
(1996) 08 AP CK 0093
In the Andhra Pradesh High Court
Case No : C.R.P. No. 1922 of 1996

Ch. Yashoda Devi and Another	Vs	APPELLANT
B. Dayakar Reddy and Others		RESPONDENT

Date of Decision : 19-08-1996

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10, 115

Citation : (1996) 3 ALT 1097 : (1996) 2 APLJ 344

Hon'ble Judges : S.V. Maruthi, J

Bench : Single Bench

Advocate : Bankatlal Mandhani, for the Appellant; Mirza Imamulla Baig, for the Respondent

Final Decision : Dismissed

Judgement

S.V. Maruthi, J.—This Revision is filed against the order in I.A. No. 712/89 in A.S. No. 19/1988 on the file of the first Addl. District Judge, Warangal. Plaintiffs 2 and 3 are the petitioners herein.

2.Theplain tiff filed a suit O.S. No. 64/85 on the file of the Subordinate Judge, Jangaon for partition of the suit schedule properties consisting of survey numbers 461/4 and 461/5. Against the preliminary decree in O.S. No. 64/85, A.S. No. 19/88 was filed in the First Addl. District Court, Warangal. Pending disposal of the appeal, LA. No. 712/89 was filed under Order 1 Rule 10 C.P.C. by the first respondent in the C.R.P. requesting the Court to implead him as a party to the suit for partition.

3. The first respondent was appointed as Receiver-Commissioner by the Chief Judge, City Civil Court, Hyderabad in I.A. No. 1874/82 in O.S. No. 18/63. O.S. No. 18/63 was filed by one Mir Abbas Hyder Kazmi against Smt. Saleha Fatima for the administration of the Estate belonging to Mir Abbas Hyder Kazmi. In the suit one Sri Ahamed Sharif, Advocate, Jangaon was appointed as Receiver-Commissioner for administration of the suit schedule properties. He took

possession of the suit schedule properties from the Revenue authorities including suit schedule property in O.S. No. 64/85 on the file of the Sub-Judge, Janagaon. On the death of the original Receiver namely Sri Ahamed Sheriff the present first respondent was appointed as Receiver in the year 1983. Respondents 2 to 20 filed the suit for partition in O.S. No. 64/85 for partition of land in survey number 461/4 & 461 /5 which were the subject matter of suit O.S. No. 18/63. The possession of the said survey numbers was handed over to Sri Ahmed Sheriff, the Receiver in file No. C3/2915/63 by the Revenue Authorities. Since these two survey numbers were the subject matter of O.S. No. 18/63 in respect of which Smt. Sahela Fatima was claiming title and ownership of the properties, the Receiver Commissioner filed the petition to implead him contending that he is a necessary party and since the suit was filed without impleading him when he came to know about the passing of the preliminary decree in favour of respondents 2 to 20, he filed LA. No. 712/89 in A.S. No. 19/88. The learned Judge relying on a judgment of this Court in CRP No. 2954/88 which arose out of an order passed in LA. No. 166/88 in O.P. No. 29/87 on the file of Sub-Court, Jangaon wherein the Receiver has been impleaded as a party to the proceedings under the Land Acquisition Act, allowed the I.A. and observed that the Receiver is a necessary party. Aggrieved by the orders of the First Addl. District Judge, Warangal, the present C.R.P. is filed by the plaintiffs.

4. The argument of the learned Counsel for the petitioner is that the preliminary decree has already been passed by the Sub-Judge, Jangaon against which the appeal is filed in the first Adll. District Court, Warangal. If the first respondent is impleaded as a party it would not only change the nature of the suit but it will also affect the rights of the petitioners in the Revision petition. The whole suit is to be retried once again and therefore, the first Addl. District Judge ought not to have impleaded the 1st respondent as a party to the suit. Respondents 2 to 20 in the LA. filed suit for partition of survey numbers 461/4 and 461/5 claiming that their predecessors in title purchased the property and they are in possession of the same over a period of 40 years and therefore, they are entitled for partition of these two items, whereas, the first respondent claims that these two items of property were the subject matter of the earlier suit O.S. No. 18/63 on the file of the Chief Judge, City Civil Court, Hyderabad in which the Receiver was appointed who had taken possession of these two items of properties and the properties are in possession and administration of the Receiver. If the Commissioner-Receiver is impleaded the matter is to be reopened which is not permissible is the contention of the counsel for the petitioners.

5. In a suit relating to property, in order that a person may be added as a party, he should have a direct interest as distinguished from a commercial interest, in the subject matter of the litigation. Further, if the Court is of the opinion that by adding that party, it would be in a better position effectually and completely to adjudicate upon the controversy, then also it is open to the Court to implead the third party to the suit (refer to Razia Begum Vs. Sahebzadi Anwar Begum and Others,).

