
(2004) 08 AP CK 0019

In the Andhra Pradesh High Court

Case No : Appl. No's. 741 to 743 and 752 to 761 of 2004 in CS No. 14 on 1958

IDPL Employees Co-operative Housing Building Society Ltd.
and Another

APPELLANT

Vs

B. Rama Devi and Others

RESPONDENT

Date of Decision : 25-08-2004

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 20 Rule 12, Order 20 Rule 18, Order 21 Rule 16, Order 21 Rule 35, Order 21 Rule 36

Citation : (2004) 5 ALD 632 : (2004) 6 ALT 323

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : A. Rama Krishna, A. Nos. 741 to 743 of 2004 and Vedula Venkata Ramana, A. Nos. 752, 753, 754, 755, 756, 757, 758, 759, 760 and 761 of 2004, for the Appellant; Vedula Venkata Ramana, for Respondent Nos. 1 to 5 in A. No. 741 of 2004, for Respondent Nos. 1 to 3 in A. No. 742 and for Respondent Nos. 4 to 6 in A. No. 743 of 2004, M.A. Nari and B. Syamsunder Rao, Receiver-cum-Commissioner for Respondent Nos. 9 and 10 in A. No. 741 of 2004, for Respondent Nos. 7 and 8 in A. No. 742 of 2004, for Respondent Nos. 10 and 11 in A. No. 743 of 2004, for Respondent Nos. 4 and 5 in A. Nos. 752 to 761 of 2004, for the Respondent

Judgement

L. Narasimha Reddy, J.—In all these applications, similar questions of fact and law are involved. Hence, they are disposed of through a common order. There are four sets of identical applications filed by individuals in some cases and groups in others. Each of them filed two applications, one with a prayer to implead them as defendants in C.S.No. 14 of 1958 and the other, to recognize the assignments of the decrees said to have been made in their favour, in respect of various extents of land in Survey No. 163 of Hydernagar, Rangareddy District.

2. The background, in which, the applications came to be made may briefly be stated as under:

3. Initially C.S. No. 14 of 1958 was filed in the City Civil Court, Hyderabad for

partition of the suit schedule properties. It related to vast extent of properties held by late Khursheed Jah. The estate is known as Paigah, after his name. It was withdrawn to this Court. During the course of the trial of the same, majority of the parties filed applications to record the compromise entered into between them. A preliminary decree was passed on 28.6.1963.

4. Some of the parties to the preliminary decree transferred their rights in respect of the agricultural lands in favour of H.E.H. the Nizam and one Mr. Nawab Kazim Nawaj Jung. On the basis of these transfers, the purchasers got themselves impleaded as Respondent Nos. 156 and 157. Defendant No. 156, transferred the property acquired by him under the sale deeds, in favour of M/s Cyrus Investments Limited, the first respondent herein. On the basis of the same, the first respondent got itself impleaded as Defendant No. 206 through orders in Application No. 82 of 1967.

5. The applicants claim that the first respondent and the legal heirs of deceased Defendant No. 157, being the Respondents 2 and 3 herein, have assigned the right, title and interest in respect of various extents of land in Survey No. 163 of Hyderanagar Village, Balanagar Mandal, R.R. District through deeds of assignment dated 30.3.2004.

6. The applicants contend that their assignors, Respondents 1 to 3, have acquired absolute and transferable rights in respect of the entire land admeasuring Ac.175.00 in Survey No. 163 and on assignment of such rights, they (the applicants) are entitled to be impleaded as defendants and that the assignments in their favour are to be capable of being recognized. They plead that the recognition of assignment is necessary for taking further steps in the suit, be it passing of a final decree or delivery of possession.

7. Two Societies, viz., I.D.P.L. Employees Co-operative Housing Building Society and Durgamatha House Building Constructions Co-operative Housing Society filed applications to implead them as respondents in these applications. They have been impleaded as Respondents 6 and 7. In fact, they alone are resisting the applications. Respondents 6 and 7 are said to have been transferred by way of assignment, an extent of Ac.50.00 of land each by the first respondent and the other individuals who had right and interest in the same. The assignments made in their favour were recognized by this Court through orders dated 13.5.1987 passed in Application Nos. 215 to 220 of 1987. They contend that once the first respondent parted with its rights over the land in Survey No. 163, on account of the transfer/assignment, it is not open to them to make any further assignments in favour of the applicants.

