

(1994) 08 AP CK 0015

In the Andhra Pradesh High Court

Case No : Letters Patent Appeal No. 261 of 1991

E. Durvasulu Naidu

APPELLANT

Vs

E. Rangaiah Naidu and Others

RESPONDENT

Date of Decision : 24-08-1994

Acts Referred:

Citation : (1994) 3 ALT 102

Hon'ble Judges : Syed Shah Mohammed Quadri, J;S.V. Maruthi, J

Bench : Division Bench

Advocate : C. Poornaiah and C. Subba Rao, for the Appellant; P.V.S.S. Rama Rao, for Respondent No. 1, M. Ramachandra Reddy, for Respondents 5 and 8 to 11, O. Manohar Reddy, for Respondents 6 and 7 and M.V.S. Suresh Kumar, for the Respondent

Final Decision : Allowed

Judgement

Syed Shah Mohammed Quadri, J.—This letters patent appeal arises out of the final decree proceedings taken in a partition suit. The plaintiff in O.S.No. 2 of 1975 is the appellant in this L.P.A. He filed the suit for partition of the plaint schedule properties against his father, 1st defendant. The parties are referred to as arrayed in the suit.

2. The father, 1st defendant and the son, the plaintiff constituted a joint family. Defendants 2 to 12 are the alienees of the joint family properties. It appears that the said suit was decreed ex parte and preliminary decree was passed on 24th April, 1982. After the decree, the 5th defendant, one of the alienees, filed I.A.No. 627 of 1983 along with an application to set aside the ex parte decree praying to condone the delay in seeking to set aside the ex parte decree. That LA. was dismissed. The said defendant carried the matter to this Court in C.R.P.No. 3209 of 1986. But the C.R.P. was also dismissed on 20th April, 1987. The 5th defendant filed another application, I.A.No. 476 of 1988, praying the Court to delete those items of the plaint schedule properties which were purchased by him from the plaintiff. Even that application was dismissed on 19-5-1988. C.R.P.

No. 2335 of 1988 was filed questioning the said order dismissing I.A.No. 476 of 1988. On 5th September, 1989 that C.R.P. was also dismissed. It may be pointed out that the preliminary decree was allowed to stand and has thus become final. The plaintiff filed I.A.No. 626 of 1983 for passing final decree praying the Court to appoint a Commissioner to work out a scheme for partition of the plaint schedule properties. In those proceedings, defendants 4 to 12 were added as parties to the proceedings. On 4th June, 1990 final decree was passed allotting the suit lands to the alienees of the 1st defendant as well as of the plaintiff. Aggrieved by the final decree thus passed, the plaintiff filed appeal, A.S.No. 2391 of 1990, and the 1st defendant filed appeal, A.S.No. 1183 of 1991. Both the said appeals were disposed of by a common Judgment by a learned Single Judge of this Court on 16-8-1991. In so far as the dismissal of the appeal A.S.No. 2391 of 1990 is concerned, the correctness of the same is assailed by the plaintiff in this L.P.A.

3. Sri. C.Poornaiah, the learned Counsel for appellant, contends that the learned single Judge had taken into consideration the extents of the land while upholding the order of the trial Court without taking into consideration the value of the land to be allotted to each of the co-parcener, namely, the plaintiff and the 1st defendant. Therefore, the order under appeal has to be set aside. Sri M. Ramachandra Reddy, the learned Counsel for the defendants 5 and 8 to 11, on the other hand, contends that the alienations in favour of the said defendants are proper and that during the course of more than twenty years the alienees have improved the lands. Therefore, the learned Single Judge was justified in dismissing the appeal and that the same cannot be interfered with in this L.P.A.

4. It is now well settled that allotment of shares to the parties to a partition suit should be in accordance with the preliminary decree passed in the partition suit. The relevant clauses of the decree in O.S.No. 2 of 1975 passed on 4-6-1990 reads as follows:

"(1) that the plaint item (i) of "B". "C and "D" schedule properties be divided by metes and bounds into two equal shares taking the good and bad qualities thereon;

(2) that one such share be delivered to the plaintiff and the remaining half share be delivered to the 1st defendant."

