



CRP.Nos.3211 of 2018 & 2245 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.02.2023

CORAM:

THE HONOURABLE MR.JUSTICE **G.K.ILANTHIRAIYAN**

CRP.Nos.3211 of 2018 & 2245 of 2019 and
CMP.Nos.18900 of 2018, 14580 of 2019, 515 & 518 of 2020

CRP.No.3211 of 2018

Sankaran

... Petitioner

Vs.

- 1.Girija
- S.A.Munisamy Chettiar(died)
- 2.Dhanakottiyammal
- 3.Sulochana
- 4.Senthil Kumar
- 5.Sathish Kumar
- S.A.Muninatha Chettiar(died)
- 6.P.M.Kannappan
- 7.B.M.Samikannu
- 8.Arulanantham
- Gnanammal(died)
- 9.Ramesh Kumar
- 10.Sureshbabu
- 11.Subramani
- 12.Mynavathi
- 13.Vijayalakshmi
- 14.Vennila
- 15.Jayanthi
- 16.Chitra
- S.A.Angamuthu Chettiar(died)
- 17.Muniraj
- Munilakshmi(died)
- Parvathiammal(died)
- 18.P.M.Dandava Chetti



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- 19.P.M.Kandasamy
- 20.Radha
- 21.Suhirdha
- Kalyaniammal(died)
- Rangumani(died)
- 22.Soudhamani
- 23.Jayamani
- 24.Vanithamani
- Nagarajan(died)
- 25.Thilagavathi
- 26.Gayathri
- 27.Sangeetha
- 28.Priya
- 29.Meenambal
- Nagarathinam(died)
- Thangavel Chettiar(died)
- 30.Sugunaranjani
- Thirumalaiammal(died)
- 31.Sridharan
- 32.Boopathy
- 33.Sakthi
- 34.Parameswari
- 35.Akila
- 36.A.R.Prabavathi
- 37.R.Mohan
- 38.Kala
- 39.Malathi
- 40.Ravi
- 41.Sumathi

... Respondents

PRAYER: Civil Revision petition is filed under Article 227 of the Constitution of India to set aside the fair and decretal order of the Subordinate Judge's Court at Dharmapuri dated 08.03.2018 in IA.No.442 of 2010 in OS.No.1 of 1989.



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For Petitioner

: Mr.P.Valliappan,
Senior Counsel
for Mr.N.Loganathan

For Respondents

For R1

: Mr.C.Prabakaran

For R2,11 to 16,
36 & 41

: Mr.W.Camyles Gandhi

For R37

: Mr.S.C.Viswanath

For R3,4,5,10,
17 to 21,23,24,
26 to 28, 30 to 36,
38 to 40

: No appearance

CRP.No.2245 of 2019

1.P.M.Kannappan
2.P.M.Samikannu
3.P.M.Arulanandam

... Petitioners

Vs.

1.Girija
S.A.Munusamy Chettiar(died)
2.M.Sankaran
3.Dhanakottiyammal
4.Sulochana
5.Senthil Kumar
6.Sathish Kumar
Gnanambal(died)
Rajam (died)
7.Ramesh Kumar
8.Suresh Babu
Alamelu Ammal(died)
9.Subramani
10.Mynavathi
11.Vijayalakshmi
12.Vennila



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13.Jayanthi

14.Chitra

S.A.Angamuthu Chettiar(died)

15.Muniraj

Munilakshmi(died)

Parvathy Ammal(died)

16.P.M.Thandava Chetty

17.P.M.Kandasamy

18.Radha

19.Sugirtha

Kalyaniammal(died)

Rangumani(died)

20.Saudhamani

21.Jayamani

22.Vanithamani

Nagarajan(died)

23.Thilagavathi

24.Gayathri

25.Sangeetha

26.Priya

27.Meenambal

Nagarathinam(died)

Thangavel Chettiar(died)

28.Suganaranjani

Thirumalaiammal(died)

29.Sridharan

30.Bhoopathi

31.Sakthi

32.Parameswari

33.Akila

34.A.R.Parvathi

35.R.Mohan

36.Kala

37.Malathi

38.Ravi

39.Sumathi

... Respondents

PRAYER: Civil Revision petition is filed under Article 227 of the



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Constitution of India to set aside the fair and decretal orders dated 08.03.2018 in IA.No.442 of 2010 in OS.No.1 of 1989 on the file of the Subordinate Judge's Court at Dharmapuri

For Petitioners : Mr.S.Sudarshan
for Mr.S.Subramanian

For Respondents
For R1 : Mr.C.Prabakaran

For R2 : Mr.P.Valliappan,
Senior Counsel
for Mr.N.Loganathan

For R35 to 37 : Mr.S.C.Viswanath

For R3 to 34 : No appearance

COMMON ORDER

Both the civil revision petitions have been filed challenging the final decree in respect of 'C' schedule property in OS.No.1 of 1989 on the file of the Subordinate Judge's Court at Dharmapuri.