8. Sri Vedula Venkata Ramana, learned Counsel for the applicants, submits that the first respondent acquired valuable rights from the transferee of majority of the parties to the decree and the present assignment made by them is capable of being recognized under Rule 16 of Order XXI C.P.C. He contends that the plea raised by Respondents 6 and 7 is absolutely without any basis. According to him,

the manner in which the so-called assignments were made and the circumstances under which the orders came to be passed in Application Nos. 215 to 220 of 1987 would clearly establish that they have not acquired any rights that can be recognized in law. He contends that as long as a final decree was not passed in the suit, it is open to the assignee of the rights from the parties to a preliminary decree to get impleaded in the suit as well as to seek recognition of the assignments. Learned Counsel submits that the registration of documents as provided for u/s 17 of the Registration Act is not necessary for a deed of assignment.

9. Sri A. Rama Kirshna, learned Counsel for Respondents 6 and 7, on the other hand, submits that there was a valid assignment of rights in favour of his clients, through the deeds of assignment, from the persons competent to assign. He submits that the legality or otherwise of the assignments made in favour of Respondents 6 and 7 cannot be canvassed at this length of time, particularly when it was recognized by this Court way back in the year 1987. He contends that the first respondent was very much a party to Application Nos. 215 to 220 of 1987 and that he has not chosen to raise any objection for the orders passed therein.

10. The applicants seek recognition of the assignment of the rights under the preliminary decree. They filed applications under Rule 10 of Order XXII read with 151 C.P.C. They also intend to be impleaded as defendants to the suit. The assignment is in respect of landed property in Survey No. 163 of Hydernagar Village.

11. C.S. No. 14 of 1958 was filed for partition of the properties held by Khursheed Jah Paigah. Initially, the suit was filed by one plaintiff and there were 43 defendants including the Jagir Administrator, Government of Andhra Pradesh. Subsequently, the number had swollen and as on today it is said to be around 800. The properties comprised broadly of three categories, viz., (a) bungalows, buildings and surrounding lands; (b) agricultural lands; and (c) jewellery. There was not much of a dispute about the partition to the bungalows and their surrounding areas, or the rights to use the jewellery. The main controversy was about the agricultural lands.

12. The parties were not aware about the extent, identity or availability of the agricultural lands. Most of them were shown by referring to the villages without indicating the survey numbers or extent. These lands were shown in Item Nos. 35 to 40 of Schedule IV. For example, the description of the lands in Items No. 37 to 40 is as under:

"Compact area of--acres in survey Nos. not available"

These lands were held by Paigah for the last several decades. By virtue of the Firmans that were issued by the then Ruler, H.E.H. the Nizam, the lands were not liable to be partitioned. That was the reason why, though the lands were made over to Paigah way back in 1871 A.D. and Khursheed Jah, who administered

Paigah died way back in 1910, they remained without any partition. The sole plaintiff specifically pleaded that the ban imposed on partition of the lands by the Firmans of Nizam became inoperative, on account of the enactment of Jagir Abolition Regulation in the year 1949, and that the properties became available for partition thereafter. Para 14 of the plaint reads as under:

"The cause of action for this suit arose at Hyderabad-Dn. on 15.8.1949, when Jagir Abolition Regulation came into force and the Firmans of H.E.H. the Nizam, preventing the partition of the suit properties, ceased to be inoperative.

Therefore, the question as to whether these lands can be treated as Matruka properties of Nawab Khursheed Jah or were available to be partitioned depended on the interpretation to be placed on the Jagir Abolition Regulations.

13. The controversies in the suit were multifarious. They ranged from the legitimacy of some of the parties, to the availability of the properties for partition. Majority of the parties filed a memorandum of compromise through Application No. 264 of 1961. Through a judgment, which runs into about three hundred pages, a compromise decree was passed on 28.6.1963. The decree can be said to be a hybrid of terms of compromise as well as adjudication by the Court. The various branches of the Paigah were recognized and the shares of the respective parties were fixed. Variation of the shares of the parties was phenomenal.

For example, shares of Defendants 32, 33 and 34 were fixed at 15/384, whereas that of Defendant Nos.44, 45 and 46 was fixed at 657/2, 76, 408. Elaborate exercise was undertaken in arriving at respective shares of the parties. There was not much of a difficulty in undertaking division of the properties covered by the buildings and bungalows, As regards agricultural lands, the preliminary decree left everything to be done by the Receiver-cum-Commissioner. Even this was on the basis of the terms, incorporated in the memorandum of compromise.

