
(1997) 01 AP CK 0047

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 2621 of 1996

Paramount Co-operative Housing Society Ltd.

APPELLANT

Vs

Sirajunnisa Begum and Others

RESPONDENT

Date of Decision : 16-01-1997

Acts Referred:

Constitution of India, 1950 — Article 227
Stamp Act, 1899 — Article 40, 2(15)

Citation : (1997) 3 ALT 243 : (1997) 2 APLJ 156

Hon'ble Judges : Syed Saadatulla Hussaini, J

Bench : Single Bench

Advocate : P. Ramachandra Reddy, for the Appellant; M.R.K. Chowdary, for Respondent Nos. 1 to 30 and A.G. for Respondent No. 31, for the Respondent

Final Decision : Dismissed

Judgement

Syed Saadatulla Hussaini, J.—This is a revision petition filed by the petitioner under Article 227 of the Constitution of India questioning the order in LA. No. 1351 of 1995 in LA. No. 854 of 1984 in OS. No. 42 of 1962 dated 10-7-1996 passed by the First Additional Judge, City Civil Court, Hyderabad.

2. The learned Senior Counsel for the petitioner Sri P. Ramachandra Reddy submits that the petition has been filed to pass final decree in respect of agricultural lands situated at Hakimpet village admeasuring Ac. 45-00 of land out of Ac. 66-00 of agricultural dry land allotted to the share of the plaintiff and defendants 3,4,6,14 to 17 and legal representatives of the deceased second defendant (respondent No. 30). It is stated that the respondent No. 29 opposed the application and the First Additional Judge by his order dated 29-3-1996 in LA. No. 1851 of 1995 in LA. No. 854/84 in O.S. No. 42 of 1962 overruled the objection of the respondent No. 29 allowed the petition and directed the petitioner to file Non-Judicial stamps for engrossing final decree. The petitioner deposited non-judicial stamps worth Rs. 30/- and the said stamps were returned with a direction to file non-judicial stamps as per the present market value along

with certificate showing the present market value. The learned Counsel for the petitioner stated that the direction of the Court to file non-judicial stamps as per the present market value would amount to revaluation of the property and the Court cannot go behind the preliminary decree and the non-judicial stamps are filed as per the valuation shown in the plaint and therefore the non-judicial stamps filed are sufficient. The matter was directed to be called on bench for hearing, when the petitioner's Counsel raised the objection. It is stated that the First Additional Judge felt that the Government Pleader should be heard on the question of collection of stamps and the petitioner has to pay non-judicial stamps as per the provisions of the Indian Stamp Act. The learned Judge held that in a suit for partition filial decree is obviously an instrument of partition as defined in Sub-section (15) of Section 2 of Indian Stamp Act and it is not disputed that the provisions of Indian Stamp Act are attracted for collection of stamp duty and relying on the Division Bench Judgment of this Court reported in Media Anasuyamma and another Vs. Choppela Lakshamma, wherein this Court after considering the Sections 2(6), 2(11), 2(12), 3 and 33(2) of Indian Stamp Act, 1899 and A.P. Stamp (Amendment) Act, 1986 (Act 17 of 1986) held that the A.P. Amending Act is not retrospective in nature - proper stamp duty payable on the instrument is the stamp duty payable on the date of the execution of instrument and not on the date of its presentation into Court - Amending Act applicable only to documents executed on or after 16-8-1986, the date of commencement of the said Act and not to those executed before the said date. The learned Judge rejected the contention of the petitioner that the production of basic value certificate at the time of registration of the suit is to enable the Court to collect non-judicial stamps at the time of passing of the final decree, therefore the value mentioned in the plaint is the criteria for collection of stamp duty. An "instrument of partition" is defined u/s 2(15) of the Indian Stamp Act as under:

"Instrument of partition" means any instrument whereby co-owners of any property divide or agree to divide such property in severalty, and includes also a final order for effecting a partition passed by any revenue authority or any Civil Court and an award by an arbitrator directing a partition and a memorandum regarding past partition."

