

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.5291 OF 2017

ORDER:

The present Civil Revision Petition, under Article 227 of the Constitution of India, is filed by the petitioners - proposed respondents questioning the order, dated 18.08.2017, in I.A. No.16 of 2017 in I.A. No.195 of 2009 in O.S. No.652 of 2006 passed by the learned I Additional Junior Civil Judge, Tenali.

2. The petitioners herein are proposed respondents. They filed I.A. No.16 of 2017 under Order I, Rule 10 of the Code of Civil Procedure, 1908 (for short 'Code') before the trial Court to implead them as respondent Nos.4 to 6 in I.A. No.195 of 2009 in O.S. No.652 of 2006 and permit them to take part in final decree proceedings.

i) It is averred in the supporting affidavit filed by petitioner No.1 before the trial Court that her father - Kurra Venkata Subbaiah was blessed with seven children of them four male and three female and during his life time he sold away some landed property owned by him and distributed the sale proceeds between himself and his three elder sons except Rajendra Prasad, who is defendant No.2 in the suit and the other three sons took their respective shares. As defendant No.2 was not wordily-wise and innocent, her father lived with him. Her father purchased land to an extent of Acs.1-20 cents under a registered sale deed, dated 16.03.1974, and enjoyed by her father and defendant No.2 jointly till the death of her father.

ii) During his life time, late Kurra Venkata Subbaiah executed a Gift Deed, dated 21.06.1988, creating life interest to his fourth son - defendant No.2 with limited rights and creating vested remainder interest on the children born through defendant No.2, but he is issueless.

iii) It is also contended that on the theory of survivorship, defendant No.2 is entitled to Ac.0-60 cents of land owned and possessed by her father and herself, her sisters and brothers except defendant No.2 have no claim or share in the remaining Ac.0-60 cents. Subsequent to death of her father - Kurra Venkata Subbaiah, defendant No.2 has been enjoying the entire suit schedule property by paying land revenue and obtained Pattadar Passbook and Title Deed in his name, and now herself, her sisters and other brothers did not claim any share till filing the suit.

iv) It is also further contended that her marriage and her other two sisters' marriages were performed, but they were not given any property at the time of their marriages. The plaintiffs, who are her brothers, filed a suit to have wrongful gain suppressing the gift deed, dated 21.06.1988, which created life-interest in favour of defendant No.2 and also suppressed the existence of female children of Kurra Venkata Subbaiah as if there are only male children entitled to the plaint schedule property and also contended that the remaining property of Kurra Venkata Subbaiah except the extent under the gift deed of 1988 in favour of defendant No.2, would devolve upon all his

children, but the plaintiffs with an ulterior motive obtained a decree behind her and final decree is pending and, as such, they are proper and necessary parties and requested to implead them as respondent Nos.4 to 6 to final decree proceedings.

3. Respondent Nos.1 to 4, who are plaintiffs in the suit, filed counter denying the material allegations, *inter alia*, contending that the petition is not maintainable at belated stage of final decree proceedings, and the preliminary decree was already passed on 16.10.2008 which is within the knowledge of the petitioners and, therefore, the petitioners, at this stage, cannot be permitted to come on record based on the alleged gift deed etc., and requested to dismiss the petition.

4. The trial Court upon hearing argument of both sides, dismissed the petition on the ground that unless the petitioners seek to amend the preliminary decree, they are not entitled to come on record since they sought for their impleadment as parties to the final decree, and thereby they are not entitled to come on record.

5. Aggrieved by the order passed by the trial Court, the present revision is filed under Article 227 of the Constitution of India, mainly contending that the petitioners being legal heirs of Kurra Venkata Subbaiah are entitled to come on record at any stage including stage of final decree, and the learned counsel for the petitioners placed reliance on the judgment rendered by a Division Bench of this Court

in **Aga Reddy v. Dharneet Singh**¹. On the basis of the principles laid down in the above decision, the learned counsel sought to set aside the order under challenge and requested to implead the petitioners as respondent Nos.4 to 6 in the final decree proceedings.