14. Ever since the preliminary decree was passed, applications came to be filed by one after the other. Initially, H.E.H. the Nizam and Nawab Kazim Nawaz Jung came forward with applications slating that they have purchased the shares of majority of the parties in respect of the lands in various revenue villages. They filed applications for impleading them as Defendants No. 156 and 157 and to recognize the transfers in their favour. The record discloses that by the time the purchases were made by them, neither the lands in Items No. 35 to 40 were in possession of any of the parties nor their rights vis-a-vis the provisions of Jagir Abolition Regulation were determined by the competent authority. Since it is always competent for a decree-holder to assign his undivided share, this Court did not feel much of a difficulty in recognizing the assignments or transfers. One fact which, however, remains is that neither transferors of the decree nor the transferees were allotted definite extent of agricultural lands. The reports that were submitted from time to time disclose that in the absence of full particulars, it was not possible to ascertain the extent, much less to recover the possession

from third parties. The state of affairs as regards possession and enjoyment of the agricultural lands is reflected in the report dated 13.7.1984 submitted by the Commissioner. It reads as under:

"The plaint schedule contains some other villages wherein it was stated that the estate had agricultural lands. From the perusal of Pahanis of such villages, it was found that all the lands stood in the names of only third parties from 1951 onwards. Hence, the then Commissioner divided these agricultural lands under three different categories as follows:

"List I containing the lands which stand either in the name of Nawab Himayat Nawaz Jung or Lutfud-dowla or Khursheed Jah or Ahmed Nawaz Jung in villages (a) Hydernagar; (b) Hafeezpet; (c) Nacharam and (d) Lalaguda (urban).

List II pertaining to lands at (a) Yenkapally,

(b) Dargah Hussain Shah Wali, (c) Gaddi Annaram and (d) Lalaguda (urban) which stand in the names of persons with similar to the names of some of the shareholders.

List III refers to such of the villages where no lands stand in the name of this estate. They are (a) Hasheempet, (b) Ghansimiaguda,

(c) Khaderabad, (d) Sahebguda, (e) Hafeejpet, (f) Malkaram and (g) Dilawarguda.

15. The developments that have taken place subsequent to this report do not appear to have clinched the issue in the form of a final decree.

16. At one point of time, this Court passed an order in Application No. 139 of 1971 directing the District Collector, R.R. District to take necessary steps as provided for u/s 54 C.P.C. There was not much of a progress in respect of the order, on account of the fact that the lands were not in possession of any of the parties to the suit.

17. This being the state of affairs, applications were made from time to time by various persons and Associations claiming that they acquired rights in the lands, which are part of the suit schedule, by way of assignment and sought for recognition of the same. In some cases, relief of delivery of possession was sought. The standard pattern adopted by the parties was to file four applications viz., (a) to implead the party as one of the defendants, (b) to recognize the assignment; (c) to direct a subordinate Court namely the City Civil Court or the District Judge, R.R. District to deliver the specified land in favour of the parties; and (d) to direct the revenue authorities to effect necessary mutations. In fact, the present applicants also filed applications for delivery of possession and for mutation. However, they have withdrawn them. Such applications are outside the scope of a suit for partition. In none of the applications, all the parties to the suit were impleaded. Almost all such applications were ordered as not opposed. Neither the rights of the other defendants were considered, nor was it examined

whether it is permissible to put any party to the suit, much less the so-called assignee into possession of a definite item of property in the absence of a final decree. Neither from the judgment in the suit nor any other proceedings, it is evident that the rights of the parties and the Government in the light of the Jagir Abolition Regulation have been dealt with, in respect of the suit properties. No one cared to see whether such lands are subject to the provisions of the A.P. (Telangana) Area Tenancy Act, A.P. Agricultural Lands (Ceiling on holdings) Act or the Urban Land (Ceiling and Regulation) Act etc.

18. It would be surprising to note that scores of parties were deleted from the cause title of the suit through an order dated 5.8.1983 in Application No. 64 of 1983 filed by the first respondent and Nawab Kazim Nawaj Jung. In this application, none of the parties, who were sought to be deleted, were impleaded. In fact, as many as ten defendants, being 194 to 205, resisted the application on coming to know the same. Their objection was overruled and the parties were substituted in the cause-title of the suit. This narration is being made only to state the background and not with a view to pronounce upon the correctness or otherwise of the orders that have been passed so far. It hardly needs an emphasis that a party can acquire only such rights as he is entitled to in law and not beyond that.

