintiff. Therefore, the plaintiff being left with no other alternative way for the reasons above stated has filed separate suit in O.S.No.10414/2015 before the City Civil Court at Bengaluru, since the suit schedule properties situated within the jurisdiction of the City Civil Court, Bengaluru. Under these circumstances, the bar under Order XXIII Rule 3A of CPC is not applicable in this present case to oust the plaintiff for filing the above cited suit.

74. Therefore, in the aforestated discussions and reasonings, the suit filed by the plaintiff is very well maintainable challenging the compromise decree passed in O.S.No.23/2014 as the compromise decree in respect of suit property is not binding on the plaintiff. It is not the case of the plaintiff's that challenging the whole compromise decree in O.S.No.23/2014, but only the relief claimed is the compromise decree in O.S.No.23/2014 is

not binding on the plaintiff insofar as suit schedule property is concerned.

75. What naturally the plaintiff ought to ask the relief that is correctly sought for by the plaintiff. Hence, it is not amounting to clever drafting as it is wrongly observed by the Trial Court while rejecting the plaint. Hence, for the aforesaid reasons, the impugned order passed by the Trial Court is notcorrect and not legaland thus suit is maintainable. Therefore, the impugned order is liable to be set aside. The matter is remanded to the Trial Court for fresh consideration in accordance with law on merits. Accordingly, I answer Point No.1 in the ***Negative***and Point No.2is answered as per the final order.

Hence, I proceed to pass the following:

ORDER

i. The appeal is ***allowed***.

ii. The order dated 17.08.2023 passed on I.A.No.19 filed under Order VII Rule 11(d) of CPC by the Court of LXI Additional City Civil

and Sessions Judge, Bengaluru (CCH-62)in O.S.No.10414/2015, is hereby set aside.

iii. The suit in O.S.No.10414/2015 is remanded to the Trial Court for fresh consideration in accordance with law on merits.

iv. Since the matter is of the year 2015, the Trial Court shall take recourse to dispose of the suit as expeditiously as possible.

v. No order as to costs.

Sd/-
(HANCHATE SANJEEVKUMAR)
JUDGE

SRA para 1 to 22& 57 to end
PMP para 23 to 56