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**(1997) 04 AP CK 0062**

**In the Andhra Pradesh High Court**

**Case No :** CCCA No. 98 of 1996 and C.R.P. SR. No. 25640 of 1996

Padmini Co-operative Housing Society

APPELLANT

Vs

Sirajunnisa Begum and Others

RESPONDENT

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**Date of Decision :** 23-04-1997

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 20 Rule 18  
Transfer of Property Act, 1882 — Section 52

**Citation :** (1997) 4 ALT 158 : (1997) 2 CivCC 329 : (1997) 4 RCR(Civil) 448

**Hon'ble Judges :** G. Bikshapathy, J

**Bench :** Single Bench

**Advocate :** M.R.K. Choudary, for the Appellant; C. Poornaiah, for Respondent  
Nos. 1 to 29 and A.K. Narasimha Rao, for the Respondent

**Final Decision :** Allowed

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## **Judgement**

G. Bikshapathy, J.—Both the cases can be disposed of by a common order.

2. The C.C.C.A. is filed challenging the order passed in I.A. No. 1351/1995 in I.A. No. 854/1984 in O.S. No. 42 of 1962 on the file of the learned I Additional Judge, City Civil Court, Hyderabad. For the sake of convenience, parties herein have been referred to as they are arrayed in the suit.

3. This is a case of litigation percolating to generations. The suit for partition was filed by the plaintiff in the year 1935 claiming partition in respect of Matruka properties. However, for various reasons, the suit was not numbered and finally it was numbered in the year 1962 as O.S. No. 42 of 1962. A preliminary Decree was passed on 24-11-1970 by the trial Court in which the share of Defendant No. 1 was determined at 14/104th. The matter was subjected to appeal, but however the said decree became final as far as the claim of Defendant No. 1 in various properties including Item No. 2 of Schedule "B" was concerned. During the pendency of the litigation, number of Defendants died including Defendant No. 1. Therefore, their Legal Representatives were brought on record. In respect of Defendant No. 1, Defendants No. 23 to 27 were brought on record as his Legal

Representatives. It was only in the year 1984, an application was filed in I.A. No. 854/84 by Defendant No. 25 (L.R. of Defendant No. 1) for passing a final decree. Similarly, Defendants No. 3 and 6 also filed LA. No. 498/84 for similar relief. In 1950 Defendant No. 1 sold an extent of Ac.42-35 gts. of agricultural lands in S. Nos. 93, 94, 104, 107, 108 and 109 of Hakimpet village, Golconda Mandal, Hyderabad district in favour of one Mr. Upender Reddy, who in turn sold the same to Sri Venkateshwara Goraksha Trust in the year 1953. Subsequently, these lands were purchased by Defendant No. 28 in 1981 under agreement of sale and sale deeds were registered in the year 1992. It got impleaded as Respondent No. 28 in I.A. No. 854/84. The lower Court after hearing both the I.As. namely LA. No. 874/34 and 493/84 they were dismissed by the trial Court by orders dated 14-2-1994 on the ground that the petitioner suppressed the fact that the Court in C.C.C.A. No. 27/72 and 188/72 modified the preliminary decree and the said modified decree was not filed and that all the alienees were not impleaded. Against the said order, Defendant No. 5 filed C.R.P. No. 700/94 and the same was allowed on 30-8-1994 holding that the lower Court ought to have given an opportunity to file the modified decree. The lower Court was directed to dispose of the LA. within six months. While allowing the C.R.P. this Court made the following observation:

"There was much debate during the course of hearing whether the partition is to be effected by taking the entire property and dividing it into shares or whether each item is to be divided into shares. It is needless to say that the value of the entire property should be assessed. Thereafter, on the basis of the value thus ascertained the property should be divided into 104 shares. Out of 104 shares, 14 shares should be allotted to the petitioner."