19. The first respondent in these applications is one such assignee. It had the benefit of the set of four orders in Application No. 31 of 1982 and Batch, dated 8.7.1983 in its favour. The question as to whether the first respondent can be said to have acquired any title in respect of any definite extent of land which is part of the suit schedule is itself debatable for the reason that the final decree is yet to be passed, much less it was engrossed on a stamp paper of requisite value.

20. Learned Counsel for the applicants submits that Respondents 6 and 7 have not acquired any right to the property as claimed by them for the reason that though they claim to have got assignment through the first respondent, the latter did not figure as a party in the deed of assignment. In reply to the submissions of the learned Counsel for Respondents 6 and 7, that the first respondent was very much a party to Applications No. 215 to 220 of 1987 and those applications were ordered with consent, learned Counsel for the applicants submits that those applications were moved by way of lunch motion in a vacation Court and were ordered on the same day. He contends that the first respondent, which was impleaded as the third respondent in those applications, has not filed any caveat and that fact that it was said to have been represented by an advocate on the same day, speaks volumes about the procedure adopted in the matter.

21. It is true that the record discloses that Applications No. 215 to 219 of 1987 were moved by way of lunch motion in a summer vacation Court. Application No. 218 of 1987 was filed for modification of the order dated 8.7.1983 as to delivery of possession and Application No. 220 of 1987 was filed for recognition of assignment. These two orders read as under:

"Application No. 218 of 1987: Respondents" Counsel has no objection. The order dated 8.7.1983 passed in Application No. 31 of 1982 is modified directing delivery of possession in favour of the petitioner by issue of warrant executable by the District Collector, R.R. District.

Application No. 220 of 1987: Respondents have no objection. Petition is allowed and the assignment of land admeasuring Ac.50.00 in Survey No. 163 of Hydernagar Village made by Respondents 1 and 3 in favour of petitioners is recognized."

The other orders were also passed in similar terms. The contention of the learned Counsel for the applicants that in the deeds of assignment, on the strength of which Respondents 6 and 7 claimed assignment and delivery of possession, the first respondent did not figure as a party at all, is sought to be explained by learned Counsel for Respondents 6 and 7 by placing certain correspondence said to have ensued between the first respondent and the agreement holders who figured as parties to the deed of assignment. The necessity to delve into this controversy would arise if only the assignment said to have been made in favour of the applicants can otherwise be recognized in law. For this purpose, two aspects become relevant and assume significance viz., (a) form of assignment; and (b) the stage of proceedings.

22. It is a matter of common knowledge that in a suit for partition, the important aspects to be undertaken by the Court are ascertainment of the shares, identification of the property available for partition, division of the available property by metes and bounds and allotment of the divided parts to the parties, commensurate with their shares. The nature of decree to be passed therein is provided for under Rule 18 of Order XX C.P.C. In *Rachakonda Venkat Rao and Others Vs. R. Satya Bai (D) by Lr. and Another*, the Supreme Court explained the various steps involved in a suit for partition. Depending on the outcome of the adjudication, or area of agreement between the parties, the suit can be disposed of in one stroke, or by way of two decrees namely the preliminary and final. Where the subject-matter of the partition is a land, being part of estate and assessed to revenue, the steps subsequent to preliminary decree are required to be undertaken by the District Collector u/s 54 C.P.C. In other matters, the Court has to undertake steps to divide the properties by metes and bounds and deliver the same to the parties concerned in accordance with their respective shares. A party can seek delivery of possession in accordance with the final decree only after it is engrossed on a stamp of adequate value and by initiating execution proceedings. Any other step in between a preliminary and final decree is almost impermissible.

23. The distinction between a preliminary and final decree was aptly pointed out by the Supreme Court in *Renu Devi Vs. Mahendra Singh and Others*, in the following terms:

"A preliminary decree declares the rights or shares of parties to the partition.

