
(1998) 11 AP CK 0012
In the Andhra Pradesh High Court
Case No : L.P.A. No. 104 of 1997

Paramount Co-op. Housing Society	Vs	APPELLANT
Padmini Co-op. Housing Society and Others		RESPONDENT

Date of Decision : 20-11-1998

Acts Referred:

Citation : (2009) 4 ALD 443 : (2009) 5 ALT 439

Hon'ble Judges : T. Ranga Rao, J;B. Subhashan Reddy, J

Bench : Division Bench

Advocate : A.K. Narasimha Rao, for the Appellant; M.R.K. Chowdary and C. Poornaiah, for Respondent Nos. 2 to 30, for the Respondent

Final Decision : Allowed

Judgement

B. Subhashan Reddy, J.—This letters patent appeal is directed against the order of the learned Single Judge in C.C.C.A. No. 98 of 1996, by which the order passed by the trial Court dated 29-3-1996 in final decree proceedings pertaining to Item 2 of plaint B schedule properties, situated in Hakimpet Village. Suit in O.S. No. 42 of 1962 was tried on the file of the Court of the I Additional Judge, City Civil Court, Hyderabad regarding the Matruka properties left behind by late Nawab Mohammed Nawaz Jung (was set aside). The plaintiff and defendants 1, 2, 3 and 12 are the sons of late Nawab, defendants 4, 5 and 6 are his daughters and defendant No. 7 is his widow. His sons are entitled to 14/104* share each while daughters to 7/104th share each and the widow to 13/104th share. The first defendant died and preliminary decree for partition was passed by the trial Court on 24-11-1970. The legal heirs of the 1st defendant preferred appeal to this Court in C.C.C.A. No. 27 of 1972 and there were cross-objections by defendant No. 6 relating to Item 4 of plaint A schedule and the said Cross-Objections were allowed and Item 4 of plaint A; schedule was taken out of the partial properties, as it was held that it was separate property of defendants 3 and 6. Result was the preliminary decree dated 24-11-1970 passed by the trial Court was confirmed by this Court excepting item 4 of "A" schedule. I.A. No. 854

of 1984 was filed for passing final decree proceedings and while the same was pending. I.A. No. 1103 of 1995 was filed by M/s. Paramount Co-operative Housing Society, represented by its President, Mohd. Shah Nawaz Khan, for impleading him as respondent to the final decree proceedings on the basis of deed of assignment executed by the plaintiff, defendants 3, 4, 6, 14 to 17 and the legal representatives of deceased defendant No. 2. The said application was allowed on 25-9-1995 and remain unchallenged and, thus, became final. The assignment in favour of the said society was recognized by the lower Court and the final decree proceedings were directed against the agricultural lands in Hakimpet Village, which is item 2 of plaintiff B schedule comprised of Survey Nos. 93, 94, 104, 107, 108 and 109 of Hakimpet Village. The final decree proceedings were objected to by M/s. Padmini Co-operative Housing Society Limited, which was respondent No. 29 before the trial Court stating that piecemeal final decree is not permissible under law and that entire suit schedule properties comprised in Schedules A and B have to be subjected to final decree proceedings at one and the same time and that the Hakimpet properties cannot be segregated and a final decree for Hakimpet properties alone cannot be passed. But, the said objections were brushed aside by the trial Court and the result in C.C.C.A in which the learned Single Judge directed the valuation of all the properties and passing of the final decree. The learned Judge was of the opinion that the purport of the order in C.R.P. No. 700 of 1994 passed by this Court was to that effect. But, the said C.R.P. was filed as I.A. No. 854 of 1994 was dismissed only/on the simple ground of not filing a copy of the modified preliminary decree and the learned Single Judge has rightly stated that the trial Court ought not to have dismissed the IA on the said flimsy ground and should have given opportunity to file the same. The other thing stated by the learned Single Judge is only an obiter and does not form the decision, as the scope of C.R.P. itself was the rejection of IA on the ground of not deciding the modified preliminary decree. That apart, the above C.R.P. was filed by Defendant No. 25 (one of the L.Rs. of Defendant No. 1) including only Padmini Housing Co-operative Society Limited as a party respondent and none-else. So, placing much reliance on the said order in C.R.P. will not be a justification for evolving the principles of succession in Mohammedan law and the right to partition. It is pertinent to mention that principles relating to succession in Mohammedan law and the consequent right to partition are quite different from that of Hindu law. In S.M.A. Samad and Others Vs. Shahid Hussain and Others, , a Division Bench of Patna High Court held that under Mohammedan Law, each of the sharers are entitled to his definite share in every item of property and among several properties available for partition, even one item can be chosen for partition as a partial partition and the same was the view taken by a Full Bench of Sind High Court in Vazir v. Dwarkamal AIR 1922 Sind 41(F.B.) and the said view as also upheld in Abdul Majeeth v. Krishnamachariar AIR 1918 Mad. 1049 and also in Annamalai v. Ramanathan AIR 1947 PC 98. The Supreme Court in Syed Shah Ghulam Ghouse Mohiuddin and Others Vs. Syed Shah Ahmed Mohiuddin Kamisul Quadri (Died) by Lrs. and Others, , held that "Mohammedans are never joint in estates, but only tenants in

