

HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

Civil Revision Petition Nos.3833 of 2013 and 1880 of 2015

Date: 14-12-2015

C.R.P.No.3833 of 2013

Between:

M.K. Anjaneyulu and 4 others

.... Petitioners

AND

M.K. Jayalaxmi

.... Respondent

C.R.P.No.1880 of 2015

Between:

Anantha Laxmi and 3 others

.... Petitioners

AND

M.K. Jayalaxmi

.... Respondent

HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

Civil Revision Petition Nos.3833 of 2013 and 1880 of 2015

COMMON ORDER:

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These two Civil Revision Petitions are being disposed of by this common order as they are filed by the legal representatives of the deceased 1st defendant.

O.S.No.386 of 1987 was filed for partition against the 1st defendant and two other defendants. The said suit was dismissed

for default on 18-01-1996 and later on the same was decreed on 10-01-2003, after setting the 1st defendant ex parte. The 1st defendant filed I.A.No.1339 of 2003 on 07-06-2003 seeking condonation of delay of 120 days in filing the petition to set aside the preliminary decree dated 10-01-2003 and during the pendency of the same, he died on 11-12-2007. In the meanwhile, the plaintiff filed I.A.No.781 of 2003 for passing a final decree and the legal representatives of the deceased 1st defendant were brought on record on 25-07-2008. After receipt of notices, the legal representatives of the deceased 1st defendant filed I.A.No.3144 of 2008 along with two other applications to come on record as legal representatives of the deceased 1st defendant in the application filed by the 1st defendant in I.A.No.1339 of 2003 seeking condonation of delay of 120 days. I.A.No.3144 of 2008 is an application seeking condonation of delay of 149 days in coming on record as the legal representatives of the 1st defendant. The said application was dismissed on 05-10-2009. Challenging the dismissal of the said application, the petitioners filed C.R.P.No.5797 of 2009 and the same was allowed on 28-02-2013. As a result of allowing of the said C.R.P., the application filed by the petitioners seeking condonation of delay in I.A.No.3144 of 2008 is allowed, but the other two applications to set aside the abatement and to come on record as legal representatives are pending in I.A.(SR)No.16381 of 2008 and I.A.(SR)No.16382 of 2008. The trial Court dismissed I.A.No.1339 of 2003 on 05-10-2009 along with applications in I.A.No.3144 of 2008 and challenging the same, C.R.P.No.3833 of 2013 is filed before this Court and it is one of the above two revision petitions.

In the meanwhile, the plaintiff filed I.A.No.1304 of 2014 in I.A.No.781 of 2003 seeking amendment of the preliminary decree

more particularly the plaint schedule property and when the said application was allowed by order dated 19-01-2015, C.R.P.No.1880 of 2015 is filed.

So far as C.R.P.No.3833 of 2003 is concerned, in view of allowing C.R.P.No.5797 of 2009 earlier by this Court on 28-02-2009, this revision petition has to be allowed by setting aside the order in I.A.No.1339 of 2003, dated 05-10-2009 as the C.R.P.No.5797 of 2009 arose out of an order in I.A.No.3144 of 2008 in O.S.No.386 of 1987. Thus, C.R.P.No.3833 of 2013 is allowed.

So far as C.R.P.No.1880 of 2015 is concerned, the Court below passed an order on 19-01-2015 allowing the amendment of A-schedule property by amending the preliminary decree as well as final decree petition, the effect of the said amendment is that out of 15 survey numbers in A-schedule property, the relief is now confined to only 5 items in A-schedule property, but with varied extents to the original extents of the plaint schedule property in respect of 15 items of Ac.56.35 guntas. In respect of B-schedule property, survey numbers remained same, but the extent is changed from Ac.5.23 guntas to Ac.4.23 guntas.

Now the point for consideration in C.R.P.No.1880 of 2015 is whether the preliminary decree can be amended subsequent to its passing on the application of the plaintiff or not?

Learned counsel for the plaintiff relied on a decision of a Division Bench of this Court in **Somireddi Burrayya and others v. Somireddi Atchayamma**^[1]. He submits that in view of authoritative pronouncement of the Division Bench, the Court is empowered to amend the preliminary decree not only under Order 6

Rule 17 but also under Section 153 C.P.C. But, the learned counsel for the respondents herein submits that the said amendment cannot be allowed without considering the objections raised by the petitioners. He submits that he filed certain documents in I.A. (SR) No.18035 of 2014 dated 19-11-2015 and without considering the same, the impugned order was passed.

Though there is no objection for amendment of the preliminary decree after its passing by showing sufficient cause, the Court should take into consideration the objections raised by the other parties and in the absence of the same, the impugned order passed by the Court below on 19-11-2015 is set aside and the matter is remanded to the learned Principal Senior Civil Judge, Ranga Reddy for considering the objections raised by the petitioner herein and pass appropriate orders thereon in accordance with law.

Since the suit is of the year 1987 and the plaintiff is waiting for the fruits of the decree, it is needless to observe that the trial Court shall consider the pending applications of the petitioners and also the application filed by the plaintiff seeking amendment of the preliminary decree and the petition for final decree within three months from the date of receipt of the order. Since the Advocate Commissioner had already filed his report, it is open to the trial Court to pass a final decree in accordance with law as expeditiously as possible.

The Civil Revision Petitions are allowed accordingly. No costs. As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed.

A. RAMALINGESWARA RAO, J

Date: 14-12-2015

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[\[1\]](#) AIR 1959 (AP) 26 = 1958 ANWR 208