

HON'BLE SRI JUSTICE S.V.BHATT

CIVIL REVISION PETITION No.2445 of 2012

ORDER:

Heard Mr.Venkateswarlu Chakkilam for revision petitioners and Mr.G.Ramachandra Reddy for respondents 2, 4, 5, 6, 7, 8 and 10.

The revision petitioners filed I.A.No.176 of 2011 to permit them to come on record in the final decree petition pending in I.A.No.28 of 2009.

Respondents 1 to 10 filed O.S.No.20 of 1988 for partition and separate possession of plaint schedule properties. On 18.10.1996, preliminary decree was passed. A.S.No.1027 of 1997 filed by 1st defendant against the decree and judgment dated 18.10.1996 was dismissed on 20.07.2007.

The revision petitioners are the sons of 1st defendant in O.S.No.20 of 1988. On 07.02.2011, I.A.No.176 of 2011 is filed by revision petitioners to come to record as defendants 7 and 8 in final decree petition pending in I.A.No.28 of 2009.

The revision petitioners filed I.A.No.176 of 2011 stating that by the time the A.P.Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 came into force, the elder son of the 1st defendant (Mandapati Subba Reddy), being the major member in the family, was given Ac.2-87 cents of dry land in R.S.No.462/1 and Ac.12-14 cents of dry land in R.S.No.324 of Repudi Village,

Tiruvuru Taluk. His name was also shown in the declaration given by his father and since the date of allotment of the said properties, he continued in possession and enjoyment of the said property. He was also issued ryot pass book during 1978. Thereafter, as per the understanding between him and his younger brother (Mandapati Appireddy), the properties partitioned into two equal shares in the year 1982 were allotted to him along with other properties. The allottees have been in possession and enjoyment of their respective shares, which include part of the suit schedule properties. Therefore, it is just and necessary to come on record as respondents and participate in final decree proceedings.

The contesting respondents opposed the prayer for impleadment and to appreciate the main objection raised by respondents/plaintiffs, this Court finds it convenient to extract the following paragraphs:-

“ The respondents humbly submitted that the father of petitioners herein i.e., Mandapati Venkata Reddy who is the 1st defendant in the above said suit filed his written statement in the said suit with the similar contentions mentioned by petitioners in above I.A./petition. The father of the petitioners i.e., 11th respondent herein agitated before this Hon’ble Court with the defence of land ceiling proceedings which were filed on 15.01.1976 vide C.C.No.946/ TVR/ 75 and that he also filed LRAT proceedings dt.06.09.1976. Thus the plea of the petitioners herein raised by their father i.e., 11th respondent herein in the suit and tried his level best for not partition the plaint schedule properties. The father of the petitioners

examined as D.W.1 and he got marked Ex.B1 to B.42 documents on his side out of which Ex.B.35 to B.39 are relating to A.P.Land Reforms Act proceedings. It is further submitted that this Honourable court also discussed at length in Para No.11 and 12 of the Judgment of above said suit. Thus the father of the petitioners who is 1st defendant placed the case of the petitioners earlier i.e., at the time of trial by filing aforesaid exhibits. Though they were in possession and incorporated petitioners names in the revenue records etc., this Honourable Court disbelieved the case of the father of the petitioners and decreed the suit in favour of the plaintiffs. It is further submitted that the averments of the petition of the petitioners is nothing but the defence of their father in the suit proceedings. On that point this Honourable court already answered on 18.10.1996 by passing a Judgment and preliminary decree in favour of plaintiffs.

3. It is humbly submitted that after passing of the Judgment and preliminary decree by this Honourable court, the father of the petitioners carried the matter to the before Honourable High Court of Andhra Pradesh vide Appeal No.1027/ 97. The Honourable High Court of Andhra Pradesh also dismissed the appeal on merits on 20.07.2007 by confirming the decree and Judgment of this Honourable court dated 18.10.1996. Thus the case of the petitioners is already decided by passing a judgment and preliminary decree. Now these petitioners approaching this Honourable court on the same plea, it appears that resjudicata applies to the case of petitioners.

In the above background, the learned Judge dismissed the application.

Mr.Venkateswarlu Chakkilam contends that the consideration of prayer for impleadment as defendants 7 and 8 by the trial court ignores the basic principle of law that necessary

and proper parties can be impleaded even at the stage of final decree proceedings. The Court, in examining the request of a party to come on record, keeps in mind their right and claim and whether the impleadment would give quietus to the issue of division of properties between the parties. According to him, the revision petitioners since claim one of the items as their exclusive property now partitioned in the final decree, is illegal and unsustainable.

This objection is considered by the trial court in the following manner :-

The main allegation of the respondents is that in the judgment while passing preliminary decree in the main suit and also in appeal in 1027/ 97 which was dismissed on merits, on 20.07.2007 by the Hon'ble High Court confirming the judgment and decree passed in the original suit on 18.10.1996 the lordship appreciated the evidence in respect of the land ceiling proceedings at page 6 of the judgment. The appellant as D1 filed Exs.B37 to 39 which are proceedings relating to land ceiling declaration were filed on behalf of himself, his wife and children by showing the suit schedule lands as belonging to his family. But it was pointed out by the lordship that it is unilateral declaration by D1 the father of the petitioners by holding that the filing of declaration by itself cannot be considered as notice to the other sharers of any exclusive claim by D1. The said appeal was dismissed confirming the preliminary decree passed by the lower court. As seen from the judgment while passing preliminary decree and the Hon'ble appellate's court judgment the allegation of the petitioners mentioned in the present petition which were taken as defence by his father as D1 were appreciated and gave finding and passed preliminary decree and appeal was

dismissed. As rightly contended on behalf of the respondents as already the above allegations basing on which the present petition is filed were decided, and the present petition is not maintainable.

9. In this case the petitioners filed Exs.P1 to P3 and stated that they are in possession and enjoyment and they got right in the property and they are necessary parties in the suit. The petitioners want to come on record, in the final decree proceedings. The contention of the respondents in respect of the same is that the 3rd party claimants right cannot be decided in preliminary decree proceedings for the first time unless such right is claimed before passing preliminary decree, and as the petitioners filed the present petition in the final decree proceedings at belated stage the petition is not maintainable and on the ground the petition is liable to be dismissed. In support of their contention they also referred case reported in 2007(2) ALT page 464 A.P. Where in his lordship held that 3rd party claim rights of attained party cannot be decided in final decree proceedings for the first time unless such right is claimed before passing preliminary decree. On the above ground also the petition fails and petition is liable to be dismissed.

In addition to the reasons recorded by the trial Court, this Court is of the view that the revision petitioners traced their claim in a partition between 1st defendant i.e., their father and themselves as early as 1973. It is matter of record that the 1st defendant for excluding from partition these items, pleaded and placed evidence on record as Exs.37 to 39. These aspects were considered by the trial court as well as appellate court. Once the plea introduced by 1st defendant on the very same lines is rejected, there ought not to be extension of consideration of

very same plea and evidence at the instance of revision petitioners herein, when the final decree application is pending.

For the above reasons, *namely*, how the revision petitioners claim the impleadment as D7 and D8 and also basis for such claim, as it is not disputed through D1, I am convinced the prayer to come on record is rightly rejected by the trial Court.

The revision fails and is accordingly dismissed. No order as to costs.

Miscellaneous petitions, if any, shall stand closed.

Dt: 11-09-2018
Prv



S. V. BHATT, J