Once the shares have been declared and a further inquiry still remains to be done for actually partitioning the property and placing the parties in separate possession of divided property then such inquiry shall be held and pursuant to the result of further inquiry a final decree shall be passed. A preliminary decree is one which declares the rights and liabilities of the parties leaving the actual result to be worked out in further proceedings. Then, as a result of the further inquiries conducted pursuant to the preliminary decree, the rights of the parties are finally determined and a decree is passed in accordance with such determination, which is, the final decree (See CPC by Mulla, Vol. 1, 1995 Edn., P.21). The distinction between preliminary and final decree is this: a preliminary decree merely declares the rights and shares of the parties and leaves room for some further inquiry to be held and conducted pursuant to the directions made in the preliminary decree which inquiry having been conducted and the rights of the parties finally determined a decree incorporating such determination needs to be drawn up which is the final decree."

24. If a partition is brought about in all respects viz., declaration of shares of parties, division of property by metes and bounds and making over the divided items to the parties, through a judgment and decree, there does not exist the necessity to pass a final decree (See Renu Devi Vs. Mahendra Singh and Others,).

25. The preliminary decree passed in C.S. No. 14 of 1958 left many steps, such as ascertainment of extent, location of agricultural land, their division etc., to be undertaken by Commissioners. It is not in dispute that in C.S. No. 14 of 1958, a final decree was not passed in relation to the lands in question so far. As for assignment of decrees, there is no controversy that a party to a preliminary or final decree in a suit is entitled to assign his undivided share in favour of a third party. Such third party is entitled to work out his remedies in accordance with the decree. For all practical purposes, the assignee would step into the shoes of the assignor who was a party to the decree. An element of uncertainty existed on the question whether it is necessary for an assignment to be recognized by the Court, before the same is given effect to. A Full Bench of this Court, in Arvapalli Ramrao Vs. Kanumarlapudi Ranganayakulu and Others, , held that unless an assignment is recognized under Rule 16 of Order XXI C.P.C., no right accrues to an assignee. To the same effect is the judgments of Madras High Court in Puthiandi Mammed v. Avalil Moidin, 1897 ILR 20 Madras 157 and Sadagopa Chariar v. Raghmatha Chariar, (1910) ILR 33 Madras 62. However, these decisions were overruled by the Supreme Court in Dhani Ram Gupta and Others Vs. Lala Sri Ram and Another, . It is apt to refer the observations of the Supreme Court made in this regard.

"Order XXI, Rule 16 neither expressly nor by implication provides that assignment of a decree does not take effect until recognized by the Court. It is true that while Order XXI, Rule 16 enables a transferee to apply for execution of the decree, the first proviso to Order XXI, Rule 16 enjoins that notice of such

application shall be given to the transferor and the Judgment-debtor and that the decree shall not be executed until the Court has heard their objections, if any, to its execution. It is one thing to say that the decree may not be executed by the transferee until the objections of the transferor and the Judgment-debtor are heard, it is an altogether different thing to say that the assignment is of no consequence until the objections are heard and decided. The transfer as between the original decree-holder and the transferee is effected by the deed of assignment."

Their Lordships quoted with approval, the passage from the judgment of the Calcutta High Court in *Dwar Buksh Sirkar v. Fatik Jali*, (1899) ILR 26 Cal. 250. The said passage reads as under:

"If, however, there is an assignment pending proceedings in execution taken by the decree-holder, I see nothing in the Code which debars the Code from recognizing the transferee as the person to go on with the execution. The recognition of the Court is no doubt necessary before he can execute the decree, but it is the written assignment and not the recognition which makes him the transferee in law"

From a reading of the above passages, it is evident that the right accrues to an assignee not on account of the recognition of assignment, but on the strength of the deed of execution. Hence, the deed through which the assignment is made assumes significance than the factum of recognition. On the strength of the deed, the assignee can seek execution of the decree even in the absence of a recognition. At the same time, a distinction needs to be maintained between an assignment simplicitor on the one hand and a transfer in law, on the other.

26. Learned Counsel for the applicants submits that the benefit under Rule 16 of Order XXI and Section 146 C.P.C. needs to be extended liberally to the persons claiming rights on the; strength of assignment or transfer pendente lite. He places reliance upon the judgment of the Supreme Court in *Raj Kumar Vs. Sardari Lal and Others*, . It was held therein that though a pendente lite transferee is not brought on record under Order XXII, Rule 10 C.P.C., he is entitled to file an application under Order IX, Rule 13 C.P.C. to set aside the decree passed against his transferor. However, the principle laid therein does not fit into the factual matrix of the present case.

