

HIGH COURT FOR THE STATE OF TELANGANA

* * *

CIVIL REVISION PETITION No.1705 of 2019

Between:

M.A. Mujeeb, S/o M.A. Khader

... Petitioner

AND

1. Habeeb Alladin and others

... Respondents

Date of Judgment pronounced on : 07.08.2019

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

1. Whether Reporters of Local newspapers : Yes / No
may be allowed to see the judgments?
2. Whether the copies of judgment may be marked : Yes / No
to Law Reporters/Journals?
3. Whether the Lordship wishes to see the fair copy : Yes / No
of the Judgment?

CHALLA KODANDA RAM, J

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

CIVIL REVISION PETITION No.1705 of 2019

% 07.08.2019

M.A. Mujeeb, S/o M.A. Khader

... Petitioner

Versus

\$ 1. Habeeb Alladin and others

.... Respondents

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> HEAD NOTE:

! Counsel for the Petitioner : Sri Vedula Venkataramana

^ Counsel for the Respondents : Sri Sunil Ganu

? Cases referred

¹(2007) 2 SCC 355

²(2007) 7 Supreme Court Cases 83

³(1995) 5 SCC 631

THE HON' BLE SRI JUSTICE CHALLA KODANDA RAMCIVIL REVISION PETITION No.1705 of 2019ORDER:

This civil revision petition is filed under Article 227 of the Constitution of India questioning the order dated 25.01.2018 passed by the II Senior Civil Judge, City Civil Court, at Hyderabad, in I.A.No.47 of 2018 in I.A.No.1072 of 2011 in O.S.No.1050 of 1994.

The undisputed facts of the case, in brief, relevant for the purpose of disposal of the present revision petition, are that the 1st respondent/plaintiff filed a suit for partition of suit schedule property admeasuring 2110 square yards in the premises bearing Municipal No.6-2-37/A & B situated at A.C. Guards, Hyderabad, with metes and bounds. In the said suit, a preliminary decree was passed against defendants 1 to 10, by judgment and decree dated 06.04.2004. The petitioner in this revision petition was arrayed as 11th defendant in the suit. Alleging that he had entered into a collusive arrangement with the plaintiff's elder brother, based on which he attempted to interfere with the plaintiff's joint possession and enjoyment, the plaintiff also filed O.S.No.4661/1990 seeking permanent injunction from interfering with his possession.

The partition suit came to be allowed, and a preliminary decree was passed allotting respective shares between the petitioner and defendants 1 to 10. The respective shares are as under:

- i) Share of the plaintiff is 9/ 40th (1080 / 4800)
- ii) Share of Defendant No.1 is 9/ 64th (675/ 4800)
- iii) Share of Defendant No.2 is 31/ 1992 (775/ 4800)
- iv) Share of Defendant No.3 is 1/ 20th (240/ 4800)
- v) Share of Defendant No.4 is 9/ 320 (135/ 4800)

- vi) Share of Defendant No.5 is 63/ 800 (378/ 4800)
- vii) Share of Defendant No.6 is 63/ 1600 (189/ 4800)
- viii) Share of Defendant No.7 is 63/ 800 (378/ 4800)
- xi) Share of Defendant No.8 is 7/ 96th (350/ 4800)
- x) Share of Defendant No.9 is 1/ 12th (400/ 4800)
- xi) Share of Defendant No.10 is 1/ 24th (200/ 4800)

The judgment and decree was not appealed against, and therefore, the judgment and decree became final. Thereafter, the plaintiff filed I.A.No.1071 of 2011 for passing a final decree; and I.A.No.1072 of 2011 for appointment of an Advocate Commissioner to partition the property as per the preliminary decree and handover his share. Thereafter, I.A.No.47 of 2018 was filed in I.A.No.1072 of 2011, for passing appropriate orders directing auction of the suit schedule property as per law, and distribute the proceeds to the respective sharers as per their entitlement in accordance with preliminary decree. Sri T.A. Mirza was appointed as the Advocate Commissioner in I.A.No.1072 of 2011, to divide the suit schedule property by metes and bounds, and he filed his report in December 2015, along with a Sketch plan, specifically observing that the petition schedule property cannot be divided by metes and bounds for the reasons set out therein. In view of the topography of the petition schedule property and the number of shares to be allotted as per the preliminary decree, there is no possibility of dividing the property by metes and bounds, as the parties could not be in a position to enjoy their shares equally. In those circumstances, the plaintiff prayed to conduct public auction and distribute the proceeds of the auction among the parties in accordance with their respective entitlement as per the preliminary decree.

It may be noted that only defendant No.11 (the petitioner in this civil revision petition) opposed the Application contending that he is not aware of the content of the Advocate Commissioner's report and as he is the

agreement holder who deposited the sale consideration and is entitled for a share in the suit property, the suit property shall not be put to public auction. Defendants 1 to 10 did not oppose the application, which came to be allowed.