6. During hearing, learned counsel for the petitioners, Mrs. S. Pranathi, reiterated the contentions urged in the grounds of this revision, while drawing attention of this Court to the principles laid down in **Aga Reddy**¹, and requested to set aside the order under challenge by permitting the petitioners to be impleaded as respondent Nos.4 to 6 in I.A. No.195 of 2009.

7. Notices were ordered to be served on respondents. But, none appeared despite service of notices on them.

8. The basis for claim of the petitioners is, since the gift deed is executed by the father of petitioners and respondent Nos.5 and 6 - Kurra Venkata Subbaiah in favour of defendant No.2. The petitioners are the daughters of late Kurra Venkata Subbaiah. But, defendant No.2 was given only life-interest and vested remainder to his children, but he is an issueless. Therefore, by way of survivorship, they are entitled to claim share in the property. The suit was filed in the year 2006 for partition and obtained preliminary decree by respondent Nos.1 to 4 - plaintiffs without impleading the petitioners herein, though they are also claiming to be the legal heirs of late Kurra

¹. (2013) 4 ALD 138 (DB)

Venkata Subbaiah, entitled to claim share either under Section - 29A of the Hindu Succession Act, 1956, as amended by the State legislature by Hindu Succession (Andhra Pradesh Amendment) Act, 1986 (for short 'Act, 1986'), or Section 6 of the Hindu Succession (Amendment) Act, 2005 (for short 'Act, 2005'). But, such question cannot be decided, at this stage, and the Hon'ble Supreme Court laid down certain principles as to entitlement of daughters to claim share in terms of Section 6 of the Act, 2005 in **Prakash v. Pulavathi**².

9. In view of the judgments referred supra, female children are also entitled subject to certain conditions laid down therein and, therefore, whether those conditions exist or not is a question to be decided by the trial Court at appropriate stage, and if for any reason, a suit is decreed without impleading the legal heirs, they are entitled to come on record as proper and necessary parties to the suit by invoking Order I, Rule 10 of the Code, even at the stage of final decree.

10. In the present case, the petitioners herein were not impleaded as parties to the suit by respondent Nos.1 to 4 - plaintiffs, and obtained a preliminary decree. However, Order I, Rule 10 of the Code permits to any third party to come on record at any stage of the proceedings, but subject to satisfying certain conditions. A bare reading of Order I, Rule 10 (2) of the Code would clearly shows that necessary parties in a suit for partition are all the members of joint family, and in the absence of impleading some of the members of

². (2016) 2 SCC 36

Hindu Joint Family, suit would be defeated. But, here, conveniently the petitioners were not impleaded as parties and obtained a preliminary decree. Even to invoke Order I, Rule 10 (2) of the Code, there must be a right to seek some relief against such party in respect of the controversy involved in the proceedings and no effective decree can be passed in the absence of any such party. In the present facts of the case, the petitioners are allegedly entitled to claim a share in part of the property by virtue of the gift deed executed by late Kurra Venkata Subbaiah in favour of defendant No.2 creating life interest and vested remainder to his children, but he is issueless. Therefore, by reversion, the petitioners are entitled to claim share in the property of late Kurra Venkata Subbaiah and, therefore, they are entitled to come on record. But, the trial Court did not consider the principles to implead third party in a suit for partition. The Hon'ble Supreme Court in **Phoolchand v. Gopal Lal**³, while dealing with a similar issue as regards impleadment of third party at the stage of final decree proceedings observing that there is no prohibition for passing more than one preliminary decree for declaring the correct shares to which parties are entitled, held thus:

"7. 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. We have already said that it is not disputed that

