

*** THE HON'BLE SRI JUSTICE SANJAY KUMAR**
AND
***THE HON'BLE DR. JUSTICE B.SIVA SANKARA RAO**

+ WRIT PETITION No.16068 OF 2016

% 12-07-2016

#Karumanchi Venkaiah and 2 others

....Petitioners

Vs.

\$ State of Andhra Pradesh rep. by Secretary Law,
Secretariat, Hyderabad and 7 others

.... Respondents

!Counsel for the Appellant : Sri V.Ravinder Rao

Counsel for the Respondents: G.P for Home Department & Sri V.Venugopal

<Gist :

>Head Note:

? Cases referred:

1. AIR 1940 Madras 124
2. AIR 1940 PC 11
3. 1979(1) AWR 243
4. AIR 1967 SC 1786
5. 2004(1) ALD 550
6. 2002(6) ALD 653
7. 1986(1) APLJ 272
8. (2003)7 SCC 452
9. (2011)9 SCC 788
10. AIR 1967 SC 1470
11. 2015(6) ALD 1
12. (2012)11 SCC 651

THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE DR. JUSTICE B.SIVA SANKARA RAO

WRIT PETITION No.16068 OF 2016

ORDER: (per the Hon'ble Dr. Justice B.Siva Sankara Rao)

This writ petition is filed by the three petitioners viz., K.Venkaiah, Rama Rao and Narasimha Rao, sons of Ramadasu against 8 respondents of whom respondents 5 to 8 relevant are K.B.Ramana, K.Nageswara Rao, B.C.V.Ramana and K.Siva. 1st respondent is the State, 2nd respondent is the State Legal Services Authority, 3rd respondent is the Mandal Legal Services Committee, Gurazala, 4th respondent is the Circle Inspector of Police, Macherla Rural Police Station of Guntur District. The prayer in the writ petition is to quash all the proceedings in Lok Adalat Case

No.251 of 2014 in connection with P.L.C. No.36 of 2014 on the file of Mandal Legal Services Committee, Gurazala. Brief facts are that the 5th respondent filed a suit in O.S. No.71 of 1995 (old No.34 of 1987) on the file of Subordinate Judge, Gurazala seeking partition of the suit schedule properties and for allotment of 1/5th share each to the plaintiff and defendants 1 to 4 therein viz., respondents 5 to 7 and predecessor of respondent No.8. On contest the same was preliminarily decreed on 30.06.1997 for partition but not for separate possession at that stage, but for to file separate application for profits etc., against defendants 5 to 8 therein who are the petitioners herein and their mother Annapurnamma in possession of the property. The decree remained conclusive though the same being challenged before various appellate authorities vide A.S. No.232 of 1997, S.A. No.706 of 2003. The plaintiff filed I.A. No.271 of 2004 for passing of final decree where one advocate-Commissioner was appointed for division of the properties, however, later withdrawn the application. It appears there is no further final decree application by any of the parties to the lis, though any of them are entitled in respect of their respective defined share of the preliminary decree made final, for division, leave about entitlement of profits to determine.

2) The contention of the petitioners is that instead of securing final decree, the respondents 5 to 8 filed P.L.C. No.36 of 2014 before the 3rd respondent seeking allotment of portions of suit schedule properties and on considering the same, the 3rd respondent passed an award on 19.12.2014 accepting the division of suit schedule properties as agreed upon by respondents 5 to 8 by observing that the award can be executed before the District Court. It is further contended that the 3rd respondent entertained separate applications filed by respondent Nos.6 to 8 seeking a direction to the Sub-registrar, Macherla for execution of deeds of conveyance, for making necessary entries in the concerned record and to deliver possession of their respective portions allotted in terms of the award dated 19.12.2014 and also to issue pattadar pass books and title deeds and the 3rd respondent, beyond the scope of his jurisdiction and contrary to the provisions under Legal Services Authority Rules, cause executed a registered document conveying title to portions of the property on remitting necessary stamp duty and also passed orders for delivery of possession of the suit schedule property. It is further contended that pursuant to the direction and at the behest of respondents 5 to 8, the 4th respondent called the petitioners to the police station and ordered that they should hand over vacant possession of the suit schedule properties to respondents 6 to 8, which is totally illegal and hence the order dated 19.12.2014 is liable to be set aside.

