

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 22.10.2018

Delivered on : 08.01.2019

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.R.P(NPD).No.911 of 2012

&

M.P.No. 1 of 2012

1.B.Chellam

2.B.Kannan

3.Subbulakshmi Ramachandran

4.B.Lalitha

...Petitioners

1.B.Raman

2.B.Geetha

...Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India against the order passed in I.A.No.3193 of 2011 in O.S.No.3883 of 1989 dated 23.01.2012 on the file of the V Assistant City Civil Court, Chennai.

For Petitioners : Mr.P.L.Narayanan
For Respondent 1 : Mr.S.Natanarajan
For Respondent 2 : Not Ready in Notice

ORDER

The defendants are the revision petitioners before this Court. The revision arises out of the dismissal of an application filed by the revision petitioners for following reliefs:

To pass a preliminary decree awarding 1/6th share to each of the five petitioners herein and the defendants in the main suit and to the respondents herein and to the plaintiffs in the main suit modifying the preliminary decree passed on 23.02.1993.

2.This is a rather unfortunate case where the children who are the plaintiffs and defendants 2 to 5 in the original suit have dragged their nonagenarian mother in the twilight of her life to the Court seeking a share in the property of her late husband.

The facts in brief which is necessary for disposing of the above Civil Revision Petition are as follows:

3.The properties which is the subject matter of the suit O.S.No.3883 of 1989 on the file of the V Assistant City Civil Judge, Chennai, admittedly belonged to one S.N.Balakrishnan. The said S.N.Balakrishnan is the husband of the 1st petitioner and father of petitioners 2 to 4 and respondents 1 and 2 herein. The said S.N.Balakrishnan died intestate on 20.02.1989 leaving behind him surviving the aforesaid persons as his legal heirs. They were in joint possession and enjoyment of the suit property and thereafter the 1st respondent herein had filed a suit in O.S.No.3883 of 1989 seeking a partition and separate possession of his 1/6th share in the suit schedule property. The said suit has been verified on 12.04.1989. It is seen that the defendants in the said suit are the petitioners and the 2nd respondent herein had filed written statements which are identical on the following dates:

Defendant 3	-	25.06.1989
Defendant 2	-	16.09.1989
Defendants 1, 4 and 5	-	06.11.1989

4. In paragraph No.2 of the said written statements it was stated that the defendants therein had received the value of his/her share from the plaintiff and he/she had no objection for allotting his/her 1/6th share in favour of the plaintiff and that they did not have any objection in passing a decree in favour of the plaintiff along with plaintiff's share.

5. In effect the defendants had submitted to a decree and allotted their share to the plaintiff. It transpires that the suit was decreed on 23.02.1993 and a preliminary decree came to be passed by the learned V Assistant City Civil Judge, Chennai, wherein, despite the written statements of the defendants the learned Judge had observed that the defendants had relinquished their 1/6th share each in favour of the plaintiff that they had no

objection to the property being allotted to him. Ultimately, the learned Judge had decreed the suit as prayed for; that is, the suit was decreed for the plaintiff's 1/6th share alone.

6. Thereafter, on 04.12.2002, nearly three years after the passing of the preliminary decree, the 1st respondent herein had filed an application for final decree, directing the allotment of the entire property in his favour. In the affidavit filed in support of the said petition the 1st respondent would contend that the defendants had filed a written statement stating that they had no objection to the property being allotted to the 1st respondent. This application was objected to by the defendants, more particularly the 5th defendant/4th petitioner herein, she has stated that the amendment application to substitute the word preliminary decree with the word final decree was wrong. In the counter affidavit they had contended that they had no intention of relinquishing their interest in the property to the 1st respondent herein. The 1st respondent had filed a reply to this counter

denying the various allegations made therein. Ultimately, by an order dated 15.12.2005, the V Assistant City Civil Judge, Chennai dismissed I.A.No.19832 of 2006, stating that the final decree can only be passed in terms of the preliminary decree and that the final decree cannot be altered by the Court. The learned Judge had directed the petitioner to file a petition for an appointment of an Advocate Commissioner.

7.In the meanwhile, the petitioners herein and the 2nd respondent had filed I.A.No.5473 of 2003 for setting aside the Judgment and Decree dated 23.02.1993 since each of the sharers were entitled to 1/6th share and further contending that the said decree had been obtained by fraud. The 1st respondent had filed a counter denying the above application and contending that the petitioners and the 2nd respondent were highly educated persons who had signed the document only after comprehending the contents of the written statement and therefore now at this stage the petitioners cannot seek to set aside the decree which has

been obtained.

8.This petition was also dismissed by the learned Judge on the ground that the remedy open to the petitioners and the 2nd respondent was only to file a suit. The 1st respondent herein had challenged the order in I.A.No.19832 of 2002 in C.R.P.No.920 of 2006 and by an order dated 15.02.2008 the said petition was dismissed by this Court as the learned Judge was also in agreement with the Trial Court, that the final decree cannot run contrary to the preliminary decree.

9.The order in I.A.No.5473 of 2003, was also taken up on challenge by the petitioners herein and the 2nd respondent in C.R.P.No.1842 of 2007, this petition was also dismissed by the learned Judge. The applications were pending for a long time therefore the 1st petitioner herein had filed C.R.P.No.4133 of 2009 for an early hearing of O.S.No.3883 of 1989. This Court by an order dated 30.06.2010 was pleased to dispose of the revision

with directions to the Court below to dispose of the suit within three months from the date of receipt of a copy of the order.

