

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

CRP.Nos.3363, 3365 and 3368 of 2013

Between:

Smt. Pasala Rukmini @ Yadamma

... Petitioner (s)

and

Manda Satyanarayana and another.

... Respondent(s)

DATE OF JUDGMENT PRONOUNCED: ***07th August, 2015.***

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

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|---|---|--------|
| 1 | Whether Reporters of Local newspapers
may be allowed to see the Judgments? | Yes/No |
| 2 | Whether the copies of judgment may be
marked to Law Reports/Journals | Yes/No |
| 3 | Whether Their Ladyship/Lordship wish to
see the fair copy of the Judgment? | Yes/No |

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THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

CRP.Nos.3363, 3365 and 3368 of 2013

COMMON ORDER :

Since these three Revisions arise out of the same suit between the same parties, they are being disposed of by this common order.

2. The petitioner in all these revisions is the defendant in the suit O.S.No.1416 of 1997 on the file of Additional Judge-cum-VI Senior Civil Judge, City Small Causes Court, Hyderabad. The

respondents/plaintiffs filed the said suit for partition of the plaint schedule properties and for allotment of 1/3rd share therein to them.

Admittedly, preliminary decree has been passed in the suit and application I.A.No.143 of 2010 is pending for passing of a final decree.

3. At that stage, the petitioner filed I.A.No.110 of 2011 to receive two relinquishment deeds dt.27.12.2010 purported to have been executed by the respondents. She contended that the matter was compromised and the respondents had agreed to relinquish their 1/3rd share in respect of the subject property in favour of the petitioner. The said I.A. was allowed and the relinquishment deeds dt.27.12.2010 were received by the Court below.

4. The said order was challenged before this Court in CRP.No.1341 of 2012 but the said CRP was also dismissed on 19.12.2012.

5. Thereafter petitioner filed an application I.A.No.226 of 2011 to send the two relinquishment deeds to the Collector, Stamps and Registration for impounding contending that the documents were under stamped. The said application was dismissed on 05.02.2013. The same was challenged before this Court in CRP.No.3476 of 2013. By order dt.06.08.2015, the said CRP was allowed and the order dt.05.02.2013 was set aside and the application IA.No.226 of 2011 was allowed.

6. While CRP.No.3476 of 2013 was pending, the petitioner filed IA. (SR).No.268 of 2013 under Section 151 CPC stating that although the documents dt.27.12.2010 allegedly executed by the respondents were styled as relinquishment deeds, they were in fact only "agreements to relinquish" and balance amount of Rs.3,41,350/- payable to them by the petitioner requires to be deposited in the Court and prayed the Court to permit her to deposit the said amount towards discharge of

respondents' 1/3rd share in the plaint schedule properties.

7. She also filed I.A.(SR)No.269 of 2013 under Section 45 of Indian Evidence Act, 1872 to send agreements dt.27.12.2010 executed by the respondents to a hand writing expert for comparison with their admitted signatures available in the suit and Vakalat filed in I.A.No.143 of 2010 or other admitted signatures as furnished by them.

8. She also filed I.A.(SR) No.270 of 2013 under Section 47 of Civil Procedure Code, 1908 to determine the question relating to execution of agreements dt.27.12.2010 by the respondents and declare that preliminary decree passed in the suit stands discharged/satisfied in view of the same.

9. By common order dt.04.07.2013, the Court below dismissed all the three applications.

10. It held that once the I.A.No.226 of 2011 to send the two documents dt.27.12.2010 to Collector, Stamps and Registration for impounding was dismissed since the said documents were under stamped and also unregistered, they cannot be looked into even for a collateral purpose or for the main purpose of deciding the question of discharge of preliminary decree raised in I.A.(SR).No.270 of 2013. It further held that the petitioner cannot seek a direction from the Court to declare the preliminary decree passed in the suit stands discharged/satisfied and it held that IA.(SR).No.270 of 2013 is not maintainable. It further observed that since even according to the petitioner the total amount payable under the document dt.27.12.2010 is not paid, there cannot be a declaration that the preliminary decree in the suit stands discharged/satisfied.

11. It held in I.A.(SR).No.269 of 2013 that the said application is premature and would be considered only after substantive evidence had been let in by the petitioner relating to the said documents.

12. In I.A.(SR).No.268 of 2013, it held that the suit O.S.No.1416 of 1997 in which the said application is filed is not a suit for specific performance and therefore, there is no question of permitting the petitioner to deposit Rs.3,41,350/- in it.

13. Challenging the order in IA(SR).No.268 of 2013, CRP.No.3365 of 2013 is filed; challenging the order in IA(SR).No.269 of 2013, CRP.No.3363 of 2013 is filed; and challenging the order in IA(SR).No.270 of 2013, CRP.No.3368 of 2013 is filed.