Thereafter the matter was taken up by the lower Court for enquiry. During this process, the Plaintiffs, Defendants No. 3, 4, 6 and Defendants No. 14 to 17 and L.Rs. of Defendant No. 2 executed a Deed of Assignment dated 28-8-1995 in favour of Defendant No. 30, a Co-operative Housing Society assigning their rights and interest in respect of 45 acres of dry agricultural land covered by S. Nos. 93, 94, 104, 107, 108 and 109 of Hakimpet village, Golconda Mandal, Hyderabad district. The said Co-operative Society filed I.A. No. 1103 of 1995 to implead as Respondent No. 30 in LA. No. 854/84 and to recognise the Deed of Assignment. The said petition was allowed on 25-9-1995. The Appellant herein filed C.R.P. SR. No. 25640/96 contending that the said order was passed without notice to it and without hearing. But, however, subsequently another order was passed in I.A. No. 1351 /95 wherein the final decree was ordered in respect of Item No. 2 of "B" Schedule agricultural lands, wherein the Appellant had participated and the said application was allowed which is the subject matter of the present Appeal. Thus, in view of the subsequent proceedings, C.R.P. which is in S.R. stage for condonation of delay has become academic and therefore the said C.R.P. SR is dismissed.

4. After the order of this Court in C.R.P. No. 700/94, the matter was taken up by

the trial Court and in pursuance of the orders of this Court, one Mr. Y. Vishweshwara Rao, Advocate was appointed as Advocate-Commissioner by orders dated 10-11-1994 to divide the entire suit schedule property by metes and bounds. The suit schedule property consists of two parts. Schedule "A" covering Buildings/Houses and Schedule "B" covering various agricultural lands spread-over in 19 villages. The order appointing the Advocate-Commissioner is reads as follows:

"You are hereby appointed as Commissioner, with a direction to divide the entire suit schedule property by metes and bounds and assess the value of the entire property and divide into 104 shares and out of 104 shares 14 shares should be allotted to the petitioner, after giving notices to the parties concerned and deliver separate possession to each of the parties. If that is not possible to take into consideration the value of the entire properties and divide as per direction given by the Hon'ble High Court, a copy of which is enclosed to this warrant for your ready reference and file your report after executing the warrant."

In pursuance of the warrant of commission, it appears that the Advocate-Commissioner instead of submitting the entire report, only submitted an interim report in respect of item No. 2 of "B" schedule property, namely agricultural lands in Hakimpet village. He found that the total area was Ac.92-31 guntas, out of which Defendant No. 6 had already sold away Ac.3-02 gts. in the year 1956 under a Registered Sale deed. Further, all the Defendants including the plaintiff also sold away nearly 24 acres of agricultural lands in the year 1982 and the remaining land was left over was only Ac.66-00. Based on the available land, the Commissioner has passed an interim report dated 14-7-1995 dividing the land among various parties. In that process, Defendant No. 1 got Ac.8.35 gts. to his share as marked in the annexure to the report of the Advocate-Commissioner. As already stated supra, the plaintiff and the Defendants, except Defendant No. 1 executed a Deed of Assignment on 28-8-1995 assigning their interest secured by them in Preliminary Decree dated 24-11-1970 in O.S. No. 42/1962 in respect of Ac.45-00 of land, out of Ac.66-00 in S. Nos. 93, 94, 104, 107, 108 and 109 of Hakimpet village. Thereupon, the Assignee (Defendant No. 30) filed LA. No. 1351/1995 in I.A. No. 854/1984 u/s 151 of CPC to pass a final decree in respect of the agricultural lands in S. Nos.93, 94, 104, 107, 108 and 109 of Hakimpet village measuring Ac.45-00. The said application was resisted by the Appellant Society stating that the Commissioner has not followed the directions of the lower Court as also the directions issued in C.R.P. No. 700 of 1994. It was also objected on the ground that the application was pre-mature and that piece-meal final decree cannot be allowed in the case of this nature and that entire final decree has to be passed once for all. In effect, it was the contention of the Appellant that application for final decree was pre-mature as Plaint "B" schedule consists of agricultural lands in 19 villages and the Commissioner has executed the warrant particularly in respect of Hakimpet village. It was also the complaint of the Appellant in C.R.P. No. 700/1994 wherein it was clearly stated that the value of the property has to be ascertained and the property has to be divided

into 104 shares and out of the said 104 shares, Defendant No. 1 was entitled for 14 shares. The trial Court rejected the objection of Appellant, accepting the Commissioner's report in respect of item No. 2 of "B" schedule property and passed final decree in respect of the said item by an order dated 29-3-1996. Aggrieved by the said order, the present C.C.C.A. has been filed by the appellant (28th Defendant in the suit).

