

*** THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO**

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+ SECOND APPEAL No. 652 of 2014

% Dated 30.03.2015

Srikakolapu Rama Mohana Rao

s/o Venkanna, aged about 53 years

R/o D.No.7-128, Vadapalem,

Kothapeta, East Godavari District Appellant

Vs.

\$ Srikakolapu Narasimha Murthy

S/o Venkanna, aged 64 years

East Godavari District and 5 others Defendants

! Counsel for the petitioner : Sri V.L.N. Gopala Krishna Murthy

^ Counsel for the respondents : Sri P. Rajesh Babu

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? Cases referred

THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

SECOND APPEAL NO.652 of 2014

JUDGMENT:

The plaintiff is the appellant herein. He instituted Civil Suit O.S.No.11 of 1985 on the file of Subordinate Judge's Court at Razole seeking partition of the plant 'A' schedule immovable properties into 24 equal shares by metes and bounds and to allot 7 such shares to the plaintiff and to put him in separate possession thereof after eviction of the defendants therefrom. He also prayed for partitioning the plant 'B' schedule movable properties into 24 equal shares by metes and bounds and to allot 7 such shares to the plaintiff and to direct the 1st defendant to deliver possession of the same to the plaintiff, failing which a decree may be passed to recover from the 1st defendant the value of the properties covered by such share together with interest at the rate of 12% p.a. from the date of presentation of the plaint till the date of its realization. The plaintiff also prayed to direct the 1st defendant to render accounts of income realized by him from the plant 'A' and 'B' schedule properties for two years immediately preceding the presentation of the plaint.

A preliminary decree was passed in the suit on 06.01.1997 in the following terms:

Item Nos.1 and 3 to 9 of plant 'A' schedule property was ordered to be partitioned into 24 equal shares by metes and bounds and allotted 7 such shares each to the plaintiff, 1st defendant and the 2nd defendant. One such share each was allotted to the defendant Nos.3, 4 and 5. Delivery of possession of the respective shares was ordered after evicting the 1st defendant therefrom. Past profits for a period of two years prior to the filing of the suit and mesne profits from the date of suit till date of delivery of possession with respect to the share allotted to him, of the properties of plant 'A' schedule was also ordered. In all other respects, the suit claims were rejected.

In pursuance of the preliminary decree, the plaintiff filed I.A.No.207 of 2000 for passing final decree. Final decree was passed on 13.07.2000. Thereafter, I.A.No.13 of 2001 was moved for amendment of the final decree dated 13.07.2000 and the said I.A. was allowed on 03.04.2002 determining the profits from 22.04.21983 to 13.07.2000. I.A.No.12 of 2001 was moved under Order 20 Rule 18 C.P.C. for appointment of an advocate-commissioner for partition of item Nos.1 and 3 to 9 of

the petition schedule properties into 24 equal shares by metes and bounds and for allotting 7 such shares to the petitioner/decreed holder. Along with other related I.As, I.A.No.12 of 2001 was allowed on 08.03.2010, determining as to how much of land each of the plaintiff/decreed holder, the 1st defendant and 2nd defendant would get towards their 7/24th share respectively, in all the items 1 and 3 to 9 of the petition schedule and in view of the practical difficulty and the utility ordered their sale so that sale proceeds can be distributed to all the sharers.

The plaintiff/decreed holder carried the matter in appeal against the said order dated 08.03.2010 by preferring A.S.No.28 of 2010 on the file of II Additional District Judge, East Godavari at Amalapuram. The learned II Additional District Judge by his order dated 30.07.2014 dismissed the appeal and confirmed the common order passed by the Senior Civil Judge, Kothapeta in I.A.No.12 of 2001 and other related I.As in O.S.No.11 of 1985. Calling in question, the correctness of the judgment rendered in A.S.No.28 of 2010 by the learned II Additional District Judge and the common order passed by the learned Senior Civil Judge, Kothapeta in I.A.No.12 of 2001 in O.S.No.11 of 1985, the present second appeal is preferred.

Heard Sri V.L.N.G.K.Murthy, learned senior counsel for the appellant and Sri P.Rajesh Babu, learned counsel, who entered appearance for the contesting respondents.

Sri V.L.N.G.K.Murthy, learned senior counsel, would submit that while the plaintiff/decreed holder has no objection for putting item No.8 of the petition schedule property (house property) in I.A.No.12 of 2001 to sale as it is not capable of being partitioned/divided exactly and 7/24th portion thereof cannot be carved out to be delivered to the plaintiff/decreed holder and instead he would be entitled to receive 7/24th value obtained by putting it to sale. Learned counsel would submit that in all other items of immovable properties, which are essentially agricultural lands, the decreed holder is entitled to retain his share of the landed properties, instead of being offered the money value thereof by selling away those lands.