6. In this case, according to the first respondent the subject matter of the suit O.S. No. 18/63 is for administration of estate and he was appointed as Receiver-Commissioner for the administration of the estate and he had taken possession of the same. Therefore, if the first respondent is impleaded as a party and if it is established in the suit that the property does not belong to the plaintiff in O.S. No. 64/85 their suit for partition automatically fails. On the other hand, if it is established in the suit that the properties belong to respondents 2 to 20 in the I.A. and the Receiver has no right to property men the preliminary decree will be confirmed and the properties have to be divided between the parties to the suit for partition by metes and bounds Therefore, the only question that requires to be decided is whether the property belongs to respondents 2 to 20 in the LA. or whether the property belongs to the first respondent vested in him for the purpose of administration of the estate?

7. It is true that preliminary decree has already been passed. Addition of the first respondent results in framing of an issue as to the ownership of the property. It may also require remand of the whole matter for purpose of considering the issues afresh. Order 1 Rule 10 C.P.C. gives jurisdiction to the Court to order that the name of any person who ought to have been joined 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 at any stage of the proceedings. The proceedings in a suit for partition cannot come to an end till the final decree is passed and hence an order directing a party to be added under Order 1 Rule 10 CPC may be made in a suit for partition before it is actually terminated by passing of the final decree (Refer to Swayamprakasam alias Chidambaranathan Vs. R. Vijayarangam,).

8. A Bench consisting of Alladi Kuppuswami and B.P. Jeevan Reddy, JJ. in R.A. Narasinga Rao v. Chunduru Sarada AIR 1976 A.P. 226 held that

"the Court has inherent power to set aside a preliminary decree at the instance of a party who has been impleaded after passing the preliminary decree though He was not a party to such a decree. The Court would exercise the power to do substantial justice between the parties having regard to the circumstances of the case."

Since it is settled that the power under Order 1 Rule 10 C.P.C. can be exercised to implead a party even after passing of the preliminary decree in order to effectually adjudicate the rights of parties and to do substantial justice between the parties, the learned Judge is right in impleading the respondent as a party to the suit. To do substantial justice to the parties and also to avoid multiplicity of the proceedings, it is just and necessary that the first respondent should be impleaded as party to the suit. The learned Counsel relied on M. Abdul Razack Vs. S. Mohammad Shah, it is true it was held that it cannot be stated that a person claiming adverse title to the estate of the deceased would be either a necessary or proper party in a suit for administration of estate and that in certain cases the plaintiff can implead such a person claiming adverse title in the event

of partition or administration suit. But where the plaintiff does not want him to be impleaded it is only to embarrass the trial of the suit. Similar is the view expressed in *B. Somaiah and Others Vs. Amina Begum*, . In *C. Satyanarayana and Others Vs. Kanumarlapudi Lakshmi Narasimham*, it was held that in a suit for money against the partners of the firm even the Receiver holding possession of the firm's property is not a necessary party. Similar is the view expressed by the Madras High Court in *Ramaswami Reddi Vs. Deivasigamani Pillai and Others*, . As against the above, the Kerala High Court in *Neelakantha Pillai Ramachandran Nair Vs. Ayyappan Pillai Kumara Pillai*, held that:

"In suits for redemption or partition where the passing of a preliminary decree is contemplated the power conferred under Order 1 Rule 10 C.P.C. is to be regarded as circumscribed by the provisions contained in Section 2(2) and Section 97 of the Code. The implead merit of additional parties subsequent to the passing of the preliminary decree is permissible only if none of the questions already settled by the preliminary decree would have to be reopened by the Court as a consequence of such impleadment. The addition of parties can be allowed at that stage only on condition that the further proceedings to be taken in the suit will be only on the basis of the preliminary decree already passed, and none of the questions settled by the preliminary decree will be allowed to be reagitated on the ground that the person newly impleaded was not before the Court at the time of the passing of the preliminary decree.

It was also held:

"As to whether or not the impleadment of a new party should be allowed on the aforesaid condition in the circumstances of a particular case will have to be considered by the Court on the merits of each case as and when the said question arises. No party should be impleaded against his will if that would involve his being subjected to the terms of a preliminary decree which was passed without his being on the party array, particularly when there are pleas which the said party could have put forward in respect of the matters considered and settled by the preliminary decree."

In other words, if the question is already settled in the preliminary decree and if it does not require reopening by adding the party the Court can implead a third party. There cannot be any dispute about the proposition that a party cannot be added against his will. On the facts of the present case, I am of the view that the only question that requires to be decided is whether the property is vested in the Receiver - first respondent or whether the plaintiffs in the suit are entitled to the same. In the preliminary decree the share of the plaintiffs and the defendants is determined and it does not require any reconsideration and the questions settled in the preliminary decree are not altered by adding the Receiver as a party to the appeal. The only question that has to be considered is whether the property is vested in the Receiver or whether it belongs to respondents 2 to 20 in the LA.

9. In order to avoid multiplicity of the proceedings, the presence of the Receiver

in the suit is necessary. The question of addition of party under Order 1 Rule 10 C.P.C. depends on facts and circumstances of each case. The main object in adding the party under Order 1 Rule 10 CPC is to do substantial justice and also to avoid multiplicity of proceedings and in order to adjudicate upon the rights of the parties in a proper manner.

10. In view of the above, I do not see any error of jurisdiction in the order of the First Addl. Dist. Judge by impleading the Receiver as a party to the suit. The Revision is therefore, devoid of merits and it is accordingly dismissed. No costs.