5. The learned Counsel for the petitioner submits that the order of the Court below is wholly erroneous in as much as the order itself goes against the terms of the warrant issued by it and also the directions of this Court issued in C.R.P. No. 700 of 1994. He further argues that in the warrant itself, it was directed that the Commissioner shall assess the value of the entire property and to divide it into 104 shares after giving notice to the parties. But, admittedly, in the instant case, the Commissioner only divided the item No. 2 of "B" schedule property and left out the order properties on the ground that it would take considerable time. The Interim Report submitted by the Advocate-Commissioner is not in conformity with the warrant issued by the Court and therefore the Court ought not to have acted on such interim report. The learned Counsel also submits that if the entire property is valued and the share of Defendant No. 1 is assessed, it would be less than the property, which was sold to the Appellant. He relies on the judgments of the Supreme Court reported in Nagubai Ammal and Others Vs. B. Shama Rao and Others, , Saila Bala Dassi Vs. Sm. Nirmala Sundari Dassi and Another, , Khemchand Shankar Choudhari and Another Vs. Vishnu Hari Patil and Others, and also the decision of the Division Bench of Madhya Pradesh High Court in Tikam Chand Lunia Vs. Rahim Khan Ishak Khan and Others,

6. On the other hand, the learned Counsel for Respondents sri C. Poornaiah submits that under Schedule "B" the agricultural lands spread over in 19 villages have to be measured and in view of the fact that this exercise will take considerable time, the Commissioner has submitted Interim Report on the basis of which final decree in respect of the said item has been passed and therefore there is no irregularity in the order passed by the Court below. He also submits that there was no prohibition for passing any number of final decrees. He further submits that the successive alienees have no right to claim equities. He relies on the judgment of the Full Bench in Ede China Gurunadhan v. Palakurti Venkata Rao and Ors. 1959 (2) An.W.R. 79 and K. Adivi Naidu and Others Vs. E. Duruvasulu Naidu and Others, . He also submits that in pursuance of the orders of Court below, the properties were delivered by the Commissioner on 28-7-1996, which is disputed by the other side.

7. The issue that arises for consideration is whether the orders passed by the Court below is valid?

8. It is not in dispute that the vast extents of lands and buildings are subject matter of the partition suit. Admittedly the suit was instituted in the year 1935, it was numbered only in the year 1962. An unusual period of 27 years took place for numbering the suit itself. Thereafter, a preliminary decree was passed in

1970. Even after the preliminary decree was passed, one of the parties applied for final decree proceedings only in 1984. This itself speaks for volumes that the parties were not at all interested in prosecuting the case for final decree. Be that as it may, it is also noticed that Defendant No. 1 had already sold Ac.42-35 gts. in 1950 itself and the said alienee had again sold it to a Trust in 1953, who in turn sold to the Appellant, an agreement of sale was executed in the year 1981 and finally the registered sale deed was executed in 1992. It is also on record that the 28th defendant purchased the property after getting clearance from the Commissioner, Urban Land Ceiling. After purchase, the land was levelled, roads were laid and the area was plotted. Thereafter it was allotted to various members of the Society. It is premature to state as to how much extent of land/building D-1 will be entitled to possess on the basis of the valuation of all the properties mentioned in the preliminary decree. Admittedly, in 1992 all the parties jointly sold 24 acres of land in item No. 2 of "B" Schedule. Defendant No. 6 also alienated over 3 acres of land. Thus the events would clearly show that the parties either individually or collectively have been selling the land. It is also worth noticing that even though the Advocate-Commissioner was appointed to divide the entire properties into 104 shares, he could only undertake the execution of the warrant in part in respect of the lands in Hakimpet village only. The reasons for such a course of action are not forthcoming. Added to this, during this period only, the plaintiff and other Defendants except Defendant No. 1 had assigned their share in item No. 2 of "B" schedule property in favour of Paramount Co-operative Building Society, Defendant No. 30 on 29-8-1995. When the litigation was kept alive for more than 65 years what made them to assign the lands in item No. 2 of "B" Schedule is also not coming forth. The timing of assignment coupled with the Interim Report of the Advocate-Commissioner leads to a reasonable inference that the move for assignment was aimed at for ablique purposes. There is also no material to show that the Commissioner had made any attempt to execute the warrant in respect of the other properties and he had particularly chosen the lands in Hakimpet village, knowing fully well that the lands are in possession of a Co-operative Society.