Sri Rajesh Babu, learned counsel, would point out that when there are several items of immovable properties situated in various villages and in various survey numbers, one has to necessarily partition them equally amongst all the sharers, so that no one will get any additional advantage or benefit to the detriment and loss of other sharers. Learned counsel would also point out that item Nos.8 and 9 of petition schedule (I.A.No.12 of 2001) are house properties, which are incapable of being divided exactly into 24 portions, for the decree holder, 1st defendant and the 2nd defendant in the suit to be delivered respectively 7/24 shares thereof. He therefore, submits that the final decree drawn by the Senior Civil Judge as affirmed by the learned II Additional District Judge need not be altered at all. It is a most equitable method worked out for common good of all sharers, is the plea of the respondents.

It is appropriate to bear in mind that in a suit for partition, all the co-sharers are joint owners of the properties, which are liable to be divided amongst themselves as per one's entitlement. No one can have an exclusive right over any such property to the detriment of the other sharers, but at the same time, if one of the sharers is anxious to retain one or the other of the immovable properties, to the extent it is feasible, for whatever be the intrinsic merit behind such a claim, such a claim deserves to be given its due consideration. A co-owner cannot be compelled to part with his immovable property and put it to compulsory sale so long as the equities can be worked out in such a manner as to enable him to retain conveniently and without any detriment to the other co-owner's interests a portion of the immovable properties which as far as is practicable represent to the nearest cumulative value of his overall share in all the items of immovable properties put together. So long as such choice does not visit the other co-sharers with any particular hardship, which cannot be compensated suitably in monetary terms. That would obviate the necessity of putting all the immovable properties owned by all the shares commonly to invariable sale. Some of the immovable properties can thus be spared from being sold. Illustratively put, if a particular item of the petition schedule lands is, let us say, of Ac.1.50 cts extent only, but its value is near about the 7/24th of the overall value of all the items ordered to be partitioned, if the decree holder is desirous of retaining it, he may be allowed to retain it, instead of compulsorily putting it to sale and then offer 7/24th portion of the sale proceeds thereof to him.

Therefore, going by the good, bad and indifferent qualities of all the lands and also taking into account their respective values, the decree holder should be allowed an option to retain the available lands in one village to the nearest valuation corresponding to his overall 7/24 share value. When the plaintiff/decreed holder is interested in retaining the lands, instead of being forced to sell away his share of lands, the advocate-commissioner should have worked out the feasibility thereof while finalizing his report instead of dividing every piece of petition schedule properties into 24 bits and pieces, consequently to realize that such properties are incapable of being partitioned and cannot be conveniently delivered possession of. For instance, it is suggested that lands of certain extents which are ordered to be partitioned are available in Avidi Village, Vanapalli village and Pasupalli village. Therefore, an option should have been allowed to the plaintiff/decreed holder to choose to retain the lands to the nearest extent of value of his share and the lands so chosen by him, if, exceeds the value of the total 7/24 share in all the items put together, the plaintiff/decreed holder should be directed to deposit the differential amount to the credit of I.A.No.12 of 2001, so that the same can be made over to the other sharers appropriately. Similarly, if the value of the lands proposed to be retained by him is less than the overall value of 7/24 share of the plaintiff/decreed holder, in all the items so decreed, after the sale of rest of the lands the differential amount may be made over to him from the sale proceeds. It should be noted that a similar option for retaining the lands representing as nearer as is possible to the 7/24 share from the rest of the lands shall be allowed to be exercised by the 1st defendant and 2nd defendant.

So far as the house properties are concerned, since the plaintiff/decreed holder has agreed for sale of the same, the sale proceeds thereof would be distributed ratably amongst all the sharers.

The plaintiff/decreed holder is directed to exercise his option in writing within thirty days by filing an appropriate memo before the Court of Senior Civil Judge, Kothapeta, disclosing the particulars of lands preferred to be retained by him. Memo should be filed by serving copies in advance on the opposite side. Thereafter, further period of 30 days should be accorded to defendant Nos.1 and 2, respondents herein

for retention of lands equivalent to their respective shares subject to the adjustment of differential amount in the same manner as was indicated supra for decree-holder, if they so desire. In the event, the choice exercised by any of the sharers happened to be the same item of the petition schedule, then, the tie, be resolved by drawing lots.. If necessary, then the rest of the lands be put to sale.

Accordingly, the order passed in I.A.No.12 of 2001 along with other I.As, as confirmed in A.S.No.28 of 2010 stands modified and only to this limited extent the second appeal stands allowed in view of the legal principle that it is not necessary and incumbent that each item of the immovable properties in a suit for partition need be divided by metes and bounds in a final decree, if any of the sharers is desirous of retaining any of the properties without, possibly altering it's physical integrity and instead their comparative valuation can be kept in view and the final decree can be modulated accordingly. No order as to costs.

The miscellaneous petitions, if any pending in this appeal, shall stand closed.

JUSTICE NOOTY RAMAMOHANA RAO

30.03.2015

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