10. After the dismissal of C.R.P.No.1842 of 2007, the petitioners herein along with the 2nd respondent had filed I.A.No.3193 of 2011, which is the subject matter of the revision, for passing a preliminary decree awarding 1/6th share to each of the petitioners and to the 2nd respondent. This application was resisted by the 1st respondent inter alia contending that after having given their consent for allotting their 1/6th share to him the petitioners are now contending otherwise. The allegations that the 1st respondent had obtained signatures in blank sheets and vakalats were denied emphatically.

11. The learned V Assistant City Civil Judge, Chennai by his order dated 23.01.2012, dismissed the said application on the ground that the preliminary decree was passed taking into account the written statement filed on behalf of the petitioners

wherein they had relinquished 1/6th share each in favour of the respondent and stated that the 5/6th share cannot be allotted to the petitioner. This is taken up on challenge by the petitioners before this Court. The 4th petitioner in the impugned application has not chosen to join petitioners and is therefore arrayed as the 2nd respondent in the revision petition.

12. Heard Mr. P. L. Narayanan, learned counsel appearing on behalf of the revision petitioners. The sum and substance of his arguments is that the written statement is a fabricated document which the 1st respondent had created by using the signature of the petitioners and the 2nd respondent that he had obtained on blank papers. These papers were obtained by him by informing them that these papers were needed for filing necessary application for obtaining letters of administration. He would also argue that the Courts below have not taken into account the fraud that has been played on the Court by producing a fabricated document. He would further argue that the learned V

Assistant City Civil Judge, Chennai has not taken note of the fact that a supplemental preliminary decree can also be passed where fraud is pleaded. The petitioners have come to the very same Court which has passed the decree to set right the same. This is on account of the fact that preliminary decree passed does not come to an end till the passing of the final decree. He would rely on the following Judgments in support of his arguments:

1.M.P.Wakf Board Vs. Subhan Shah (Dead) By Lrs. and others reported in (2006) 10 SCC 696.

2.Shankar Balwant Lokhande (Dead) by Lrs. Vs. Chandrakant Shankar Lokhande and another reported in (1995) 3 SCC 413.

3.Union of India Vs. Ibrahim Uddin and another reported in (2012) 8 SCC 148.

4.Sishpal Vs. Vikram reported in Manu/Ph/0946/1998.

5.United India Insurance Co. Ltd. and another Vs. Samir Chandra Chaudhary reported in (2005) 5 SCC 784.

13.Mr.S.Natanarajan, learned counsel appearing on behalf of the 1st respondent on the other hand would contend that the sisters who had originally agreed to handover the property to their brother is now going back on their promise and making allegations of fraud. He would further contend that there can only be a preliminary decree and therefore the Court below was correct in rejecting the case of the petitioners.

14.Heard, both counsels and perused the papers. It is seen that the Trial Court has passed a decree only with reference to the plaintiff's 1/6th share and remaining 5/6th share remains in a limbo. The revision petitioners have also remained silent for over 13 years after the death of their father in taking the first step to have the preliminary decree modified. The reasons for the inertia is very sketchy. The contention of the petitioners was that their brother, the 1st respondent herein had obtained signatures in blank sheets for preparing consent affidavits for filing the letters of administration. This reason appears to be rather strange

because the father of the petitioners had died intestate. Be that as it may, the application which is the subject matter of the revision is an application filed for modifying the preliminary decree to be in consonance with the rights of the parties as per the Hindu Succession Act. Ultimately, the defendants have not relinquished their rights by executing a release deed and nor have they entered into the box as witnesses in the suit and deposed that they have relinquished their share in favour of the 1st respondent and that they had no objection to the entire property being allotted to the 1st respondent.

15. In these circumstances, it is to be noted that the decree has not reached finality since the final decree proceedings are yet to be disposed off. Therefore, the learned V Assistant City Civil Judge, Chennai, was wrong in holding that if the application is ordered it would complicate matters. The learned Judge has failed to take note of the fact that any number of preliminary decrees can be passed before the final decree is passed. This

Court draws strength from the Judgments of the Honourable Supreme Court in ***Phoolchand and another Vs. Gopal Lal*** reported in ***AIR 1967 SC 1470, Rachakonda Venkat Rao and others Vs. Late R.Satya Bai (Smt) Represented by her L.R. Rajkumari and others*** reported in ***AIR 1996 SC 965*** and ***Ganduri Koteshwaramma and another Vs. Chakiri Yanadi and another*** reported in ***2011 (9) SCC 788***.

In the Judgment reported in ***2011 (9) SCC 788*** the honourable Supreme Court has held as follows:

"It is true that the final decree is always required to be in conformity with the preliminary decree but that does not mean that a preliminary decree, before the final decree is passed, cannot be altered or amended or modified by the Trial Court in the event of changed or supervening circumstances even if no appeal has been preferred from such preliminary decree."

16.The facts of the instant case squarely comes within the above category. The learned V Assistant City Civil Judge, Chennai, has erred in dismissing I.A.No.3193 of 2011 in O.S.No.3883 of 1989.

In the result the Civil Revision Petition is allowed. The learned V Assistant City Civil Judge, Chennai, is directed to dispose of I.A.No.3193 of 2011 in O.S.No.3883 of 1989 within a period of three months from the date of receipt of a copy of the order. There shall be no order as to costs. Consequently connected Miscellaneous Petition is also closed.

सत्यमेव जयते

08.01.2019

kan

Index : Yes/No
Speaking order/non-speaking order

To
The V Assistant City Civil Judge,
Chennai.

P.T.ASHA, J.,

kan



Pre-delivery order in
C.R.P(NPD).No.911 of 2012 &
M.P.No. 1 of 2012

WEB COPY

08.01.2019