9. The learned Counsel for the Appellant submits that merely because the property was sold by Defendant No. 1 to others who in turn sold to the Appellant during the said proceedings, the sale deeds cannot be ignored altogether. He relies on the judgment of the Supreme Court reported in Nagubai's case (1st cited supra), wherein it is held:

"The effect of Section 52 is not to wipe out a sale pendente lite altogether but to subordinate it to the rights based on the decree in the suit. As between the parties to the transaction, however, it is perfectly valid and operates to vest the title of the transferor in the transferee."

10. It is true that the doctrine of pendente lite u/s 52 is based on equity and good conscience. It rests upon the foundation that no party to the litigation can alienate the disputed property so as to affect the other party, otherwise it would

be impossible that any action or suit could be brought to a successful termination (See: Smt. Sefali Roy Chowdhary and Others Vs. A.K. Dutta, . Therefore, the doctrine is not intended to nullify the voluntary transfer effected by the parties to a suit, but the transactions will operate validly subject to the decree or orders that may be passed in this suit. It cannot be disputed that the sale took place between the parties during the pendency of the suit. Even the other co-sharers have knowledge of the sale made by Defendant No. 1 in 1950. Hence, it cannot be said that it is a collusive or fraudulent transaction. More over the suit though presented in 1935 was in fluid state of affairs till 1962, when it was duly registered after innumerable hurdles.

11. In Tikam Chand case (4th cited supra), the Division Bench observed thus:

"It is true that every co-owner has a legal right to have the joint properties partitioned. Mere reluctance or some inconvenience of other co-owners is not by itself sufficient to take away the said right. Different considerations, however, apply where a partition is inconvenient or is destructive of the intrinsic value of the property. In such cases Courts avoid actual partition as far as practicable and adopt a procedure more suitable in the circumstances of the case. The Court has the jurisdiction to allot such a property exclusively to one co-owner with suitable direction for payment of owelty money to the others. We feel that there is no justification to deprive the plaintiff, who is a purchaser for value, from having an equity in his favour to stand in the shoes of his alienors to the extent of claiming a general partition of all the properties so that the equities may be worked out by allotting to the shares of his vendors the properties which have been alienated by them if such a course did not work injustice to the right of the other co-owners."

12. In Khemchnnd Shankar Choudhary"s case (3rd cited supra) the question for consideration before the Supreme Court was:

"Whether the High Court, the Government and the Revenue authorities were right in the circumstances of the case in holding that the appellants had no locus standi to ask for an equitable partition particularly when the sale in favour of the appellants were in dispute."

and holding affirmatively the Court observed thus:

"Section 52 of the Transfer of Property Act no doubt lays down that a transferee pendente lite of an interest is an immovable property which is the subject matter of a suit from any of the parties to the suit will be bound in so far as that interest is concerned by the proceedings in the suit. Such a transferee is a representative in interest of the party from whom he has acquired that interest. Rule 10 of Order 22 of the Civil P.C. clearly recognises the right of a transferee to be impleaded as a party to the proceedings and to be heard before any order is made. It may be that if he does not apply to be impleaded, he may suffer by default on account of any order passed in the proceedings. But if he applies to be impleaded as a party and to be heard, he has got to be so impleaded and heard. He can also prefer an appeal against an order made in the said proceedings but

with the leave of the appellate Court where he is not already brought on record. The position of a person on whom any interest had devolved on account of a transfer during the pendency of any suit or a proceeding is somewhat similar to the position of an heir or a legatee of a party who dies during the pendency of a suit or a proceeding, or an official receiver who takes over the assets of such a party on his insolvency. An heir or a legatee or an official receiver or a transferee can participate in the execution proceedings even though their names may not have been shown in the decree, preliminary or final. If they apply to the Court to be impleaded as parties they cannot be turned out. The Collector who has to effect partition of an estate u/s 54 of the Civil P.C. has no doubt to divide it in accordance with the decree sent to him. But if a party to such a decree dies leaving some heirs about whose interest there is no dispute should he fold up his hands and return the papers to the Civil Court? He need not do so. He may proceed to allot the share of the deceased party to his heirs. Similarly he may, when there is no dispute, allot the share of a deceased party in favour of his legatees. In the case of insolvency of a party, the official receiver may be allotted the share of the insolvent. In the case of transferees pendente lite also, if there is no dispute, the Collector may proceed to make allotment of properties in an equitable manner instead of rejecting their claim for such equitable partition on the ground that they have no locus standi. A transferee from a party of a property which is the subject matter of partition can exercise all the rights of the transferor. There is no dispute that a party can ask for an equitable partition. A transferee from him, therefore, can also do so. Such a construction of Section 54 of the Civil P.C. advances the cause of justice. Otherwise in every case where a party dies, or whether a party is adjudicated as an insolvent or where the transfers some interest in the suit property pendente lite the matter has got to be referred back to the Civil Court even though there may be no dispute about the succession, devolution or transfer of interest. In any such case where there is no dispute if the Collector makes an equitable partition taking into consideration the interests of all concerned including those on whom any interest in the subject matter has devolved, he would neither be violating the decree nor transgressing any law. His action would not be ultra vires. On the other hand, it would be in conformity with the intention of the Legislature which has placed the work of partition of lands subject to payment of assessment to the Government in his hands to be carried out in accordance with the law (if any) for the time being in force relating to the partition or the separate possession of shares."

13. The learned Counsel for the Respondents submits that an alienee of an alienee has no claim for equity and that is available only to the alienation by one of the co-sharers. In the instant case the Appellant is an alienee from the second alienee and hence he cannot seek equities. It is true that the Appellant is not a direct alienee from the co-sharer. Sri Poornaiah relies on the judgment of Full Bench of this Court reported in *Ede China Gurunadham's* case (5th cited supra). In the said case it was held:

"The equity which arises in the case of a first alienee is not available to the

alienee from an alienee of a specific item of property from a Hindu coparcener and the latter could not maintain a suit for general partition claiming the allotment to him that specific item.

This equity is peculiar to the first vendee from a coparcener and is not transferable. Consequently, the position of the second alienee cannot be equated to that of the first alienee in that regard. There is no reason why the subsequent vendee should be treated differently from ordinary purchasers. The rights of such purchasers are regulated by the provisions of the Transfer of Property Act."

14. Saila Bala Dassi's case (2nd cited supra), speaks of opportunity to be given to the purchaser even in execution proceedings. The Supreme Court held that

"As a purchaser pendente lite she will be bound by the proceedings taken by the 1st respondent in the execution of her decree, and justice requires that she should be given an opportunity to protect her rights."