³. AIR 1967 SC 1470

in partition suits the court can do so even after the preliminary decree is passed. It would in our opinion be convenient to the court and advantageous to the parties, specially in partition suits, to have disputed rights finally settled and specification of shares in the preliminary decree varied before a final decree is prepared. If this is done, there is a clear determination of the rights of parties of the suit on the question in dispute and we see no difficulty in holding that in such cases there is a decree deciding these disputed rights; if so, there is no reason as why a second preliminary decree correcting the shares in a partition suit cannot be passed by the court. 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, and if there is a dispute in that behalf, the order of the court deciding that dispute and making variation in shares specified in the preliminary decree already passed is a decree in itself which would be liable to appeal. We should however like to point out that what we are saying must be confined to partition suits, for we are not concerned in the present appeal with other kinds of suits in which also preliminary and final decrees are passed. 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. In any case if two views are possible -- and obviously this is so because the High Courts have differed on the question - we would prefer the view taken by the High Courts which held that a second preliminary decree can be passed particularly in partition suits where parties have died after the preliminary decree and shares have to be adjusted. We see no reason why in such a case if there is dispute, it should not be decided by the Court which passed

the preliminary decree, 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....."

The same principle is reiterated in later judgment rendered by a learned Judge of Madras High Court in **S. Pitchai v. Ponnammal**⁴. In **Manohar Lal Chopra v. Rai Bhadur Rao Raja Seth Hiralal**⁵, the same principle was laid down, and this Court in **Syed Mohiddin v. Abdul Rahim**⁶, held that third party can be impleaded even after passing of a preliminary decree when the decree was obtained by playing fraud without impleading the persons, who are entitled to claim share in the property. In another recent judgment rendered by a learned Single Judge of this Court in **Syed Mujtaba Ali v. Mazharuddin Khan**⁷, an identical question came up and by relying on the decisions **Syed Mohiddin**⁵, **Ramader Appala Narasinga Rao v. Chunduru Sarada**⁸, **Sriramula Ramachandram v. Sriramula Bhoodamma**⁹, **Ch. Yashoda Devi v. B. Dayakar Reddy**¹⁰, **Krishna Aiya v. Subrahmania Aiyar**¹¹, answered the issue holding that as a matter of law, a party can be impleaded after passing of a preliminary decree in a partition suit and before passing of final decree:

⁴. C.R.P. (PD). (MD) No.1066/2009, dated 04.08.2017

⁵. AIR 1962 SC 527

⁶. AIR 1964 AP 260

⁷. Application No.210 of 2010 in Appl.No.455 of 2009 in C.S. No.7 of 1958, dt.12.12.2013

⁸. AIR 1976 AP 226 (DB)

⁹. AIR 1994 AP 79

¹⁰. (1996) 4 ALD 105

¹¹. AIR 1924 Madras 648

11. Hence, in view of the law declared by the Apex Court and this Court, the petitioners are entitled to come on record as parties to the suit as they were not impleaded in a suit for partition, and whether they are entitled to claim any share or not, it is to be determined at an appropriate stage during inquiry, and at this stage when they are able to show *prima facie* that they are entitled to claim share in the property along with the plaintiffs and other defendants, they shall be impleaded as parties - respondent Nos.4 to 6 in I.A. No.195 of 2009 i.e., final decree petition, and make necessary inquiry, and if necessary the trial Court may pass appropriate preliminary decree in view of the law declared by the Apex Court in **Phoolchand**².

12. Accordingly, the Civil Revision Petition is allowed and the order, dated 18.08.2017, in I.A. No.16 of 2017 in I.A. No.195 of 2009 in O.S. No.652 of 2006 passed by the learned I Additional Junior Civil Judge, Tenali, is set aside permitting the petitioners herein to implead themselves as respondent Nos.4 to 6 in I.A. No.195 of 2009 in O.S.No.652 of 2006. No order as to costs.

Consequently, Miscellaneous Petitions, if any, pending in the present revision, stand closed.

M. SATYANARAYANA MURTHY, J

October 24, 2018

Mgr