
(2011) 11 AP CK 0157

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No's. 3481 and 4636 of 2011

Dr. G. Umesh

APPELLANT

Vs

Smt. A. Seetha Kumari and Others

RESPONDENT

Date of Decision : 09-11-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10, Order 6 Rule 17
Constitution of India, 1950 — Article 227

Citation : (2013) 3 ALD 710 : (2012) 2 ALT 271

Hon'ble Judges : Ramesh Ranganathan, J

Bench : Single Bench

Advocate : K. Maheswara Rao and P. Venugopal, for the Appellant; N. Ranga Reddy, Counsel, for the Respondent

Final Decision : Dismissed

Judgement

Ramesh Ranganathan, J.—Both C.R.P. Nos. 3481 and 4636 of 2011 are filed by the plaintiff in O.S. No. 20 of 2005 aggrieved by the docket order in I.A. No. 481 of 2011 in I.A. No. 30 of 2008 in O.S. No. 20 of 2005 dated 11.8.2011, and the subsequent order in I.A. No. 30 of 2009 in O.S. No. 20 of 2005 dated 12.10.2011, on the file of the I Addl. District Judge, Anantapur. O.S. No. 20 of 2005 was filed by the petitioner herein seeking partition of the suit schedule properties; for a preliminary decree directing division of the suit schedule properties into three equal shares by metes and bounds; for allotment of one such share to the plaintiff; and to put him in possession thereof. The defendants in the said Suit were the plaintiff's mother and brother. A compromise petition was filed by the plaintiff and the defendants in terms of which the plaintiff and the defendants agreed to enjoy Item No. 1 of the plaint schedule property jointly, having equal share i.e., 1/3rd share each; none of them had an individual right to alienate the same; if the parties directed (sic. decided) to sell, both the plaintiff and the defendants had to sell the said property jointly; the plaintiff and the defendants agreed that house tax, water tax and electrical consumption charges would be paid to the concerned departments by persons who resided in

item No. 1 of the schedule property; the plaintiff and the defendants agreed to sell item No. 2 of the schedule property, and to receive the sale proceeds in the agreed shares i.e., 37.5% for the plaintiff; 30% for the 1st defendant and 32.50% to the 2nd defendant. Item No. 1 of the suit schedule property was house bearing No. 3/384 situated at Court Road, Anantapur and Item No. 2 was house bearing No. 11/176 situated at Subash Road, Anantapur. A compromise decree was passed, in terms of the compromise petition, in O.S. No. 20 of 2005 on 11.11.2005.

2. The 1st respondent in C.R.P. No. 3481 of 2011 (daughter of the 1st defendant in O.S. No. 20 of 2005 and sister of the plaintiff-petitioner herein) filed I.A. No. 481 of 2011, under Order 1 Rule 10 read with Order 6 Rule 17 C.P.C, that she be impleaded as the third respondent in I.A. No. 30 of 2008. In the affidavit filed by her in support of the said I.A. she stated that her mother, who was the 1st defendant in O.S. No. 20 of 2005, had died on 20.2.2011; during her life time the 1st defendant had executed a registered gift deed in her daughter's favour on 16.7.2009 gifting her share in the schedule property to her; the applicant was entitled to come on record as the 3rd respondent in I.A. No. 30 of 2005 as she had a right in the property; and, if she was not impleaded as the 3rd respondent, she would be put to great loss and injustice. She filed a copy of the gift deed dated 16.7.2009 executed by her mother in her favour. The application in I.A. No. 481 of 2011 was ordered by the learned District Judge by docket order dated 11.8.2011 as under:

For hearing heard, in the interest of justice petition is allowed as there is a registered gift deed in favour of the petitioner, this petition is allowed and no prejudice will be caused to the respondent

Aggrieved thereby C.R.P. No. 3481 of 2011 is filed.

3. I.A. No. 30 of 2009 was filed by the widow of the 2nd defendant in O.S. No. 20 of 2005, (widow of the petitioner - plaintiff's brother), requesting the Court to pass a final decree in terms of the preliminary decree passed earlier by the Court. In the affidavit filed in support of the I.A. she stated that she was residing at Bangalore; she was the wife of the 2nd defendant in the suit; the 2nd petitioner in the I.A. was her minor son who was under her care and custody; the petitioner - plaintiff had filed O.S. No. 20 of 2005 for partition and separate possession of the joint family properties against her husband and his mother; subsequently parties had entered into a compromise; in terms thereof a compromise decree was passed on 11.11.2005; thereafter the second item in the suit schedule properties was jointly sold; however the first item was yet to be divided as per the respective shares in terms of the compromise; subsequently her husband died leaving behind him their son and herself as his legal heirs; for reasons best known the petitioner - plaintiff had not moved the court for final decree proceedings; and, hence, she was filing a petition for passing a final decree.