As per the provisions of the Stamp Act stamp duty has to be paid as per Article 40 of Schedule 1-A and the relevant factor for collection of non-judicial stamps is the date of execution of the document. As passing of the final decree in a partition suit has to be treated as on the date of execution of the partition deed the value as on that date has to be taken into consideration for the purpose of collection of stamp duty and the market value shown in the plaint on the date of presentation of the suit is only for the purpose of Court fee and to decide the pecuniary jurisdiction of the Court but the same value cannot be adopted for collection of stamp duty to engross final decree and directed the petitioner to furnish non-judicial stamps per the value of the property on the date of passing of the final decree.

3. Mr. P. Ramachandra Reddy, the senior Counsel for the petitioner contends that the learned Judge cannot at this stage reopen the question of valuation of the suit property and cannot go behind the preliminary decree in which the valuation of the suit property was accepted by the Court. The preliminary decree under the CPC determines the rights and shares of the parties. He relies on the decision reported in Mool Chand and others Vs. Dy. Director, Consolidation and others, wherein the Apex Court held as follows:

"From a perusal of the above provisions it would appear that in a suit for partition, the Revenue Court also, like the civil Court, has first to pass a preliminary decree determining and declaring the rights of the parties and their shares, if any in the holding. Thereafter, proceedings for preparation of the final decree are initiated under Rules 158 to 164 which lay down the various modes in which a decree for partition can be implemented and the respective shares of the tenure holders separated, in accordance with the rights and shares already determined under the preliminary decree."

Next he relies on the decision of the Apex Court reported in Venkata Reddi and Others Vs. Pothi Reddi, wherein the Apex Court held as follows:

"A decision is said to be final when, so far as the court rendering it is concerned, it is unalterable except by resort to such provisions of the CPC as permit its reversal, modification or amendment. Similarly a final decision would mean a decision which would operate as res judicata between the parties if it is sought to be modified or reversed by preferring an appeal or a revision or a review application as is permitted by the Code. A preliminary decree passed whether it is in a mortgage suit or a partition suit, is not a tentative decree but must, in so far as the matters dealt with by it are concerned, be regarded as conclusive. No doubt, in suits which contemplates the making of two decrees-a preliminary decree and a final decree-the decree which would be executable would be the final decree. But the finality of a decree or a decision does not necessarily depend upon its being executable. The legislature in its wisdom thought that suits of certain types should be decided in stages and though the suit in such cases can be regarded as fully and completely decided only after a final decree is made, the decision of the Court arrived at the earlier stage also has a finality attached to it. Section 97 Civil P.C. clearly indicates that as to the matters covered by it a preliminary decree is regarded as embodying final decision of the Court passing that decree."

In another decision of the Supreme Court reported in Muthangi Ayyanna Vs. Muthangi Jaggarao and Others, it was held as follows:

"Partition Suit - Final Decree - Final decree cannot amend or go behind the preliminary decree on a matter determined by the preliminary decree."

Relying on the above decisions Mr. Ramachandra Reddy submits that the order of the learned Judge, directing the petitioner to deposit requisite Non-Judicial stamps as per the present market value on the date of passing of the final

decree is illegal.

