

(2013) 12 AP CK 0137

In the Andhra Pradesh High Court

Case No : Application No. 210 of 2010 in Application No. 455 of 2009 in CS. No. 7 of 1958

Syed Mujtaba Ali

APPELLANT

Vs

Mazharuddin Khan and Others

RESPONDENT

Date of Decision : 12-12-2013

Acts Referred:

Citation : (2013) 12 AP CK 0137

Hon'ble Judges : M.S. Ramachandra Rao, J

Bench : Single Bench

Advocate : V. Venkataramana, for the Appellant; M.A. Bari, Sri S. Malla Rao, Sri M.V.S. Suresh Kumar, Sri Mohd. Osman Shaheed and Sri V. Vijaya Rama Raj, for the Respondent

Final Decision : Allowed

Judgement

M.S. Ramachandra Rao, J.

Application No. 210 of 2010:

1. This application is filed to implead the applicant herein Syed Mujtaba Ali as respondent No. 266 in Appln. No. 455 of 2009 in CS. No. 7 of 1958 on the file of this Court.

BRIEF BACKGROUND HISTORY:

CS. No. 7 of 1958 is a suit for partition and separate possession of the Matruka properties of Paigah Asmanjahi filed by Smt. Sultan Jahan Begum, D/o. Moinuddowla Bahadur against Nawab Zahir Yar Jung Bahadur and others. It was initially filed before the City Civil Court at Hyderabad but was later transferred to the High Court.

2. The matter was ultimately compromised and IA. No. 126 of 1958 was filed by the parties under Order XXIII Rule 3 CPC to pass a decree in terms of the compromise. On 06.04.1959, a preliminary compromise decree was passed.

3. In this application, we are concerned with Item No. 236 of "A" schedule to the said preliminary decree, i.e., Somajiguda Maktha.

4. Clause 4(g) of the preliminary decree provided as under:

for the purpose of effecting the distribution of the properties among the persons entitled thereto, the Commissioner receivers shall have powers to sell the said properties by public auction and exercise all powers necessary for effecting the division of the same between among defendants Nos. 2 to 12 and 14 to 22 each son getting 2/33rds and each daughter getting 1/33rds share in the properties mentioned in schedule "A" except items 230 to 254 of this schedule and the items of properties allotted to the plaintiff. Defendants Nos. 2 to 22 will get their share, namely each son getting 2/35 and each daughter getting 1/35 from the arrears of income, future income, compensation or commutation or sale proceeds of the items 230 to 254 of Schedule "A" detailed under the head of "Makhtas" in case the same are restored or released in favour of Paigah Asman Jahi.

This was incorporated as the items mentioned in item Nos. 230 to 254 were properties claims in respect of which were pending adjudication before the Board of Revenue in an appeal against an order passed under the Andhra Pradesh (Telangana Area) Atiyat Enquiries Act, 1952.

5. Appln. No. 455 of 2009 has been filed by the legal representatives of defendant Nos. 2, 3, 4, 5, 6, 7, 9, 10, 11, 17, 18 and defendant Nos. 19 to 22 for passing a final decree in respect of item No. 236 of Schedule "A" of the preliminary decree dt. 06.04.1959 in CS. No. 7 of 1958 in particular - in respect of Sy. Nos. 1 to 40 of Somajiguda Village, Ameerpet Mandal, Hyderabad District, by declaring the shareholders as the absolute owners thereof.

6. It is pertinent to note that in the preliminary decree only "Somajiguda" was mentioned at Item No. 236 as a Maktha in Schedule "A" thereto. There is no mention of Sy. Nos. or boundaries in the preliminary decree.

7. Even in Appln. No. 455 of 2009, the application seeking passing of final decree, boundaries or extent of the land in Item No. 236 are not given. APPLN. 1456-1458/2000

8. Appln. No. 1456 to 1458 of 2000 were filed on 25.09.2000 by A.P. Policemen Mutually Aided Co-operative Housing Society Ltd. to implead them in CS. No. 7 of 1958; to recognise the assignment deed dt. 16.09.2000 in their favour; and to direct the Mandal Revenue Officer of Somajiguda and Asifnagar and the District Collector, Ranga Reddy District to mutate their names in respect of the lands situated in Somajiguda.

9. They were disposed of on 10.10.2000 along with Appln. Nos. 1462 to 1464 filed in respect of other Makthas covered by the preliminary decree as follows:

The parties to the applications are present in person and their Advocates are also present. The Counsel for the first respondent and first respondent present in the

Court stated that they have no objection for allowing the applications. Hence the applications are allowed.

THE DIVISION BENCH ORDER IN OSA. No. 30 and 31/2003, ETC:

10. The applicant herein Syed Mujtaba Ali challenged the above order in Appln. No. 1456 of 2000 in OSA. Nos. 30 of 2003 and the order in Appln. No. 1457 of 2000 in OSA. No. 31 of 2003 before a Division Bench of this Court consisting of Hon''ble Justice B. Sudershan Reddy (as his lordship then was) and Hon''ble Justice C.V. Ramulu. These appeals were heard along with similar appeals by the Division Bench and a common judgment was passed on 10.06.2003.