common whether they live together or not an tenants in common are not obliged to sue for partition of all other properties in which they are interested. There is nothing to preclude one of the joint owners of, several items of property from seeking a partition of one of such items of property." In *Tikam Chand Lunia Vs. Rahim Khan Ishak Khan and Others*, , a Division Bench of Madhya Pradesh High Court though has held that under Mohammedan Law, one co-owner has a right to sell in the undivided share in the estate to which he has succeeded as a heir, an alienee of a specific item stands in the shoes of the co-owner and obtains a personal right, which he is equally entitled to enforce against the shares of his vendors and that the said purchaser for value, therefore, can stand in the shoes of his alienor to the extent of claiming a general partition of all the properties so that the equity may be worked out by allotting to the shares of his vendors the property which has been alienated by him, if such a course does not work injustice to the right of the other co-owners. However, the said judgment also held that on consideration of the character and nature of the property to be divided and the extent of the shares of other co-owners, the specific item of property cannot be exclusively allotted to the shares of the alienors, the sale must be construed to be the sale of so much portion of that item as can justly be given to the shares of alienor having regard to all the equities in the circumstances of the case. In fact, the trial Court has considered this aspect. The judgment of the Supreme Court in *Khemchand S. Choudhari v. Vishnu H. Patil* (1983) SCC 18, has got no relevance here firstly because it arises out of Hindu Law and the proposition laid down is that the transferee/ pendente lite can get himself impleaded and claim equities. But the later judgment of the Supreme Court in *K. Adivi Naidu and Others Vs. E. Duruvasulu Naidu and Others*, , has held that alienee of a alienee has no right or equities and in that case, even the sale before the suit was not saved. In the instant case, the sale was much after the institution of the suit and the first alienee was one Mr. Upender Reddy and the second alienee was Sri Venkateswara Goraksha Trust and Padmavathi Co-operative Society is the third alienee. As such, the ratio decided in *K. Adivi Naidu v. E. Duruvasulu Naidu* (supra), is squarely applicable. We may also say that the Full Bench of this Court in *Gurunadham v. Venkat Rao* (1959) 2 An.W.R. 79, has taken the same view and the said view stands confirmed in view of the judgment of the Supreme Court in *K. Adivi Naidu v. E. Duruvasulu Naidu*, (supra). All other judgments referred to above also deal the aspect that in Mohammedan Law, there is no recognition for a sale by a co-sharer of the entire estate and that other co-sharers are not bound by the said sale and the said decisions even went to the extent of saying that even if the said sale was meant for discharging the debts of ancestor, whose property had devolved on the sharers, the said sale without the consent of other co-sharers is invalid and does not confer any right on the purchaser with regard to such co-sharers who do not join the said sale. The order of the trial Court is quite in consonance with the Law of the land laid down by the Supreme Court in *S.S. Gulam v. S.S.A.M. Kamisul* (supra) and in *K. Adivi Naidu v. E. Duruvasulu Naidu* (supra), and as such, we set aside the order passed by the learned Single Judge dated 23-4-1997 in C.C.C.A. No. 98 of 1996

and restore the order dated 29-3-1996 passed by the Court of the I Additional Judge, City Civil Court in I.A. No. 1351 of 1995 in I.A. No. 854 of 1984 in O.S. No. 42 of 1962.

2. The L.P.A. is allowed. No costs.