4. The learned Counsel for the petitioner filed a Xerox copy of extract of the Commissioner's report and final decree proceedings before this Court in C.S. No. 14 of 1958. On internal page No. 6 it is stated that the application No. 66 of 1972 was heard on several occasions and ultimately this Court passed order dated 13-9-1975 and directed that the Court fees to "be calculated at Rs. 100/- only with the stamp duty calculated as on the prevailing rates for several items of jewellery, agricultural lands, urban immovable properties etc., separately. Then Receiver-cum-Commissioner calculated stamp duty accordingly and filed a statement No. 12 application No. 66 of 1972 which is accepted by the Court order dated 17-12-1976. Statement No. 12 which states showing the calculation of stamp duty as per the revised orders in application No. 66 of 1972 which is in continuation of the statement No. 16 of the previous final report submitted wherein it is observed that the stamp duty of urban immovable properties including movables and jewelleries calculated at 2.25% on valuation of urban immovable property etc. Rs. 68,13,563-86 and on agricultural lands at 3.00% Rs. 51,897-50. This reveals that this Court directed the Receiver-cum-Commissioner to calculate the stamp duty in final decree proceedings as on the prevailing rates of the property. This itself cut across his argument that at the time of final decree proceedings which is on the original side itself while final decree is passed the stamp duty of the individual shares paid on the shares of the prevailing market rates of the property, as directed by this Court.

5. The Government Pleader appearing for the Advocate General repelling the arguments of the Counsel for the petitioner invites my attention to the provisions of Sub-section (2) of Section 34 of the A.P. Court Fees and Suits Valuation Act, 1956 which is extracted hereunder

"2. In a suit for partition and separate possession of joint family property or property owned, jointly or in common, by a plaintiff who is in joint possession of such property, fee shall be paid at the following rates: When the plaint is presented to--

(i) A District Munsif's Court Rupees fifty (ii) a Subordinate Judge's Court or a District Court : Rupees one hundred if the value of the plaintiff's share is less than Rs. 10,000/- Rupees two hundred if the value is not less than Rs. 10,000/-"

He further contended that as the suit was only for partition of mathruka properties of Muslim, fixed Court fee was paid for the purpose of jurisdiction of the Court and it cannot be said that final decree which has to be engrossed on the non-judicial stamps after determination in the shares of mathruka properties is to be paid on the same valuation as per the plaint. He submitted, relying on Anasuyamma's case (1 supra) sustained the reasoning of the learned Judge in the impugned order.

6. The question for Consideration before me is that whether on the above facts in

the instant case the petitioner can invoke the jurisdiction of this Court under Article 227 of the Constitution of India?

7. It is relevant to extract Sub-section (1) of Article 227 of the Constitution of India which is as under:

"(1) Every High Court shall have superintendence over all Courts and Tribunals throughout the territories in relation to which it exercises jurisdiction."

It is a settled law that Article 227 of the Constitution of India involves a duty on the High Court to keep inferior Courts and tribunals within the bounds of their authority and to see that they discharge their duties but it does not vest the High Court with any unlimited prerogative to correct all species of hardship or wrong decisions made within the limits of the jurisdiction of the Court or Tribunal but it must be restricted to cases of grave dereliction of duty and flagrant abuse of fundamental principles of law or justice where grave injustice would be done unless the High Court interferes. This power would not permit this Court to substitute its own judgment whether on the question of fact or law in place of that of the subordinate Courts.

8. The Apex Court in the case of Mohd. Yunus Vs. Mohd. Mustaqim and Others, at paras 6 and 7 of its judgment held that a mere wrong decision without anything more is not enough to attract the jurisdiction of the High Court under Article 227 and the supervisory jurisdiction conferred on the High Courts under Article 227 of the Constitution is limited to seeing that an inferior Court or Tribunal functions within the limits of its authority and not to correct an error apparent on the face of the record much less an error of law, and in exercising the supervisory power under Article 227 the High Court does not act as an appellate Court or Tribunal and it will not review or reweigh the evidence upon which the determination of the inferior Court or tribunal purports to be based or to correct errors of law in the decision.

9. Keeping in view the law laid down by the Apex Court in the above decision, I am not inclined to invoke the powers of this Court under Article 227 of the Constitution of India on the facts of the case directing the petitioner to deposit requisite Non-Judicial stamps on the market value of the property as on the date of the passing of the final decree.

10. The Civil Revision Petition is devoid of merits and accordingly it is dismissed. No costs.