
(2004) 07 AP CK 0105

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 3442 of 2004

Singireddy Yadi Reddy

APPELLANT

Vs

Singireddi Malla Reddy, Singireddi Narsamma (died),
Singireddi Chandra Reddy (died) and Smt. Balamani Reddy

RESPONDENT

Date of Decision : 14-07-2004

Acts Referred:

Citation : (2004) 5 ALD 121 : (2004) 6 ALT 670

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : A. Anasuya, for the Appellant; D. Hanumantha Rao and B.G. Ravinder Reddy, Counsel for the Respondent No. 4, for the Respondent

Final Decision : Allowed

Judgement

L. Narasimha Reddy, J.—This civil revision petition is filed against the order dated 2.5.2000 in E.P. No. 52 of 1999 in O.S. No. 116 of 1981 passed by the learned II Additional Junior Civil Judge, City Civil Court, Hyderabad.

2. The petitioner, the first respondent, and the third respondent, who is since dead, are brothers. The first respondent filed the suit for partition of the joint family properties shown in the suit schedule. A preliminary decree was passed on 20.03.1986 declaring that the three brothers are entitled to the share of one-third each in the suit schedule properties. I.A. No. 1226 of 1991 was filed for final decree proceedings. An advocate-commissioner was appointed and he, in turn, divided the properties into three parts viz. A, B and C. The trial Court, ultimately, allotted Plot A to the third respondent, Plot B to the petitioner and Plot C to the first respondent.

3. The petitioner filed I.A. No. 697 of 1998 for appointment of a second Commissioner for locating Plot B and to put him in possession. The I.A. was allowed through order dated 6.5.1998. The third respondent challenged the same by filing C.R.P. No. 2300 of 1998 mainly on the ground that the decree could not

be given effect to, unless necessary stamp duty was paid. The C.R.P. was allowed on 3.8.1998.

4. After complying with the directions issued in C.R.P. No. 2300 of 1998, the petitioner filed E.P. No. 52 of 1999 for localization of Plot B and for attachment of the same, so as to be delivered to him. Through the order under revision, the Executing Court dismissed the E.P. on the ground that the petitioner figures as Judgment-debtor in the decree and at his instance the decree cannot be executed.

5. Learned counsel for the petitioner submits that in a suit for partition, the distinction between a decree holder and a Judgment debtor is almost non-existent and once the decree contemplates division of the suit schedule property into parts and allotment of the same to the parties, each party is entitled to seek execution of the same irrespective of the fact whether he figures as decree-holder or judgment-debtor. She contends that the observation made by the executing Court that possession was already delivered is not supported by record.

6. Sri D. Hanumantha Rao, learned counsel for the first respondent, on the other hand, submits that the petitioner was not only delivered the possession of Plot B, but also had constructed a house therein. He contends that the effort of the petitioner is to disturb the possession of the first respondent and others with an oblique motive and once the final decree has been given effect to, the question of seeking further execution does not arise.

7. Sri B.G. Ravinder Reddy, learned counsel for fourth respondent, legal representative of deceased third respondent, submits that though the final decree proceedings were passed by appointing a commissioner and getting the property divided into three shares, the possession of the respective shares was not delivered to the concerned parties.

8. In the partition suit filed by the first respondent, a preliminary decree was passed way back on 20.3.1986. Final decree proceedings were initiated by filing I.A. No. 1226 of 1991. Through an order dated 10.12.1995, the trial Court appointed an Advocate-Commissioner with a specific direction to divide the suit schedule property into three equal parts. The entire suit schedule property is a contiguous block admeasuring Ac.2.05 guntas. The Advocate-Commissioner divided the suit schedule property into plots A, B and C, prepared a sketch and submitted a report on 18.12.1995. Based on this report, the trial Court passed a final decree on 22.1.1998 and allotted plot A to the third respondent, plot B to the petitioner and Plot C to the first respondent, by drawal of lots.

9. The petitioner filed I.A. No. 697 of 1998 for appointment of a second Commissioner for locating Plot B and to put him in possession. The said I.A. was allowed on 6.5.1998. The third respondent filed C.R.P. No. 2300 of 1998 challenging the order in I.A. No. 697 of 1998 mainly on the technical ground, viz. the necessary stamp duty was not paid for engrafting the final decree. The C.R.P. was allowed on 3.2.1998 setting aside the order passed in I.A. No. 697 of 1998

and leaving it open to the parties to seek execution of the decree on compliance with the condition as to payment of stamp duty.

10. After complying with the orders of this Court in C.R.P. No. 2300 of 1998, the petitioner filed E.P. No. 52 of 1999. In effect, he sought for the relief of localization of Plot B allotted to him. The Executing Court dismissed the E.P. mainly on the ground that the petitioner figures as judgment-debtor in the decree and at his instance, the execution cannot be undertaken. References were also made to the contentions of the parties that the possession of the suit schedule property was delivered to the respective sharers.