3) It is the contest of respondents 5 to 8, with counter affidavit of 5th respondent, while disputing the maintainability of the writ petition, that the writ petitioners and their mother as defendants 5 to 8 of O.S. No.71 of 1995 suffered preliminary decree for partition with profits to get final decree that made final having been unsuccessful including before the Apex Court in the S.L.P (civil) No.3925 of 2015 dated 20.02.2015. The Lok Adalat award under challenge is dealing with the

allotment of shares, pursuant to the preliminary decree that was made final. The earlier final decree application was closed as withdrawn, from stay of passing of final decree and there was a proposal through elders later to give quietus to the lis. The commissioner appointed found only item 4 residential house is not partible, but for other items. It was suggested through elders pursuant to the preliminary decree to take separate possession and to give up claim of profits that was not materialized. It is therefrom approached the Legal Services Authority and the orders in question were passed which no way requires interference, thereby sought for dismissal of writ petition.

4) The counter of 4th respondent-Circle Inspector of Police is that one B.Sitharamayya lodged a complaint stating that he is the owner of land in S.Nos.471 and 472 of Kambampadu village, registered through District Court in his favour which is outcome of civil dispute and that later on 13.05.2016 the accused therein who are writ petitioners herein trespassed armed with weapons and obstructed him from doing his work with a threat for dire consequences, else to vacate that was registered as Crime No.24 of 2016 against writ petitioners and 10 others and the matter is under investigation to file final report and so far six witnesses already examined and the allegations, if any, contra against him are untrue and baseless for his proceeding according to law.

5) Heard and perused the material on record.

6) Undisputedly, respondent No.5 herein filed a suit in O.S. No.71 of 1995 seeking partition of suit schedule properties and for allotment of 1/5th share to each of the plaintiff and defendants respectively and the same was decreed and said decree challenged in appeals became final. It is a partition preliminary decree thereby defining the rights of parties to work out their rights by filing final decree petitions for respective shares by plaintiff and defendants as per the preliminary decree before the trial Court, so as to divide the suit schedule properties by metes and bounds and allot their respective shares. As the definition of decree under Section 2(2) C.P.C itself indicates that there can be more than one decree, to say after any preliminary decree already passed, there can be either complete final decree or partly final decree as the case may be depending upon the facts of the lis and scope of the final decree application with reference to preliminary decree or decrees for entertaining further final decree application so to pass and even after preliminary decree any rights created or estate succeeded or survived or from any assignment, to those who were not parties to preliminary decree even, it is by their coming on record under Section 146 C.P.C and are under Order XXII Rule 10 C.P.C so to apply for passing of any further preliminary or final decree in the same suit and not by any separate suit or other proceedings.

7) It is also settled law that till passing of a complete final decree, the suit is deemed pending and so far as partition final decree to be applied and obtained concerned, there is no limitation. The Full Bench of Madras High Court in ***Ramasubrahmanya Pattar V. Karimbil Pati***^[1] held that for obtaining partition final decree, based on preliminary decree, including for mesne profits claim under

Order XX C.P.C, there is no limitation and the provisions of Limitation Act have no application muchless Article 181 of the Limitation Act. Whenever the preliminary decree holder moves the Court, the Court is bound to enquire and grant in favour of the decree holder a final decree and a final decree application in a partition preliminary decree to work out the rights defined in the preliminary decree is merely in the nature of a reminder of what is still to be done. Further, the privy Council in **Jadhunath Roy V. Parameswar Mullick**^[2] (3 JB) held that in a partition mortgagee of undivided share of parties to the suit though not a necessary party, should be allowed to attend and be heard at the stage at which working out the rights and making of proper allotment is affected in final decree proceedings as a person interested. It is further observed categorically that in a partition suit even after a preliminary decree has been passed, it is still a pending suit and the rights of the parties who are added after the preliminary decree have also to be adjudicated at the time of passing final decree by taking consideration of the events subsequent to preliminary decree. In **Chakrala Venkateswarlu V. Golla Anjaiah**^[3], this Court held referring to catena of expressions including of the Madras High Court and of the Apex Court in **Mangal Singh V. Rattno**^[4] on the scope of Section 146 and Order XXII Rule 10 C.P.C that even in a suit for possession and profits decreed, it is a preliminary decree for ascertainment of the profits to be determined and the suit is thereby deemed to be pending and after decree if any of the defendants died, the legal representatives can be brought on record under Order XXII Rule 10 C.P.C but not under Rule 4 and question of applicability of limitation to bring legal representatives on record of such final decree proceedings does not arise for such legal representatives of deceased defendants can be brought on record at any time in the final decree petition for ascertainment of profits even the death is subsequent to preliminary decree. In **Uppalapati Subrahmanyam Raju V. U.Sanyasi Satya Venkata Appala Raju**^[5] it was held that there can be more than one preliminary decree and there can be more than one final decree even to say where a supplemental final decree is made Court is not precluded to pass further final decree as there can be more than one final decree. In **Gangalla Venkataiah V. Gangalla Yakaiah**^[6] it was held that for filing application after preliminary decree in a partition suit to pass a final decree there is no time of limitation that is applicable and even residuary Article 137 of the Limitation Act has no application as partition suit would be deemed to be pending till a complete final decree is passed in respect of parties and with reference to all properties covered by the suit. It was further held that if it is a compromise decree in a partition suit finally settling the claim including working out rights by defining such compromise decree itself is a final decree and in such a case Court can appoint a Commissioner to affect delivery of possession. In **Uppalapati Subrahmanyam Raju** supra, it was further held by this Court that even partition preliminary decree passed only defining the share of the plaintiff and not defining the shares of the defendants, defendants are entitled to seek for modification of the preliminary decree to define their shares also instead filing application directly to pass final decree in their favour for not defined their share in the preliminary decree, for the reason a specific