4. The Learned District Judge, by proceedings dated 12.10.2011, directed that a final decree be passed; and, for the said purpose, appointed an advocate commissioner to divide item No. 1 of the plaint schedule property into three equal shares by measuring the entire property, and preparing a proper plan. The Advocate commissioner was directed to issue notice to both the parties; fix a date for the commissioner to visit the schedule property on the day fixed; and to measure the property and prepare a plan to divide the property equally between the parties. Aggrieved by the said order dated 12.10.2011, C.R.P. No. 4636 of 2001 is filed.

5. While Sri K. Maheswara Rao, Learned counsel, has appeared on behalf of the petitioner - plaintiff in C.R.P. No. 3481 of 2001, Sri P. Venugopal, Learned counsel, has appeared on his behalf in C.R.P. No. 4636. Sri N. Ranga Reddy, Learned counsel, put forth his submissions on behalf of respondents 1 to 3 in both the C.R.Ps.

6. Both Sri P. Venugopal and Sri K. Maheswara Rao would contend that the docket order dated 11.8.2011 impleading the petitioner's sister as the 3rd respondent was bereft of reasons; the petitioner did not accept the registered gift deed to be true; and, in such circumstances, the said order was liable to be set aside. On the petitioner's challenge to the subsequent order, passed in I.A. No. 30 of 2009 dated 12.10.2011, learned counsel would contend that the compromise decree dated 11.11.2005 was itself a final decree; no useful purpose would be served in appointing an advocate commissioner treating the compromise decree as a preliminary decree; and, since the compromise decree dated 11.11.2005 was, in effect, a final decree, the order of the Court below dated 12.10.2011 was without jurisdiction. Learned counsel would rely on *Panchangula Venkatasubamma v. Kambhampati Venkatappaiah Sastri* 1971 (1) ALT 212.

7. On the other hand Sri N. Ranga Reddy, Learned Counsel appearing on behalf of the respondents, would submit that the petitioner's endeavour was only to delay giving effect to the compromise decree dated 11.11.2005; there is a presumption regarding the validity of a registered gift deed; the validity of the registered gift deed can only be challenged in independent civil proceedings before a competent civil court, and not in an application filed either by the 1st respondent to implead herself as the 3rd respondent; or in an application filed by the 2nd respondent requesting that a final decree be passed. Since the petitioner-plaintiff was in possession of item No. 1 of the suit schedule property in O.S. No. 20 of 2005, he was not making any efforts to partition the said property despite a compromise having been arrived at, and a compromise decree being passed on 11.11.2005; and, it is in such circumstances, that his brother's widow, who is the 2nd respondent in these C.R.Ps and was residing at Bangalore, was forced to file an application requesting the Court to pass a final decree by appointing an advocate-commissioner.

8. The challenge to the order of the District Judge dated 11.8.2011, on the

ground that it is bereft of reasons, does not merit acceptance. It is not in dispute that the plaintiff's mother was a defendant in O.S. No. 20 of 2005; she was also a party to the compromise decree; and was entitled to an equal share in item No. 1 of the property specified in the compromise decree. It appears that she had gifted her share to her daughter (1st respondent herein) by way of a registered gift deed. There is a presumption regarding the validity of such a gift deed and, if its validity is to be questioned, the remedy is by way of an independent suit before a competent civil court. The petitioner cannot seek to assail its validity in a partition suit in which a compromise decree was passed as early as on 11.11.2005.

9. On the petitioner's challenge to the subsequent proceedings dated 12.12.2011 on the ground that the compromise decree was a final decree and not a preliminary decree, a Division Bench of this Court, in Panchangula Venkatasubbamma (1 supra), held that the answer to the question whether a compromise decree was only a preliminary or a final decree would turn upon the construction of the relevant provisions contained in the decree, which in their turn gave an indication of the intention of the parties to the compromise on which the decree was based; where the compromise decree pointed to the fact that the suit was finally disposed of, and there was nothing more for the trial court to do in the matter, it would amount to a final decree; and that the parties intended the decree to be final and not preliminary.

10. In the counter affidavit filed before the Additional District Judge, Anantapur in LA. No. 30 of 2009 all that the petitioner herein contended was that the petition was not maintainable; nobody had an individual right to alienate the same; if the properties were required to be sold, both parties had to sell the same jointly; no share was divided and allotted to the parties in the preliminary decree; hence passing of the final decree did not arise; and a final decree petition was not maintainable as there was no preliminary decree dividing the shares of the parties. It is thus evident that the case of the petitioner was on the basis that there was a preliminary decree, and not on the basis that the earlier compromise decree was a final decree. The contention to the contrary, urged for the first time by the petitioner in this revision under Article 227 of the Constitution of India, does not, therefore, merit acceptance.