5. From a perusal of the above noted clauses of the decree it is clear that the trial Court has to divide the properties by metes and bounds into two equal shares taking the good and bad qualities thereof and deliver one such share to the plaintiff and the other share to the 1st defendant.

6. Much reliance is placed on the order of this Court dated 5th September, 1989 in C.R.P.No. 2335 of 1988 to upset the position obtaining under the preliminary decree in the matter of allotment of shares. It has been pointed out that the said C.R.P. was filed by the 5th defendant against the order in I.A.No.476 of 1988, wherein he prayed that the items of the properties purchased by him should be

deleted from the plaint schedule. Denying that relief to the 5th defendant, the learned Judge pointed that he got a right to request the Court to work out the equities with regard to the property purchased by him so as to allot the property purchased by him to his vendor. The learned Judge thus confirmed the observation of the trial Court made to the same effect and also pointed out a similar observation made by another learned Single Judge of this Court while disposing of C.R.P.No. 3209 of 1986. The effect of the orders in these C.R.Ps. is not to upset the above said terms of the preliminary decree but to direct the trial Court to allot properties to the vendors of the alienees, namely, the plaintiff and 1st defendant, as the case may be, so that the same could be retained by the alienees. The directions in those CR.Ps. do not mean that in allotting the suit properties clause (1) of the decree should be given a go-by and allotment should be made without taking into consideration the good and the bad quality of the properties. The correct way to work out equities is to divide the properties equally, as far as possible, having regard to the nature of the properties and the valuation thereon into two equal shares. The properties which have been sold by the parties should be allotted to their respective shares, namely, to the shares of the vendors without prejudice to the right of the other shareholder-coparcener. This position as stated by learned author of Mayne on "Hindu Law and Usage", 13th Edition, para-410. This principle has also been laid down by a Full Bench of the Madras High Court in Aiyagari Venkataranayya v. Aiyagari Ramayya, ILR 25 Madras 690 and thereafter in various decisions of the Madras High Court as well as the Supreme Court. The same principle is reiterated by the Supreme Court in Muthangi Ayyanna Vs. Muthangi Jaggarao and Others, . Thus, the question of allotting these items between the 1st defendant and the plaintiff by adjustment of the value does not arise.

7. In so far as the allotment of the properties in two equal shares is concerned, the learned Single Judge observed as follows:

"It is true that the preliminary decree merely stated the division of the properties between the plaintiff and the first defendant into equal shares. At that time, there was no direction with regard to the adjustment of the equities in favour of the alienees. But, by virtue of direction given by the High Court in C.R.P.No. 2335 of 1988, it is incumbent on the lower Court at the time of passing of final decree to adjust the equities in favour of the alienees. In the written statement of the first defendant he admitted the alienations made by him and execution of the registered sale deeds. Similarly, the plaintiff alienated in favour of respondents 6 and 7 from out of "C" schedule properties. What all the lower Court did was that it took into consideration while determining the shares of the plaintiff, the alienations made by the plaintiff and the alienations made by the first defendant while determining the share of the first defendant and directed that those extents in which the alienees were in possession to be allotted to them. This cannot be said to be contrary to the preliminary decree as long as the alienations made by the respective parties are computed in their shares."

This, in our view, is not the correct position in law. We are, therefore, constrained to set aside the judgment of the learned Single Judge dated 16th August, 1991 in A.S.No. 2391 of 1990 confirming the order of the trial Court dated 4th June, 1990 in I.A.No. 626 of 1983 in O.S.No. 2 of 1975 and remit the case to the trial Court to pass final decree keeping in view the observations made above.

8. It is needless to mention that as the matter is pending final determination for quite some time, the trial Court should dispose of the same without any avoidable delay.

9. The L.P.A. is accordingly allowed. But, in the circumstances of the case, without costs.