14. Counsel for the petitioner contends firstly that the recital in the documents dt.27.12.2010 is to the effect that some consideration has been paid on the date of its execution by the petitioner to the respondents and that balance consideration will be paid on the date of closing of the final decree petition in I.A.No.143 of 2010 before the Court below; that the Court below therefore cannot say that since the amount payable under documents dt.27.12.2010, has not been paid, IA(SR).No.270 of 2013 itself is not maintainable and there cannot be a declaration that the preliminary decree passed in the suit stands discharged/satisfied. She further contended that since CRP.No.3476 of 2013 had been allowed on 06.08.2015 by this Court allowing I.A.No.226 of 2011 filed by the petitioner to send the documents dt.27.12.2010 to the Collector, Stamps and Registration for impounding, the Court below is bound to consider I.A.(SR).No.270 of 2013 filed by the petitioner under Section 47 of Civil Procedure Code, 1908 and hear it along with I.A.No.143 of 2010 filed by the respondents for passing of final decree in the suit. She further contended that the Court below ought to have permitted the petitioner to deposit a sum of Rs.3,41,350/- since the documents dt.27.12.2010 had already been received in evidence by virtue of order in I.A.No.110 of 2011 passed on 15.11.2011 and therefore the Court below was not right in not even numbering IA(SR).No.268 of 2015 on the ground that

the suit is not a suit for specific performance and is one for partition. She further contended that I.A(SR).No.269 of 2015 also should have been numbered by the Court below and it was not right in stating that said application was premature and not maintainable and the said application would be considered only after substantive evidence on documents was elicited by the petitioner.

15. Counsel for the respondents refuted the above contentions and supported the order passed by the Court below.

16. From the facts narrated above, it is clear that a preliminary decree was passed in the suit filed for partition by the respondents against the petitioner. I.A.No.143 of 2010 filed for passing of a final decree by appointing an Advocate-Commissioner to divide the plaint schedule properties according to the decree and to deliver possession to the respondents/plaintiffs, is still pending. Also I.A.No.110 of 2011 filed by the petitioner to receive the documents dt.27.12.2010 purporting to be relinquishment deeds (but which are now admitted to be agreements to relinquish) were directed to be received in evidence by the Court below by its order dt.15.11.2011. I.A.No.226 of 2011 filed by the petitioner to send those documents to Collector, Stamps and Registration for impounding, though dismissed by the Court below, has been allowed by virtue of this Court's order dt.06.08.2015 in CRP.No.3476 of 2013.

17. Once the documents dt.27.12.2010 have been received by the Court and they have been sent to Collector, Stamps and Registration for impounding, it is necessary for the Court below to look into the question whether there is a compromise between the parties leading to execution of the alleged documents dt.27.12.2010 or not, while deciding I.A.No.143 of 2010.

18. No doubt, execution of the documents dt.27.12.2010 has been

disputed by the respondents. Therefore, opportunity should be given to the petitioner to lead evidence to prove the execution of the documents dt.27.12.2010 by the respondents. Such opportunity would include not only consideration of the petitioner's application under Section 47 CPC (IA.(SR).No.270 of 2015) but also sending the said documents to a hand writing expert (IA.(SR).No.269 of 2015) to prove the execution of the said documents by the respondents. If the petitioner is able to establish that the respondents did execute these two documents, and that they have received the amount said to have been paid there under, the only course open to the Court below is probably to close the final decree petition if the balance amount mentioned in the said document is paid to the respondents.

19. Therefore, in my considered opinion, the Court below is not justified in not even numbering IA(SR).No.268 of 2013 filed by the petitioner seeking deposit of the balance consideration, IA(SR).No.269 of 2013 filed by the petitioner to send the documents to an expert, and IA(SR).No.270 of 2013 filed by the petitioner under Section 47 CPC. The Court below is not correct in going into the issue of requirement of registration of the said documents at the stage of numbering the said IAs. Also the counsel for the respondents has not been able to place any provision in the Registration Act, 1908 requiring the agreement to relinquish a share in the property to be registered. It is also not open to the Court below to state that since the entire amount payable under documents dt.27.12.2010 was not paid by the petitioner to the respondents, the Court cannot declare that the preliminary decree passed in the suit stands discharged/satisfied. This is because, if the execution of the said documents by the respondents is established by the petitioner along with the receipt of the consideration said to have been paid by them there under, the balance consideration amount as per the terms of the said documents is payable on the date of closing of the final decree petition. So the course open to the Court below is

probably to consider whether the final decree petition is to be closed or not by giving effect to the said clause in the relinquishment deed. However, I am not expressing any opinion thereon at this point of time. I am of the considered opinion that the refusal of the Court below to even number these applications in its impugned order dt.04.07.2013 cannot be sustained.

20. Therefore, all the three Civil Revision Petitions are allowed; common order dt.04.07.2013 in I.A.(SR).No.268 of 2013, I.A.(SR).No.269 of 2013 and I.A.(SR).No.270 of 2013 is set aside; the Court below is directed to number all the three applications and decide them along with I.A.No.143 of 2010 in accordance with law uninfluenced by any observations made by it in its order dt.04.07.2013. Since the suit is of the year 1997, the Court below is directed to decide these applications as expeditiously as possible, preferably within two (02) months from the date of receipt of a copy of this order. There shall be no order as to costs.

21. Consequently, Miscellaneous Petitions pending if any in all three Revisions shall stand closed.

M.S.RAMACHANDRA RAO, J

07th August, 2015

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