

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.5206 OF 2017

ORDER:

The present Civil Revision Petition, under Article 227 of the Constitution of India, is filed by the petitioner - proposed respondent questioning the order, dated 18.08.2017, in I.A. No.19 of 2016 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 petitioner herein is proposed respondent No.3. She filed I.A. No.19 of 2016 under Order I, Rule 10 read with Section 151 of the Code of Civil Procedure, 1908 (for short 'Code') before the trial Court to implead her as respondent No.3 in I.A. No.195 of 2009 in O.S. No.652 of 2006 and permit her to take part in final decree proceedings.

i) It is averred in the supporting affidavit filed by petitioner before the trial Court that she allegedly purchased the entire schedule property under a registered sale deed, dated 27.04.2006 from respondent No.6, who is defendant No.2 in the suit, and since she has been in possession and enjoyment of the property and came to know that respondent Nos.1 to 4 herein filed suit O.S. No.652 of 2006 for partition against respondent Nos.5 and 6 herein and that final decree petition in I.A. No.195 of 2009 is pending, she filed a suit O.S. No.357 of 2015 on the file of Principal Senior Civil Judge, Tenali, against the respondents herein for declaration of her right over the petition schedule property. When the petitioner purchased the

property prior to filing the suit by respondent Nos.1 to 4, she being purchaser is entitled to claim at least equities. Even if respondent No.6 is not entitled to sell the schedule property belonging to joint family, to enable the petitioner to claim equities to the share allotted to him, she must be a party to the 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 petitioner and that if the petitioner wants to seek any relief, she can seek the same in a suit filed by her but not in their suit and, therefore, the petitioner, at this stage, cannot be permitted to come on record and requested to dismiss the petition.

4. The trial Court upon hearing argument of both counsel, dismissed the petition on the ground that unless the petitioner seeks to amend the preliminary decree, she is not entitled to come on record since she sought for her impleadment as party to the final decree, and thereby she is 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 petitioner being purchaser of the property from defendant No.2, she is 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 petitioner as respondent No.3 in the final decree proceedings.

6. During hearing, learned counsel for the petitioner, 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 petitioner to be impleaded as respondent No.3 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 petitioner is that she purchased the petition schedule property under a registered sale deed, dated 27.04.2006 from defendant No.2 and since then she has been in peaceful possession and enjoyment of the same. As she came to know about the filing suit O.S.No.652 of 2006 by the plaintiffs against defendant Nos.1 and 2 for partition and the final decree proceedings are pending in I.A. No.195 of 2009, she filed a suit O.S. No.357 of 2015 on the file of learned Principal Senior Civil Judge, Tenali, against the plaintiffs and defendants for declaration of her ownership

¹. (2013) 4 ALD 138 (DB)

right and title over the said property, along with petition to grant stay of proceedings. On receipt of summons in the said suit, the plaintiffs are trying to get appoint the advocate commissioner to execute warrant even there was a standing crop lying on the schedule property. In view of the same, she being purchase of property, she is proper and necessary party to the final decree proceedings.

9. 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 the Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added. 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 petitioner is allegedly purchased the property from defendant No.2 and, therefore, she is 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**², 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 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

². AIR 1967 SC 1470

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**³. In **Manohar Lal Chopra v. Rai Bhadur Rao Raja Seth Hiralal**⁴, the same principle was laid down, and this Court in **Syed Mohiddin v. Abdul Rahim**⁵, 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

³. C.R.P. (PD). (MD) No.1066/2009, dated 04.08.2017

⁴. AIR 1962 SC 527

⁵. AIR 1964 AP 260

learned Single Judge of this Court in **Syed Mujtaba Ali v. Mazharuddin Khan**⁶, an identical question came up and by relying on the decisions **Syed Mohiddin**⁵, **Ramader Appala Narasinga Rao v. Chunduru Sarada**⁷, **Sriramula Ramachandram v. Sriramula Bhoodamma**⁸, **Ch. Yashoda Devi v. B. Dayakar Reddy**⁹, **Krishna Aiya v. Subrahmania Aiyar**¹⁰, 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. However, the petitioner's entitlement to claim equities will depend on circumstances, like purchase prior to filing suit etc., such entitlement can be decided after inquiry.

10. In view of the law declared by the Apex Court and this Court, the petitioner is entitled to come on record as party to the suit as she was not impleaded in a suit for partition, and whether she is entitled to the property purchased from defendant No.2, it is to be determined at an appropriate stage during inquiry, and at this stage when she is able to show *prima facie* that she allegedly purchased the property from defendant No.2, she shall be impleaded as party - respondent No.3 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 decree in view of the law declared by the Apex Court in **Phoolchand**².

⁶. Application No.210 of 2010 in Appl.No.455 of 2009 in C.S. No.7 of 1958, dt.12.12.2013

⁷. AIR 1976 AP 226 (DB)

⁸. AIR 1994 AP 79

⁹. (1996) 4 ALD 105

¹⁰. AIR 1924 Madras 648

11. Accordingly, the Civil Revision Petition is allowed and the order, dated 18.08.2017, in I.A. No.19 of 2016 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 petitioner herein to implead herself as respondent No.3 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.

October 24, 2018
Mgr

M. SATYANARAYANA MURTHY, J