2. The petitioners in both the civil revision petitions are the legal heirs of the deceased plaintiff and the deceased first defendant. The suit was filed for partition in respect of the suit properties. In the said suit, preliminary decree was passed and on the strength of the preliminary decree, one of the legal heirs of the deceased first defendant filed application in IA.No.442 of



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2010 for passing final decree in respect of 'C' schedule property alone and the same was allowed. Aggrieved by the same, the present civil revision petitions have been filed.

3. The learned Senior Counsel appearing for the petitioner in CRP.No.3211 of 2018 submitted that final decree cannot be passed for 'C' schedule property alone. Any number of preliminary decree can be passed and insofar as final decree, only one final decree can be passed, that too for all the properties. The final decree cannot be passed for some of the schedule mentioned properties alone.

4. The learned counsel for the petitioners in CRP.No.2245 of 2019 submitted that in respect of other properties, some of the properties were already sold out and as such, final decree cannot be passed in respect of 'C' schedule property alone. It is not permissible under law. He further submitted that the first respondent admitted that the other properties contained in the preliminary decree are not in the possession of the joint family members and they have been lost irretrievably and that she has given up all her rights over those properties totally. Therefore, the rights of the parties to the preliminary decree have to be worked out again afresh taking into account the loss of the



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other properties. Therefore, final decree cannot be passed only in respect of 'C' schedule property alone. In support of his contention, he also relied upon the judgment of the Hon'ble Supreme Court of India in the case of ***Phoolchand and another Vs. Gopal Lal*** reported in ***AIR 1967 SC 1470***, wherein it is held that there is nothing prohibited in the Code of Civil Procedure from passing more than one preliminary decree if some parties die and shares of other parties are thereby augmented. Therefore, it would 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 to 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 why a second preliminary decree correcting the shares in a partition suit cannot be passed by the court.

4.1 He also relied upon the judgment in the case of ***Ganduri Koteshwaramma and another*** reported in ***(2011) 9 SCC 788***, in which the Hon'ble Supreme Court of India held that a preliminary decree determines the rights and interests of the parties. The suit for partition is not disposed of by



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passing of the preliminary decree. It is by a final decree that the immovable property of joint Hindu family is partitioned by metes and bounds. After the passing of the preliminary decree, the suit continues until the final decree is passed. If in the interregnum i.e. after passing of the preliminary decree and before the final decree is passed, the events and supervening circumstances occur necessitating change in shares, there is no impediment for the court to amend the preliminary decree or pass another preliminary decree redetermining the rights and interests of the parties having regard to the changed situation.

5. The learned counsel for the first respondent would submit that she is the legal heir of the first defendant and filed application for passing final decree in respect of 'C' schedule property alone. All the other properties were already sold out and as such, she has no interest over the other properties. Therefore, she filed application for final decree in respect of 'C' schedule property alone. It is very much maintainable and any number of final decree can be passed as preliminary decree. Therefore, the court below rightly passed final decree in respect of 'C' schedule property alone. In support of his contention, he also relied upon the judgment of the Hon'ble Supreme Court of India in the case of ***Shankar Balwant Lokhande (dead) by LRs Vs.***



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Chandrakant Shankar Lokhande and another reported in ***(1995) 3 SCC 420***,

in which it is held that as envisaged in sub-rule (2) of Rule 18 of Order 20, it was only a preliminary decree declaring the rights of the parties with power to the court to give further directions in that behalf. It is settled law that more than one final decree can be passed. With the passing of the final decree in respect of the share of the first respondent, the rights of the parties in respect of other properties have not been crystallised and no final decree dividing the properties by metes and bounds was passed nor any application was made to divide the properties in terms of the shares of the parties declared in the preliminary decree. He also relied upon another judgment of the Hon'ble Supreme Court of India in the case of ***Hasham Abbas Sayyad Vs. Usman Abbas Sayyad and Others*** reported in ***(2007) 2 SCC 355***, in which the Hon'ble Supreme Court of India held that there can be more than one final decree. A decree may be partly preliminary and partly final. A final decree proceeding may be initiated at any point of time and no limitation is provided therefor.

6. Heard, the learned counsel appearing on either side.

7. On the strength of the preliminary decree, the first respondent herein filed application for final decree in respect of 'C' schedule property alone.



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Only contention raised by the learned Senior Counsel for the petitioner in

CRP.No.3211 of 2018 and the learned counsel for the petitioner in

CRP.No.2245 of 2019 is that any number of final decree can be passed in

respect of all the properties as per the preliminary decree and it cannot be

passed in piecemeal manner, that too for 'C' schedule property alone.