27. As to the form of assignment, the learned Counsel for the applicants made an endeavour to persuade this Court that in a suit for partition, no party can be said to have acquired any right in respect of definite extent of property and in such an event a transfer as such does not take place. He relies upon several judgments in support of his contention.

28. In *J. Venkayya v. K.N. Murty* 1971 (2) ALT 79, a Division Bench of this Court took the view that Section 6 of the Transfer of Property Act does not get attracted, in relation to a preliminary decree in a suit for accounts. Almost to the same effect, is the judgment of this Court in *Jammula Venkayya v. Kasireddi*

Narasimha Murthi, 1969 (1) An.WR 74. In this regard, it needs to be noticed that a partnership firm holds assets and not individual items of properties; and no partner can be said to have ownership or right in respect of any definite item of immovable property. It is also recognized that a transfer as such does not take place when a partner contributes an item of immovable property towards his share to the partnership firm, or when he retires from it. Thereby the Transfer of Property Act and Registration Act do not get attracted to those situations. In a suit for dissolution of partnership and accounts, no partner becomes entitled to definite items of immovable properties, particularly at the stage of preliminary decree. Therefore, the law applicable to dissolution of firms cannot be extended to partition of immovable properties.

29. In *Commissioner of Income Tax, Gujarat Vs. Keshavlal Lallubhai Patel*, the Supreme Court dealt with the question as to whether a transfer can be said to have been taken place, when a member of joint family gets a property to his share as a consequence of partition. It was answered in the negative. In the case on hand, the question is not about accrual of property to co-owners from a joint family or vice versa. Further, the concept of a joint family does not exist among the members of the family following Islam religion.

30. Learned Counsel for the applicants relies upon the judgment of the Madras High Court in *Periakatha Nadar v. Mahalingam*, AIR 1936 Mad. 543, to contend that the law does not stipulate any form of assignment of decree under Order XXI, Rule 16 C.P.C. The subject-matter in the proceedings before it, was a decree for dissolution of a partnership firm. As observed earlier, the transactions and transfers in relation to a partnership firm stand on different footing. A Division Bench of Patna High Court took the view that registration is not necessary for allotment of a plot to one of the parties in a suit for partition (See *Ramdas Sah and Another Vs. Jagarnath Prasad and Others*, . In *Jaswant Rai Datta Chawdhry v. Mt. Lajwanti*, AIR 1928 Lahore 70, it was held that assignment of a part decree is permissible and registration of the assignment is not necessary. The reasoning assigned by the Lahore High Court was as under:

"There was no denying the fact that the lady made the assignment and as it was reduced to writing and embodied in a decree. It fulfilled the necessary conditions and fell within the purview of Order XXI, Rule 16 C.P.C. Further, it is clear that it did not require registration because it had been incorporated in a decree and also became the assignment of a decree, though the decree should be for possession of immovable property, is not equivalent to a transfer of property"

Reference was made to several judgments rendered by the High Courts of Calcutta, Madras and Allahabad, in support of his conclusion.

31. Two important aspects need to be noticed in relation to the principle laid down by the Lahore High Court. The first is that where the assignment is only of the undivided share of a party to the suit, it cannot be said that the assignment has resulted in transfer or conveyance of rights in relation to any definite

property. Since the concept of transfer itself pre-supposes existence of an identified property, such assignment in relation to an unidentified immovable property does not need any registration. Where, however, the assignment is in relation to an identified and definite immovable property, a transfer does take place, irrespective of the nature of the suit. It is possible to argue that in a suit for partition, unless the final decree is passed and a definite extent is allotted to any party, he would not be competent to assign his rights in respect of such property. This, however, would amount to begging the question. If it was not competent for a party to a preliminary decree to have assigned the rights in respect of an identified immovable property, he can be said to have acted beyond the scope of the decree and thereby the assignment becomes or remains outside the scope of the suit and the preliminary or final decree.

32. The second aspect is that in *Surjit and others Vs. Harbans Singh and others etc. etc.*, the Supreme Court held that the assignment in relation to immovable property worth more than Rs. 100/- requires registration. It observed as under:

"As said before, the assignment is by means of a registered deed. The assignment had taken place after the passing of the preliminary decree in which Pritam Singh has been allotted 1/3rd share. His right to property to that extent stood established. A decree relating to immovable property worth more than hundred rupees, if being assigned, was required to be registered. That has instantly been done."