defending of rights of the parties is required by preliminary decree and thereby a preliminary decree even sought for modification for passing any further relief including in favour of the defendants. It is observed in this context referring to the earlier expression of this Court in ***Rahmatibi V. Makbul Bhanu*** that there can be number of final decrees passed in the partition suit. It also referred and relied for holding declaration relating to rights is essential in the preliminary decree in order to pass final decree in terms thereof and where such preliminary decree does not contain any declaration in favour of any party they can apply in relation to that to define for partition and separation of their share so as to apply therefrom for final decree. For that the Court also referred the earlier expression in ***K.Rangaiah Naidu V. K.V.Naidu***^[7]. The Apex Court in ***Rachakonda Venkata Rao V. R.Satyabai***^[8] observed that in a suit for partition of immovable properties the Court has to define the shares of parties, after identifying the joint properties to be partitioned (generally as preliminary decree) then allocate the properties as per the respective defined shares and if necessary put the parties in possession after the properties so allocated to them (as per final decree). So far as compromise partition decree concerned, it all depends upon the terms of the compromise, as to the same is preliminary or final decree to determine therefrom.

8) Apart from the above, the Apex Court in ***Ganduri Koteswaramma V. Chakiri Yanadi***^[9] also held that a preliminary decree only determines the rights and interests of the parties that to be worked out in a final decree proceedings. It was further held that when a suit for partition is filed in a Court, a preliminary decree is passed determining shares of the members of the family. The final decree follows, thereafter, allotting specific properties and directing the partition of the immovable properties by metes and bounds to have separate possession. Unless and until the final decree is passed and the allottees of the shares are put in possession of the respective property, the partition is not complete. The preliminary decree which determines shares does not bring about the final partition. For, pending the final decree the shares themselves are liable to be varied on account of the intervening events. After the passing of the preliminary decree, the suit continues until the final decree is passed. If in the interregnum i.e., after passing of the preliminary decree and before the final decree is passed, the events and supervening circumstances occur necessitating change in shares, there is no impediment for the Court to amend the preliminary decree or pass another preliminary decree redetermining the rights and interests of the parties having regard to the changed situation. Further, the Apex Court held in ***Phoolchand V. Gopal Lal***^[10] as follows:

"We are of opinion that there is nothing in the Code of Civil Procedure which prohibits the passing of more than one preliminary decree if circumstances justify the same and that it may be necessary to do so particularly in partition suits when after the preliminary decree some parties die and shares of other parties are thereby augmented. So far therefore as partition suits are concerned we have no doubt that if an event transpires after the preliminary decree which necessitates a change in shares, the court can and should do so; there is no prohibition in the Code of Civil Procedure against passing a second preliminary decree in such circumstances and we do not see why we should rule out a second preliminary decree in such circumstances only on the ground that the Code of Civil Procedure does not

contemplate such a possibility. . . for it must not be forgotten that the suit is not over till the final decree is passed and the court has jurisdiction to decide all disputes that may arise after the preliminary decree, particularly in a partition suit due to deaths of some of the parties. . . .a second preliminary decree can be passed in partition suits by which the shares allotted in the preliminary decree already passed can be amended and if there is dispute between surviving parties in that behalf and that dispute is decided the decision amounts to a decree.... .."