Admittedly, on perusal of 'C' schedule property, revealed that already as per the

order passed by this Court in WA.No.342 of 1984, in order to run the transport

business, eighth respondent in IA.No.442 of 2010 has been appointed as

receiver. However, he failed to furnish proper accounts for the transport

business. Therefore, one of the legal heirs of the first defendant filed

application for passing final decree insofar as 'C' schedule property alone. The

Hon'ble Supreme Court of India in the case of **Hasham Abbas Sayyad Vs.**

Usman Abbas Sayyad and Others reported in (2007) 2 SCC 355, held as

follows:

6. Order XX of the Code of Civil Procedure provides as to when a judgment is said to be pronounced. Rule 7 thereof provides that a decree although prepared at a later date shall relate back to the date of the judgment. A Civil Court, in a suit for partition, may pass a preliminary decree in terms of Order XX Rule 18 of the Civil Procedure Code, which reads as under :



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"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) if in so far as the decree relates to an estate assessed to the payment of revenue to the Government, the decree shall declare the rights of the several parties interested in the property, but shall direct such partition or separation to be made by the Collector, or any gazetted subordinate of the Collector deputed by him in this behalf, in accordance with such declaration and with the provisions of section 54.

(2) if and in so far as such decree relates to any other immoveable 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 rights of the several parties, interested in the property and giving such further directions as may be required."

7. Preliminary decree declares the rights and liabilities of the parties. However, in a given case a decree may be both preliminary and final.

8. There can be more than one final decrees. A decree may be partly preliminary and partly final. [See



Rachakonda Venkat Rao and Others v. R. Satya Bai (Dead)

by L.Rs. and Another (2003) 7 SCC 452]

9. *A final decree proceeding may be initiated at any point of time. No limitation is provided therefor. However, what can be executed is a final decree, and not a preliminary decree, unless and until final decree is a part of the preliminary decree.*

8. Thus, it is clear that there can be more than one final decree. A decree may be partly preliminary and partly final. The Hon'ble Supreme Court of India also held in the case of ***Shankar Balwant Lokhande (dead) by LRs Vs. Chandrakant Shankar Lokhande and another*** reported in ***(1995) 3 SCC 420***, as follows:

7. *Question is whether the aforesaid view is correct? Since the decree is one which is prior to the [Limitation Act, 1963](#), we are to look to the provisions contained in the [Limitation Act, 1908](#), (for short, 'the old Act'), for deciding the controversy. [Article 182](#) of the First Schedule to the old Act envisages that "for the execution of a decree or order of any civil court not provided for by [Article 183](#) or by Section 48 of CPC, the period of limitation of three years begins to run from the date the final order was passed on an application made in accordance with law to the proper court for execution, or to take some step in aid of execution of the decree or order. Explanation 1 provides that*



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"where the decree or order has been passed severally in favour of more persons than one, distinguishing portions of the subject-matter as payable or deliverable to each, the application mentioned in note 5 of the article shall take effect in favour only of such of the said persons or their representatives as it may be made by. But where the decree or order has been passed jointly in favour of more persons than one, such application, if made by any one or more of them, or by his or their representatives, shall take effect in favour of them all."

Therefore, it would be clear that where decree or order has been passed jointly against more persons than one, the application shall take effect against them all, even if it is made by one or more. It is seen that the preliminary decree is a declaration of the rights of the parties with a charge on the properties to be allotted and a Commissioner is required to be appointed for partition of certain specified properties. Therefore, as envisaged in sub-r. (2) of Rule 18 of Order 20, it was only a preliminary decree declaring the rights of the parties with power to the court to give further directions in that behalf. It is settled law that more than one final decree can be passed. With the passing of the final decree in respect of the share of the first respondent, the rights of the parties in respect of other properties have not been crystallised and no final decree dividing the properties by metes and bounds was



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passed nor any application was made to divide the properties in term's of the shares of the parties declared in the preliminary decree.

9. Thus, it is clear that as envisaged in sub-rule (2) of Rule 18 of Order 20 of CPC, it was only a preliminary decree declaring the rights of the parties with power to the court to give further directions in that behalf. It is settled law that more than one final decree can be passed. That apart, insofar as the other properties, they have been sold out in favour of the third parties. The first respondent also has no interest over the other properties. Therefore, the court below rightly passed final decree insofar as 'C' schedule property alone and this Court finds no infirmity or illegality in the order passed by the court below.

10. Accordingly, both the civil revision petitions are dismissed. Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

22.02.2023

Index :Yes/No

Internet : Yes/No

Speaking order/non-speaking order

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To
The Subordinate Judge at Dharmapuri

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