Hence, the principle laid down by the Lahore High Court needs to be understood in the light of the facts the precedent referred to above.

33. So much, as to nature of assignment. As for stage of proceedings, it may be seen that in a suit for partition, delivery of possession of properties through the medium of Court would arise only to the limited extent of making one party in possession of the property, to pass on the same to the other party, whom it was allotted. Even this exercise can be undertaken only at the stage of execution, after the final decree is passed. The question of recovery of possession of the properties from the persons who are not parties to the suit is undoubtedly beyond the scope of a partition suit. The recovery of possession is impermissible even from a party to the suit, unless he is himself a sharer or claims through any sharers. The distinction maintained by the CPC in the form of decrees under Rules 12 and 18 of Order XX C.P.C. is significant. In a suit for partition, there is no scope for inclusion of the relief of recovery of immovable property from the third parties.

34. Learned Counsel for the applicants places reliance upon the judgment of the Delhi High Court in *Mumtaz Jehan Vs. Insha Allah alias Noor Jehan and Others*, . In that case, the decree-holder obtained symbolical possession of the property on the basis of a final decree in a suit for partition. Subsequently, another application was filed to recover the physical possession. It was held that it is permissible to entertain such application for recovery of possession from the

tenant of the property. The Delhi High Court relied upon several judgments, which related to decrees for recovery of possession of immovable property; as well as Rules 35 and 36 of Order XXI C.P.C. which deal with the decrees for delivery of immovable property.

35. From the scheme under Code of Civil Procedure, it is difficult to discern that the immovable property can be recovered from persons other than the sharers on the strength of a decree in a partition suit. The circumstances under which possession of an immovable property can be delivered under Rules 35 and 36 of Order XXI C.P.C., the nature of possession so delivered and the rights that can accrue on account of it, were aptly explained by the respective High Courts, in the decisions reported in *Ayer Ravji Vasta Vs. Joshi Gopalji Khimji and Another*, *Kamlakar and Company Vs. Gulamshafi Imambhai Musalman*, and *Kattil Raman Kunhi's sons Chatu and Others Vs. Vadakke Poduvath Devaki Amma's daughter Janaki Amma*, . The sharers in a partition suit have to receive their shares in the suit schedule properties with the incidence of rights and obligations in relation to such properties. It is no part of the duty of the Court to clear encumbrance or recover possession of such properties, for the benefit of the decree-holders or their assignees. The disputes in relation to the partitioned properties vis-a-vis third parties, have to be worked out separately, by the Joint owners collectively or the respective sharers individually. If such a task is undertaken by a Court in a suit for partition, it partakes the character of a suit for recovery of possession or administration. Therefore, it cannot be said that the judgment of the Delhi High Court is an authority for proposition that it is permissible to recover the possession of the immovable properties from the persons other than the sharers, on the strength of a decree in partition suit.

36. Reverting to the facts of the case, the assignment in favour of the applicants is in respect of definite extent of land, identified with specific boundaries. A reading of the so-called deed of assignment discloses that it purports to do nothing short of conveying the title. Nowhere in the deed, it is stated that the assignment is in relation to the corresponding undivided share of any party to the suit, or of particular sharer or sharers. The assignment cannot be recognized for more reasons than the one. Firstly, the suit schedule does not contain the land in specific survey numbers of the villages and unless the preliminary decree is suitably amended, it is impermissible to bring into its fold, the lands in any definite survey numbers. Secondly, there is no final decree, as yet, dividing the suit schedule properties by metes and bounds and allocating the lands said to have been assigned in favour of the assignees of the applicants. Thirdly, the deed of assignment is not in relation to an undivided share of the assignors. Fourthly, it relates to an identified piece of land, the value of which exceeds Rs. 100/-, and ought to have been registered in view of the judgment of the Supreme Court in *Surjit Singh's case* (supra).

37. Learned Counsel for Respondents 6 and 7 relied upon several judgments rendered by the Hon'ble Supreme Court and High Courts. Since the applications

of the applicants are being rejected on other grounds, it is not necessary to discuss the decision cited by him.

38. For the foregoing reasons, the assignments cannot be recognized, and the applications filed therefore are accordingly dismissed. Consequently, the applications for impleading the applicants as defendants in CS No. 14 of 1958 are also dismissed. It is however, made clear that this order cannot be construed as upholding or otherwise pronouncing upon the rights of the Respondents 6 and 7.