Thus, the learned Counsel submits that the Appellant can only protect its rights but cannot claim equities. He also relies on K. Adivi Naidu's case (6th cited supra), wherein the Supreme Court held thus:

"Having considered the respective contentions, we are of the view that since the preliminary decree was allowed to become final, the trial Court needs to give effect to it. It is settled law that alienees of the alienees have no right to equities. Equally, it is settled law that a coparcener has no right to sell his undivided share in the joint family property and any sale of undivided and specified items does not bind the other coparceners. Since the specific properties were purchased prior to the institution of the suit for partition, though the appellants have no right to equities, it could be said that the respective share to which their principal alienor was entitled would be allottable to them as a special case. However, since the preliminary decree specifically directed that the good and bad qualities of the land should be taken into consideration in effecting the partition, it should, in letter and spirit, be given effect to. While passing final decree, if the lands purchased by the appellants are found more valuable than the lands to be allotted to the respondents, the respective values thereof should be ascertained and the respondents need to be compensated in monetary value. That would be the effect of the preliminary decree as well. Considered from this perspective, the direction issued by the Division Bench would be modified as above, and the trial Court would pass the final decree accordingly."

15. From the foregoing decisions, it is clear that alienee of an alienee cannot seek equities and his rights are subordinate to the decree or orders passed in the suit. But, the Appellant is not seeking equity in this case. It is his case that the application is premature as the 2nd decree of the entire property should be passed. Therefore, I am not inclined to consider the contention of the learned Counsel for the Respondents that the Appellant cannot have a right to claim equity in as much as he is not the immediate vendee as the complete and final decree proceedings have not taken place. The vast extent of lands over

thousands of acres are the subject matter of the suit apart from number of houses in the twin cities. The appellant is admittedly in possession of Ac.42-35 gts. which was purchased from the Trust and the said land was sold by the vendee of Defendant No. 1 around 1953. It is beyond controversy that the purchaser can have no higher right than the vendor and the sale having been made after the institution of the litigation, the immediate purchaser or the successive purchaser are bound by the result of the litigation.

16. I have gone through the order of this Court in C.R.P. No. 700/1994 and it was directed that the value of the entire property should be assessed and on the basis of value thus ascertained, the entire property should be divided into 104 shares, and 14 shares should be allotted to D-1's share. The relevant portion of the order has already been extracted. Admittedly, in the instant case, only item No. 2 of "B" schedule property was assessed by the Commissioner in Interim Report and other properties have not been assessed. Whether the Appellant will get the entire Ac.42-35 gts. or Ac.8-35 gts. in Hakimpet village is a matter which cannot be decided in this appeal. But, at the same time, it is desirable that all the properties should be assessed and evaluated in the final decree proceedings. That is what is precisely held in Tikam Chand's case (4th cited supra).

17. The learned Counsel for the respondents submits that the Defendant No. 1 has in fact sold much more extent of land than to which he was entitled under the preliminary decree. Therefore, the Appellant has no manner of right to object for final decree proceedings in respect of the land in Hakimpet village. As can be seen from the terms of the warrant of Commission, the Commissioner was directed to assess the entire lands and buildings and properties and he was directed to submit a complete Report. This warrant is in conformity with the directions issued by this Court in C.R.P. No. 700/94. But, for the reasons best known to the Commissioner, he could assess and divide the lands in Hakimpet village. Even from the Interim Report of the Commissioner, it is not forthcoming as to why he had selected the item No. 2 of "B" schedule property. As can be seen from "A" and "B" schedules, number of buildings are involved apart from large extents of land spread over in 19 villages. Passing final decree on the basis of Report of the Commissioner would not be in the interest of the parties. The aim should be to put a quietus to the litigation as it has been percolating to generations. The Courts under the circumstances are duty bound to make effort as to how best the interest of a bonafide purchaser should be protected. This is also borne out by the finding of the trial Court in its judgment in para 93 which is extracted below:

"It is a fact and also admitted in some cases that D-1 had sold some lands in some villages. Ex.B-2 to B-9 are such sale deeds executed by D-1. It was explained by D-1 that he was to pay the land revenue to the Government and for that purpose he had to sell the lands. I need not go into the question about the lands sold by D-1 and about the sale amounts realised. In the final decree proceeding these facts can be taken into consideration. D-1 would be liable to

account for the monies realised."

