

(2008) 03 AP CK 0010

In the Andhra Pradesh High Court

Case No : O.S.A. No's. 58 and 59 of 2007 and O.S.A. (SR) . No. 7401 of 2007

Sai Anupama Agencies Pvt. Ltd.

APPELLANT

Vs

K.S.R. Mohan Rao and Another

RESPONDENT

Date of Decision : 11-03-2008

Acts Referred:

Citation : (2008) 4 ALD 52 : (2008) 3 ALT 326

Hon'ble Judges : G. Rohini, J;D.S.R. Varma, J

Bench : Division Bench

Advocate : Vedula Venkataramana, for the Appellant; Kasa Jaganmohan Reddy, for the Respondent

Judgement

D.S.R. Varma, J.—Since all the abovementioned appeals do arise out of the common order, dated 14-08-2007, in Application Nos. 145 of 2007 and 1071 of 2006 in C.S. No. 14 of 1958, passed by a learned Single Judge of this Court, and the question involved is closely inter-twined, they are heard together with the consent of both the parties and being disposed of by this common judgment, at the stage of admission.

2. Heard Sri Vedula Venkataramana, the learned Counsel appearing for the appellants in O.S.A. Nos. 58 and 59 of 2007 as well as Sri Kasa Jaganmohan Reddy, the learned Counsel appearing for the respondents in O.S.A. Nos. 58 and 59 of 2007 and the learned Counsel appearing for the appellant in O.S.A. (SR). No. 7401 of 2007.

3. Aggrieved by the common order, dated 14-08-2007, in Application Nos. 145 of 2007 and 1071 of 2006 in C.S. No. 14 of 1958, passed by the learned Single Judge of this Court, O.S.A. Nos. 58 and 59 of 2007 are filed by the second respondent in Application Nos. 145 of 2007 and 1071 of 2006 in C.S. No. 14 of 1958 while O.S.A. (SR). No. 7401 of 2007 is filed by the applicant in Application No. 145 of 2007.

4. For the sake of convenience, in this common judgment, the parties will be

referred to as per their array in Application No. 145 of 2007.

5. So far as O.S.A. Nos. 58 and 59 of 2007 are concerned, the claim of the applicants in Application No. 145 of 2007, as could be seen from the order, dated 14-08-2007, passed by the learned Single Judge of this Court, in nutshell, is, firstly, Hafeezpet is an Inam land and consequently the heirs of Khurshid Jah Paigah or the second respondent (along with other respondents) claiming through them had no right, title or interest in the land in Hafeezpet village and secondly, the applicants being the tenants are lawfully entitled to the property and consequently they have a right to have their names mutated and also for the relief of perpetual injunction in respect of the disputed lands in Survey No. 78 of Hafeezpet village.

6. Yet another Application No. 1071 of 2006 is filed seeking the leave of this Court to implead the applicants therein as respondents in C.S. No. 14 of 1958 so as to enable them to raise objections in the final decree proceedings and to direct the respondents therein to remove the fencing laid in Survey No. 78 of Hafeezpet village by virtue of the orders of this Court in Application No. 521 of 2006.

7. The learned Single Judge of this Court, after an elaborate discussion on the subject and considering all the aspects, by a common order, dated 14-08-2007, had recorded a finding that it was not in dispute that the suit C.S. No. 14 of 1958 had been adjudicated effectively by determining the rights of the parties to the suit and accordingly no fresh direction was required, and what was left for determination in the suit is not the rights and liabilities of the parties, but pursuant to the preliminary decree the division of the properties by means of metes and bounds so as to passing of a final decree.

The learned Single Judge further observed that no adjudicatory process was left undecided once a preliminary decree had been passed.

8. Therefore, the learned Single Judge had positively arrived at a conclusion that a party cannot seek to come on record after adjudication by passing a preliminary decree in a suit for partition claiming right over the properties except invoking the remedies of amendment of the judgment and decree, appeal and review. The learned Single Judge specifically rejected the contention of the applicants that the lands in dispute along with the other lands, which were the subject matter of partition in the suit C.S. No. 14 of 1958, were not partitionable and eventually held that the subject lands are partitionable. While observing so, as a matter of eventuality, the learned Single Judge had dismissed the said applications.

9. In fact, the reasoning accorded by the learned Single Judge, while touching upon various aspects of law and fact, is more than sufficient to arrive at the said conclusion and there cannot be any controversy with regard to the reasoning assigned by the learned Single Judge on various aspects and also the eventual finding recorded, as above.