11. A reading of the order under revision discloses that basic principles of civil law were not followed and that many observations were made contrary to the record. There was absolutely no doubt that the decree, which is sought to be enforced, was passed in a suit for partition. In a suit for partition, hardly there exists any distinction between plaintiff and defendant and decree holder and judgment-debtor. Unlike in other categories of decrees, a decree in a partition suit would ensure to the benefit of all the parties. Each party, irrespective of his being arrayed as plaintiff or defendant in the suit, shall be entitled to reap the benefits of the decree. Despite the same, the Executing Court observed as under:

"It is only a decree-holder that is respondent No. 1 that has to file E.P. and therefore the E.P. itself is not maintainable."

12. In para 6 of the order, it was observed

"petitioner who is defendant No. 2 in this petition is not a decree-holder."

13. On this ground alone, the order under revision is liable to be set aside.

14. At more places than one, the Executing Court observed that the possession of the suit schedule property was delivered to each sharer. In para 5 of the order, he observed as under:

"Subsequently possession was also delivered to each of the sharers."

15. In para 7, he pointed out that

"since the petitioner has taken possession of plot B and constructed houses and has been realizing the rents, there is no question of appointing a fresh Commissioner for demarcating the land for delivery of possession."

16. The Executing Court proceeded on the assumption that because the petitioner is in possession of some property, which is in Plot B and constructed house therein, the possession can be said to have been delivered to him. It needs to be borne in mind that in a joint family, each coparcener would be in possession of some part or the other of the joint family property. Unless it is pleaded and established that the petitioner is in possession of the said house, on being allotted towards his share, through the process of Court, it cannot be inferred that he was put in possession of the entire property comprised in Plot B

17. In the final decree proceedings, the trial Court did nothing more than directing the Advocate-commissioner to divide the property into three equal shares. There is nothing on record to disclose that the respective shares were delivered to the respective parties. The petitioner was compelled to file I.A. No. 697 of 1998 to localize plot B allotted to him and to put him into possession. The Court appointed the Advocate-commissioner and before the warrant could be executed, the third respondent challenged the same by filing C.R.P. No. 2300 of 1998. Learned counsel for the first respondent is not able to point out as to in which proceedings and at what point of time, the parties were delivered the respective shares. He places reliance upon the report submitted by the Advocate-commissioner appointed in I.A. No. 1226 of 1993, namely, the final decree proceedings. It is beneficial to extract the relevant portion of the report:

"In pursuance of the preliminary decree passed by this Hon"ble Court, the entire suit schedule property is divided into three equal parts admeasuring 2.8 gts & 40 sq. yards. Since the preliminary decree directs the suit property be divided into three equal shares which are accordingly done more fully described in the sketch plan and shown as plot No. A, B & C. The plaintiff Sri S. Malla Reddy is allotted plot No. C admeasuring 28 guntas & 48 sq. yards which is more particularly shown in the sketch plan filed along with the report. As the execution of warrant of commission is completed on 17.12.1995 the warrant of commission is herewith returned along with the sketch plan."

18. There is nothing in the above extracted portion to disclose that the Commissioner had delivered possession of the respective plots to the parties. In fact, the purport of the warrant was only to divide the suit schedule property into plots and nothing more. The allotment of plots was undertaken by the Court on drawal of lots subsequent to filing of the report. Thereafter, no proceedings were initiated for delivery of possession. Though the suit is filed for division of the property into three equal shares and allotment of one share to the plaintiff (respondent No. 1), the decree can be said to have been completely executed only when the remaining sharers are also put in possession of the respective shares allotted to them. The findings recorded by the trial Court are not borne out by the record. On account of the dismissal of E.P., on improper grounds, the disputes between the parties are being protracted. Once there is a final decree in which plot B was allotted to the petitioner, he is entitled to be delivered possession of the same. The petitioner specifically pleaded that the boundaries fixed for that plot have been effaced. It is the duty of the executing Court to ensure that the boundaries are re-fixed strictly in accordance with the report submitted by the Commissioner in I.A. No. 1226 of 1991 and that the parties are put in possession of the respective plots.

19. Hence, the civil revision petition is allowed and the order under revision is set aside. The executing Court is directed to appoint an Advocate-Commissioner for the purpose of localizing the plots A, B and C, as demarcated by the Commissioner in I.A. No. 1226 of 1991, if necessary by taking the help of a

Surveyor and to put the respective parties in possession of the plots. This exercise shall be completed within three months from the date of receipt of a copy of this order.