

(2006) 10 AP CK 0003
In the Andhra Pradesh High Court
Case No : CRP No. 986 of 2006

Maddineni Koteswara Rao

APPELLANT

Vs

Maddineni Bhaskara Rao and Another

RESPONDENT

Date of Decision : 26-10-2006

Acts Referred:

Citation : (2007) 1 ALD 807 : (2007) 2 ALT 201

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : Gandyadapu Rajesham, for the Appellant; V.S.R. Anjaneyalu and C.B. Ram Mohan Reddy, for the Respondent

Final Decision : Dismissed

Judgement

L. Narasimha Reddy, J.—The petitioner and respondents 1 and 2 are brothers. Against his father and two brothers, the petitioner filed O.S. No. 197 of 1978 in the Court of Principal Senior Civil Judge, Vijayawada, for partition of suit schedule property. A preliminary decree was passed on 1-10-1986, directing that the suit schedule property shall be divided into four equal shares and each one of the parties shall be allotted one share. A.S. No. 2879 of 1986, filed against the preliminary decree before this Court, was dismissed, and L.P.A. No. 154 of 1997 was also rejected.

2. After the preliminary decree became final, the petitioner filed I.A. No. 1161 of 1998, with a request to pass final decree. An Advocate and an Engineer were appointed by the trial Court as Commissioner, to undertake division of the suit schedule property into four equal shares. The father of the parties herein, by name Veera Raghavaiah, died on 17-1-1985, even when the suit was pending. The first respondent claimed that his father executed a registered Will, dated 21-3-1984, bequeathing his entire share to him, and in that view of the matter, he is entitled to be allotted two shares. The petitioner opposed the same and took the plea that such a course would amount to modification of the preliminary decree. It was also his case that the validity of the Will was not at all considered

by the trial Court, while dealing with the preliminary decree, and unless an independent adjudication is undertaken into it, the claim of the first respondent through the Will cannot be accepted. Through the order, dated 2-1-2006, the trial Court repelled the contention of the petitioner and allotted two shares to the first respondent and one share each to the petitioner and the second respondent. The same is challenged in this civil revision petition.

3. Sri B. Narasimha Sharma, learned Counsel appearing for the petitioner submits that the preliminary decree was passed, directing the division of the suit schedule property into four equal shares, with a direction that the parties to the suit shall be entitled to one share each, and the allotment of two shares to the first respondent alone, would amount to alteration of the preliminary decree. He places reliance upon the judgments of the Supreme Court in Muthangi Ayyanna Vs. Muthangi Jaggarao and Others, and Phoolchand and Another Vs. Gopal Lal, . He further contends that the validity of the Will, relied upon by the first respondent, was not considered at any stage and that there was no basis for the trial Court, to act upon it.

4. Sri C.B. Ram Mohan Reddy, learned Counsel for the respondents, on the other hand, submits that the preliminary decree was very specific to the extent that the father and his three sons must be allotted one share each and the share allotted to the father in the partition was virtually notional, since he died, even while the suit was pending. He contends that such an exercise would not amount to alteration of the preliminary decree. Learned Counsel further contends that soon after the death of Veera Raghavaiah, I.A. No. 958 of 1985 was filed on 25-3-1985, and a specific reference was made to the Will in it. According to him, the validity of the Will was proved by the first respondent, in the present proceedings itself under Point No. 3, by examining its scribe and attester.

5. The preliminary decree passed in the suit on 1-10-1986 became final only on 7-9-2002, with the dismissal of L.P.A. No. 154 of 1997. Application for final decree was filed, even while the L.P.A. was pending. The trial Court took up the enquiry into the final decree, after the dismissal of the L.P.A.

6. Veera Raghavaiah, the father of the parties herein, died on 17-1-1985. It is not as if the preliminary decree was passed, without taking his death into account. In fact, the first respondent filed I.A. No. 958 of 1985 on 25-3-1985 itself, bringing to the notice of the trial Court that Veera Raghavaiah died and since all the three sons are already on record, it is not necessary to take any further steps. It was also stated in the affidavit filed in support of the I.A. that Veera Raghavaiah executed a Will, dated 21-3-1984, bequeathing his share of the property in favour of the first respondent.

7. The inclusion of the share of the deceased-father in the preliminary decree cannot be said to be illegal or extraordinary, particularly, when it was brought to the notice of the Court that he executed a Will. At any rate, the petitioner ought to have raised all objections in this regard, in the appeal and the L.P.A. If they

were not raised, they cannot be permitted to be raised at this stage. Identification of sharers, in a suit for partition, is an exercise, which must be undertaken at the stage of preliminary decree.

8. The trial Court allotted the share of the father, to the first respondent herein, on the strength of a Will. Two questions arise for consideration, in this regard viz.

(a) Whether there existed proper basis for this ? and

(b) Whether such a course would amount to alteration of the preliminary decree ?

9. The answer to the first question would depend, in turn, upon the validity of the Will. It is true that the Will, dated 21-3-1984, did not fall for consideration before the trial Court, when it passed the preliminary decree. Change of circumstances, resulting in testate or intestate succession vis-a-vis the shares of some of the parties to a preliminary decree, is not a strange phenomenon. By the time, the preliminary decree gives rise to a final decree, changes may take place, on account of death of a party or transfer made by him. The share allotted to an individual in the preliminary decree may accrue to other parties to a suit or even third parties, depending on the nature of succession or transfer, as the case may be. The validity of such succession, whether testate or intestate, or transfer, can certainly be considered at the stage of final decree proceedings. The reason is that the final decree proceedings are as good a part of the suit, as the preliminary decree. A suit for partition would stand disposed of, only with the passing of a final decree. It is competent for the Court to examine the validity of transfers or testate or intestate successions in the final decree proceedings.

10. In the instant case, in a way, it can be said that the necessity for the trial Court to examine the Will, at the stage of preliminary decree, did not arise. The final decree proceedings are the proper stage to consider that. The first respondent filed the Will-Ex.A.1 in the final decree proceedings. The trial Court framed issue No. 3, on the validity of the Will. To prove his case, the first respondent examined the scribe and attester of the Will. The trial Court recorded a finding to the effect that the Will is proved as required in law. Learned Counsel for the petitioner is not able to point out any factual or legal defect in that finding. Therefore, the allotment of share of the executant of Ex.A.1 in favour of the first respondent, cannot be said to be illegal or unlawful.

11. Coming to the second aspect, it is no doubt true that the Supreme Court held on more than one occasion that the purport of the preliminary decree cannot be altered, while passing the final decree. There cannot be any quarrel with this settled proposition. The controversy is as to whether the allotment of the share of Veera Raghavaiah to the first respondent would amount to alteration of the preliminary decree. The preliminary decree can be said to have been altered, if only the extent of shares allotted to each sharer or the items identified for partition, is altered. As long as these two aspects are in tact, any adjustment of the shares of the parties does not bring about any alteration of the preliminary decree. No such alteration had taken place, in this case. Therefore, this Court

does not find any basis to interfere with the order passed by the trial Court.

12. The civil revision petition is, accordingly, dismissed. There shall be no order as to costs.