18. When a piece meal final decrees are passed, though not impermissible under law, one party or the other aggrieved by every piece meal decree would tend to carry the matter to Higher Courts thereby the entire litigation is kept in the fluid stage. The agricultural properties both in and around twin cities and also outside the Municipal limits have acquired phenomenal commercial value and if such vast extents of lands are kept undecided for decades together there is every scope for outsiders to encroach upon the land thereby the fruits of parties will not be available to the litigants or to their Legal Representatives. Thus, the property continues to be under perennial litigation. More over, this Court is not satisfied with the method and manner adopted by the Advocate-Commissioner in submitting the Interim Report instead of a final report which created present impasse. By virtue of the piece-meal final decree, the Appellant who was in possession of the land of Ac.42-35 gts. since 1981 is now threatened with dispossession. It is also pertinent to state that at the time of admission of C.C.C.A. this Court granted interim stay of all further proceedings, however on a vacate application, this Court modified the stay order on 30-11-1996 restricting the stay only to the extent of share held by Defendant No. 1 in item No. 2 of "B" schedule sold to the Appellant Society herein (Defendant No. 29) and stay in respect of other properties was vacated. Against the said order, the Appellant carried the matter in Appeal in L.P.A. No. 160/96. The Division Bench of this Court disposed of the Appeal on 18-12-1996 and the relevant portion is extracted below:

"After hearing both the sides, we are satisfied that it is a fit case for allowing the Appeal. Handing over of one item of property in piecemeal when the Appellant is entitled to equities with regard to the share of the Defendant No. 1 in other plaint schedule properties would be detrimental to the interest of the Appellant."

19. As already stated, here is a peculiar case. The Appellant Co-operative Society purchased the extent of Ac.42-35 gts. situate in Hakimpet village in the year 1981 from alienee of Defendant No. 1. It has also made plots and allotted to its members for the purpose of construction of houses. The Interim Report of the Advocate-Commissioner entitles Defendant No. 1 only Ac.8-35 gts. which means the remaining land has to be surrendered while all other vast extents of lands are yet to be divided. It is settled proposition that good and bad qualities of the lands have to be considered at the time of final decree proceedings. The difficulty arose in this case, because Defendant No. 1 got only Ac.8-35 gts. to his share while the Appellant is in possession of Ac.42-35 gts. Thus having 34 acres in excess. In such a situation and keeping in view the facts that the lands were sold for valid consideration when the suit was incubating under very uncertain circumstances and when the factum of purchase was not in dispute, it is but fair that the entire properties should be valued simultaneously and final decree should be passed as visualised by the learned single Judge of this Court in C.R.P. No. 700/94. Though there is no prohibition in passing any number of final

decrees, but in the peculiar facts and circumstances of this case, this Court is of the opinion that the final decree proceedings should be passed once for all.

20. Under these circumstances and for the foregoing reasons, I set aside the order of the lower Court and issue the following directions:

(1) That the interim report of the Advocate-Commissioner dated 14-7-1995 shall stand undisturbed with regard to the availability of land of 66 acres.

(2) That the lower Court shall direct the Advocate-Commissioner to complete the assessment as directed in the warrant of the Commission 10-11-1994 within a period of six months from the date of receipt of a copy of this order.

(3) It is open for the Court below to change the Advocate-Commissioner or appoint one or more Commissioners for the purpose.

(4) The entire report of the Commissioner(s) shall be filed before the trial Court within a period of six months from to-day.

(5) The trial Court shall pass final decree proceedings taking into consideration overall value of both "A" and "B" schedule properties separately, within a period of two months of the submission of the report of the Commissioner(s).

(6) Status quo existing as on to-day with regard to possession and features of the lands in respect of item No. 2 of "B" schedule shall be maintained until the final decree proceedings are passed.

(7) It is open for the trial Court to take into consideration the land sold by Defendant No. 1 and in possession of the appellant, which is none-else than a Co-operative Housing Society, vis-a-vis other similarly situate lands of reasonably comparable values while passing final decree, so as to protect the rights of the Appellant to the extent possible without substantially affecting the interest of assignee Co-operative Society.

21. The Appeal is allowed with the above directions. For the reasons already stated supra, no orders are necessary in the C.R.P. (SR) No. 25640/1996. Accordingly, the same is dismissed. No costs.