Sri Vedula Venkataramana, learned senior counsel appearing for the petitioner/11th defendant, by relying on the Judgment of the Supreme Court in Hasham Abbas Sayyad v. Usman Abbas Sayyad¹, contends that what is executable in a partition action is only a final decree engrossed on a Stamp paper, and therefore the question of entertaining a petition under Section 2 of the Partition Act, 1893, and proceeding to execute a preliminary decree is unsustainable in law. He further submits that a preliminary decree is not an executable decree in a suit for partition and, admittedly, there being no final decree drawn, allowing of the I.A. by the trial Court for conducting public auction of the suit schedule property is illegal and unsustainable. Learned senior counsel would further contend that the reliance placed on Section 2 of the Partition Act is not tenable as the procedural requirement that is required to be followed has not been complied with.

On the other hand, learned counsel Sri Sunil Ganu, appearing for respondent No.1/plaintiff would contend that the procedure that is followed by the Court below is in accordance with the normal practice followed in the Courts, and considering the nature of the suit schedule property and the Advocate Commissioner's report and the shares of respective parties, the trial Court came to the conclusion that there is no possibility of dividing the property by metes and bounds in the light of Section 2 of the Partition Act, and therefore the trial Court adopted the next alternative course of putting

¹ 2007 (2) SCC 355

the property to auction and distribute the proceeds thereof amongst the respective sharers in accordance with their entitlement as determined in the preliminary decree.

Sri Sunil Ganu, learned counsel would further assert that after the property is put to auction and the amounts payable to respective parties is determined, the Court would pass a final decree and hence there is no illegality in the Court adopting such a procedure. In support of his submission, he places reliance on the judgment of the Supreme Court in *Punjab National Bank v. Sahujain Charitable Society*².

Having regard to the respective submissions, the question which falls for consideration is whether the order passed by the Court below is without jurisdiction and illegal, thus, requiring interference of this Court?

It may be noted that Order 20 Rule 18 CPC deals with the method and manner of drawing a decree in a suit for partition of property or separate possession of share therein. Order 20 Rule 18 (ii) CPC, which is relevant, reads as under:

18. Decree in suit for partition of property or separate possession of a share therein – Where the Court passes a decree for the partition of property or for the separate possession of a share therein, then,—

(1) * * *

(2) if and in so far as such decree relates to any other immovable property or to movable property, the Court may, if the partition or separation cannot be conveniently made without further inquiry, pass a preliminary decree declaring the right of the several parties interested in the property and giving such further directions as may be required.

² (2007) 7 Supreme Court Cases 83

In the case on hand, as a matter of fact, a preliminary decree was passed declaring the rights of respective parties interested in the property. Though it is contended by the learned senior counsel that the provisions of Partition Act have no application, however, with respect to the procedural irregularity pointed out by the learned senior counsel, it may be noted that the Supreme Court in *Moolchand v. Dy. Director, Consolidation*³, while considering the scope of Order 20 Rule 18, and Order 26 Rule 13 CPC, held in paragraph 15, held as under:

15. The definition of "decree" contained in Section 2(2) read with the provisions contained in Order 20 Rule 18(2) as also Order 26 Rule 14 of the Code indicate that a preliminary decree has first to be passed in a partition suit and thereafter a final decree is passed for actual separation of shares in accordance with the proceedings held under Order 26. There are, thus, two stages in suit for partition. The first stage is reached when the preliminary decree is passed under which the rights of the parties in the property in question are determined and declared. The second stage is the stage when a final decree is passed which concludes the proceedings before the Court and the suit is treated to have come to an end for all practical purposes.

In other words, once the final decree is passed, the suit proceedings shall come to an end for all practical purposes. In the case on hand, the Court below, basing on the advocate commissioner's report that the property is indivisible as per the shares allotted in the preliminary decree, had allowed the Application for conducting of auction so as to distribute the sale proceeds as per the respective shares determined in the preliminary decree; and after determination of respective amounts to be paid, by formalizing the distribution of amounts in accordance with the shares, final decree would be passed.

³ (1995) 5 SCC 631

It may also be noted that, as a matter of fact, the Court could have made such an order at the first instance itself, under Order 20 Rule 18(ii) CPC, as passing of preliminary decree declaring the rights is not mandatory in each and every case, and it is only in cases where the Court comes to the conclusion that if partition or division of the property cannot conveniently be made without further enquiry, a preliminary decree is required to be made.

In the facts of the present case, considering the division of shares of respective sharers in the immovable property, as determined in the preliminary decree being cumbersome and not feasible, the preliminary decree itself could have been made as a final decree, however, it appears that the trial Court, in a routine manner, proceeded with passing of preliminary decree declaring the rights of parties.

It may be noted that the suit being a partition suit, and the claim of the petitioner-11th defendant came to be rejected by the trial Court, there is no interest of the petitioner either in the property or in the division of the property. Thus, there is no merit in the civil revision petition and, hence, same is liable to be dismissed.

The civil revision petition is, accordingly, dismissed. No costs. Miscellaneous petitions, if any pending, shall also stand dismissed.

CHALLA KODANDA RAM, J

07th August, 2019

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THE HON' BLE SRI JUSTICE CHALLA KODANDA RAM



CIVIL REVISION PETITION No.1705 of 2019

07th August, 2019

KSM