9) From the above legal position, it is crystal clear that in a partition suit there can be more than one preliminary decree and even after preliminary decree passed one or more as the case may be, there can be more than one final decree that can be passed; leave about any alteration of the preliminary decree even can be sought. It further clarifies that defining of rights once made in the preliminary decree, working out the rights is part of the final decree proceedings which include division of the defined shares through Advocate-Commissioner or the like by casting of lots to the respective shareholders defined in the preliminary decree pursuant to their application/applications and engrossing of the respective shares sought for on non-judicial stamps and such properties even to deliver pursuant to said engrossing of the share worked out in the final decree.

10) It is thereby made clear that for question of passing preliminary decree for possession does not arise and thereby not granted even at that stage, once share is defined in the preliminary decree to work out in a final decree pursuant to the preliminary decree as part of such working out, after the share is allotted and same is engrossed on non-judicial stamps, the possession can be recovered pursuant thereto as part of the final decree proceedings or from any direction in the final decree proceedings to be given for execution of the same. It is made clear therefrom that once there is a preliminary decree and even earlier any final decree application filed and withdrawn that is not a bar to file fresh final decree application for which particularly in the partition suit there is no limitation as till passing of final decree in respect of all properties with relation to rights of all parties, suit is deemed pending; and as such a separate suit is not maintainable but for to work out the preliminary decree by filing application for recourse to final decree proceedings or if necessary by seeking amendment of the preliminary decree for anything required and to apply for final decree pursuant thereto. When such is the case, there is a bar to the maintainability of separate suit and once such is the bar a P.L.C is also a bar to maintain. When same is questioned in the writ petition in saying what is the preliminary decree rights defined are to be worked out and not to file any P.L.C case in relation to the properties covered by the partition preliminary decree, for such relief to set aside the Lok Adalat award obtained instead working out the rights by final decree petitions, the same is prone to writ jurisdiction as laid down by a division bench of this Court in ***Kothakapu Mutyal Reddy V. Bhargam Constructions***^[11] where it is held suit to set aside the Lok Adalat award for not maintainable, remedy of plaintiff whose suit rejected thereby is to seek for setting aside the award by filing writ petition under Article 226 of the Constitution of India in so far as permanent Lok Adalat awards pre-litigation concerned under Section 22(e) of the Act. The expression made clear that if the award passed by Lok Adalat organized under Section 19 of the Act concerned, the award can be

challenged by suit for which there is no bar. In fact availability of alternative remedy itself is not a bar to the maintainability of the writ petition is also observed by the above expression in saying if the award passed by the Lok Adalat in question is without jurisdiction or otherwise. The Apex Court in ***Union of India V. Gauhati Carbon Limited***^[12] categorically held that despite alternative efficacious remedy available, writ jurisdiction under Article 226 and 32 of the Constitution of India can be invoked to impugn the statutory authority exercised the power has not acted in accordance with the provisions of law or acted in defiance to fundamental principles of judicial procedure or the like. Thus, the writ petition is maintainable in the facts of the case from the passing of award as a P.L.C case is unsustainable, for the parties effective remedy is by filing final decree application from there is already a suit wherein a preliminary decree is passed, with a direction to work out their rights by filing final decree petition, for which there is no limitation even.

11) Therefore, the P.L.C proceedings are thereby unsustainable and are liable to be set aside by restoring status quo ante and relegating the parties to the position and status as on the date of filing of the P.L.C. No.36 of 2014.

12) In the result, the writ petition is allowed by setting aside the award dated 19.12.2014 in Lok Adalat Case No.251 of 2015 and all the proceedings in P.L.C. No.36 of 2014 are hereby quashed. It is open to the parties concerned to file appropriate application for passing of final decree/partly final decree(s) as the case may be pursuant to the preliminary decree before the Court where preliminary decree is passed, for their respective remedies.

13) Consequently, miscellaneous petitions in the writ petition pending, if any, shall stand closed.

SANJAY KUMAR, J

Dr.B.SIVA SANKARA RAO, J

12-07-2016
Note: L.R. Copy to be marked
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^[1] AIR 1940 Madras 124
^[2] AIR 1940 PC 11
^[3] 1979(1) AWR 243
^[4] AIR 1967 SC 1786
^[5] 2004(1) ALD 550
^[6] 2002(6) ALD 653
^[7] 1986(1) APLJ 272
^[8] (2003)7 SCC 452
^[9] (2011)9 SCC 788
^[10] AIR 1967 SC 1470

[\[11\]](#) 2015(6) ALD 1

[\[12\]](#) (2012)11 SCC 651