10. The only objection for second respondent is, as regards the further observations made by the learned Single Judge

11. For the sake of convenience, the relevant portion of the said observations is extracted hereunder:

...It is an altogether different aspect, as discussed hereinabove, if they are allowed to come in record on the final decree petition to be filed by any of the parties to the preliminary decree questioning their right for partition but the specific relief sought for in the instant application by the applicants is to bring them on record at this stage in the suit C.S. No. 14 of 1958, in my considered view, such application is mis-conceived and cannot be allowed.

12. At a glance, the above observations do not actually meant for enabling the applicants to raise the objections at the stage of final decree proceedings. We are conscious that no further observations are necessary, but, still, we may have to add that the aggrieved parties can, as well, avail their remedy elsewhere as permitted under law.

13. But, as could be seen from the elaborate reasoning assigned in the impugned common order, the learned Single Judge was of the absolute opinion that the applications filed by the applicants cannot be sustained.

14. Nevertheless, we are of the view that the further observations of the learned Single Judge, as extracted above, are not warranted, inasmuch as, those observations may create a feeling among the applicants that they can raise their objections even at the stage of final decree proceedings, as a matter of right. In other words, there is a scope, though bleak, for the applicants or for that matter even to the Court below, to understand that the applicants were permitted to raise objections at the stage of passing of final decree proceedings.

15. As already noticed, the above observations of the learned Single Judge, of course, which do not have any positive effect by way of creating a right to the applicants to raise objections at the stage of final decree proceedings, are not warranted.

16. The learned Counsel appearing for the applicants contended that subsequently the final decree proceedings have been initiated, wherein the objections taken by the applicants were not considered by the Court below, therefore, the present appeals have become in fructuous.

17. In this context, we are clear in our mind that the subsequent events, as regards the initiation of final decree proceedings and the other proceedings, initiated by the applicants, are not relevant for the purpose of disposal of the present appeals, for the simple reason that we are confined only to the issue raised for consideration before this Court in these appeals. The subsequent events, may it be in favour or against either of the contesting parties, do not have any bearing on the disposal of these appeals, in view of the fact that the scope and the question raised before this Court, in these appeals, is very limited.

18. Accordingly, the observations of the learned Single Judge, as extracted above, are liable to be set aside.

19. So far as the appeal O.S.A. (SR). No. 7401 of 2007 is concerned, the main grievance of the applicants in this appeal is that the learned Single Judge did not properly construe the objections as regards the deletion of Item No. 37 of Schedule-4 of the suit properties meant for partition. In other words, it is the contention of the applicants that though Item No. 37 of Schedule-4 properties was not available for partition, the learned Single Judge had passed the impugned common order.

20. We have carefully gone through the reasoning accorded by the learned Single Judge on this aspect. Prima facie, we do not find any illegality or irrationality or impropriety in recording a finding to the extent prayed for by the applicants.

21. As already noticed above, while dealing with the other two appeals, the learned Counsel appearing for the applicants pointed out that subsequent to the passing of the impugned common order, by the learned Single Judge, final decree proceedings have been initiated and in those proceedings the very objection as regards the non-availability of the land covered by Item No. 37 of Schedule-4 properties was not accepted to by the Court below and eventually a final decree had been passed on 24-12-2007.

22. As regards the grievance of the applicants that the learned Single Judge did not consider their objections regarding the non-availability of Item No. 37 of Schedule-4 properties, it is to be noticed that the same had already been considered and rejected by the Court below in the final decree proceedings. Therefore, it is the final decree proceedings, by which the present contention had been rejected, that ought to have been challenged.

23. In this context, the learned Counsel appearing for the applicants submits that steps are being taken to file an appeal against the said rejection orders in the final decree proceedings.

24. In view of the fact that no appeal is preferred against the orders passed in the final decree proceedings, as regards the property covered by Item No. 37 of Schedule-4, we see no reason to express any view in this appeal.

Therefore, the appeal O.S.A. (SR). No. 7401 of 2007 is liable to be dismissed as redundant.

25. In the result, the appeals O.S.A. Nos. 58 and 59 of 2007 filed by the second respondent are allowed, setting aside the observations of the learned Single Judge, in the impugned common order, as prayed for, and the appeal O.S.A. (SR). No. 7401 of 2007, filed by the applicants, is dismissed as redundant, at the stage of admission. However, there shall be no order as to costs.