11. The petitioner's conduct in dragging on proceedings is also a factor which is required to be borne in mind. If the compromise decree dated 11.11.2005 had attained finality then the petitioner ought to have effected partition in terms of the compromise arrived at. Though nearly six years had elapsed after the compromise decree was passed on 11.11.2005, it is evident that the petitioner has made no efforts in this regard; and, as a result thereof, his brother's widow had perforce to move an application seeking a final decree to be passed. The compromise decree dated 11.11.2005 merely fixes the share of all the three parties i.e., the petitioner, his mother and brother in Item no. 1 of the suit schedule property in O.S. No. 20 of 2005. Division of the said property, in

accordance with the specified shares, by metes and bounds is not specified therein, and may well require a final decree to be passed. The Court below was justified in not accepting the contention that the property is joint, and cannot be sold except with the consent of the parties to the compromise decree. As rightly pointed out by Sri N. Ranga Reddy, Learned counsel for the respondents, the compromise decree arrived at was between the petitioner, his mother and brother and, as both the petitioner's mother and his brother have since passed away, and as the shares of each of the parties are fixed, the petitioner, while retaining possession of the subject property, cannot deny the respondents herein, (the petitioner's sister, and his widowed sister-in-law), their rightful share in the property.

12. It is useful to note that these revision petitions are filed by the petitioner under Article 227 of the Constitution of India. However wider its powers may be than the provisions of S. 115 C.P.C., the High Court cannot assume appellate powers, (Satyanarayan Laxminarayan Hegde and Others Vs. Millikarjun Bhavanappa Tirumale, ; Municipal Corporation of Hyderabad Vs. Philomena Education Foundation of India,), and unlimited prerogative to correct all species of hardship or wrong decisions. Interference must be restricted to cases of grave dereliction of duty and flagrant abuse of fundamental principles of law or justice where grave injustice would occur unless the High Court intervenes, Laxmikant Revchand Bhojwani and Another Vs. Pratapsing Mohansingh Pardeshi Deceased through his Heirs and Legal Representatives, ; Philomena Education Foundation of India (3 supra)).

13. The power of superintendence under Article 227, intended to keep subordinate courts within the bounds of their authority, Dalmia Jain Airways Ltd. Vs. Sukumar Mukherjee, 193 Waryam Singh and Another Vs. Amarnath and Another, Nagendra Nath Bora and Another Vs. The Commissioner of Hills Division and Appeals, Assam and Others, may be exercised in cases such as when (i) the court or tribunal has assumed a jurisdiction which it does not have, (ii) has failed to exercise a jurisdiction which it does have, such failure occasioning a failure of justice, and (iii) the jurisdiction, though available, is being exercised in a manner which tantamounts to overstepping the limits of jurisdiction. Surya Dev Rai Vs. Ram Chander Rai and Others, ; Philomena Education Foundation of India (3 supra)).

14. The supervisory jurisdiction is to be exercised sparingly, and only in appropriate cases, where the judicial conscience of the High Court dictates it to act lest gross failure of justice or grave injustice occasion. Care, caution and circumspection needs to be exercised when this jurisdiction is sought to be invoked during the pendency of any suit or proceedings in a subordinate court and the error, though calling for correction, is yet capable of being corrected at the conclusion of the proceedings in an appeal or revision preferred there against and entertaining a petition, invoking the supervisory jurisdiction, would obstruct the smooth flow and/or early disposal of the suit or proceedings. The High court

may feel inclined to intervene where refusal to do so would result in travesty of justice- (Surya Dev Rai (8 supra); D.N. Banerji v. P.P. Mukherjee 1953 (1) Mad.LJ 195; Philomena Education Foundation of India (3 supra)).

15. Though the petitioner is in possession of Item 1 of the suit schedule property he had, for the past six years, not divided the said property, in terms of the specified shares, either to his sister, (who acquired her mother's share in the said property by way of a registered gift deed), or to his widowed sister-in-law, who has a minor son and is away at Bangalore. The submission of Sri N. Ranga Reddy, Learned counsel for the respondents, that these C.R.Ps. have been preferred only to drag on proceedings, and thereby ensure that the petitioner does not have to part with possession of the property which the respondents 1 to 3 are entitled to share, has considerable force. Neither do the orders under challenge in these two CRPs suffer from any patent illegality nor has the petitioner suffered grave injustice thereby. I see no reason, therefore, to grant the relief sought for. Both the revision petitions fail, and are, accordingly, dismissed.