11. The Division Bench noticed that the appellants in the OSAs (including Syed Mujtaba Ali) did not claim their right, title and interest from any one of the parties in CS. No. 7 of 1958 nor under any assignment deed like that of the respondents-applicants but had purchased the various extents of land for valuable consideration from their respective predecessors-in-title in those villages in respect of which orders impugned therein have been passed; that they have all purchased under registered sale deeds for valuable consideration and assert and claim to be in continuous possession and enjoyment of the land after their purchase from the previous owners; that they cannot be said to be not aggrieved persons by the orders passed by the single Judge although in the OSAs, there is no question of declaration of their title; such persons in possession are sought to be thrown out under the orders passed by the Court without any notice to any of them; it is not as if the respondents in the appeal are unaware of the appellants being in possession of their respective lands; in the docket orders passed in the proceeding sheets in the batch of cases being heard by the Bench, none of the parties in the applications had been examined, no documents were marked and orders were obtained by the respondents for inclusion of not any specified piece of land into the compromise decree in CS. No. 7 of 1958, but villages themselves were included, which in course of time had become an integral part of Hyderabad city; details of survey numbers were not mentioned and localities after localities of the twin cities of Hyderabad and Secunderabad, and villages after villages in Ranga Reddy District were sought to be included in the compromise decree.

12. The Division Bench held that on an overall consideration of the material on record it appeared that the whole exercise of filing the applications resulting in passing of orders of far reaching consequences is a collusive affair, that fraud is apparent on the face of the record and the whole thing is engineered by vested interests. It expressed shock and surprise as to whether the decree-holders would be held entitled to all public roads, lanes, parks, bridges, ditches, rivers, streams, tanks, ponds, canals, lakes which would otherwise vest in the Government, by just adding through amendment applications to the compromise decree, villages after villages without specifying the details of the lands such as Sy. Nos., extents, boundaries in the applications, and without any evidence whatsoever. The following important observation was also made by it:

We have perused the original plaint which is in Urdu language with the assistance of the official translators. We have also perused the translated copy of the plaint in OS. No. 130/1/53 on the file of the Chief Judge, City Civil Court, Hyderabad (renumbered as C.S. No. 7 of 1958 in this Court). Neither in the body of the plaint nor in the details of the properties, which are mentioned in the plaint, the name of Miyapur village is not to be found. In the plaint, nowhere the details of the properties are mentioned and it is for the first time the details of the properties and schedules are mentioned in the memorandum of compromise

(emphasis supplied)

13. The Bench noticed that the respondents in the OSAs have chosen to get whole of the lands situated in a particular village into the compromise decree as one of the items and such an attempt made by them has not been resisted, since there is none to resist, as both parties were colluding with each other and competing with each other to play and perpetrate fraud upon the Court. In the opinion of the Division Bench, the cases required a thorough probe for which purpose Jagir Administrator and Secretary, Revenue Department, Government of Andhra Pradesh apart from District Collector, Ranga Reddy District and District Collector, Hyderabad were to be impleaded as inclusion of many localities and villages situated in the above districts would result in any amount of prejudice, adversely affecting rights of individuals in possession, and the orders would virtually come as a bolt from the blue as far as they are concerned.

14. It rejected the submission of the respondents that the appellants could get their claims adjudicated by filing necessary applications under Order XXI Rule 97 CPC since a preliminary decree had already been passed by this Court in terms of compromise. It observed:

Even orders have been passed by this Court to accept the report of the Commissioners/Receivers and accordingly orders have been passed for preparation of final decree. This Court is seized of the whole of the proceedings in either case whether a final decree has been passed or not. In the circumstances, it would be a futile exercise for the appellants herein to go before the District Judge who is directed to implement the orders passed by this Court. The District Judge may not go beyond the directions of this Court and make any roving enquiry into the claim of the appellants.

Even if such applications are required to be filed under Order 21 Rule 97 CPC, they have to be filed only in this Court.

(emphasis supplied)

15. The Division Bench held that the appellants have locus to file the appeal as they cannot be said to be not aggrieved persons. As regards the contention urged by the respondents that the appellants themselves do not have a proper subsisting valid title, the Bench observed that it did not propose to express any opinion whatsoever on that issue. It left open all questions, after setting aside all

the orders passed by the learned single Judge impugned in the batch of OSAs heard by it, and remitted the matter to the learned single Judge for disposal in accordance with law, after recording evidence. It further directed that each of the appellants in the OSAs would stand impleaded as respondents in the applications. Certain other observations were also made as to the conduct of the decree holders/their assignees.

16. In view of the decision of the Division bench dt. 10.06.20103 in OSA Nos. 30 and 31 of 2003, Syed Mujtaba Ali (the applicant in Appln. No. 210 of 2010), being the appellant therein, automatically stood impleaded in Appln. Nos. 1456 and 1457 of 2000. The judgement in O.S.A. Nos. 30 and 31 of 2003 is binding on me.

17. However, after remand, Appln. No. 1456 of 2000 was got dismissed for non-prosecution on 03.02.2004 by this Court by way of strategy.

FRESH APPLN. 455 OF 2009 FILED BY DECREE HOLDERS FOR PASSING FINAL DECREE:

18. It is only thereafter that Appln. No. 455 of 2009 was filed by some decree holders and the legal representatives of some deceased decree holders/respondents in Appln. No. 210 of 2010, to pass a final decree in respect of Sy. Nos. 1 to 40 of Somajiguda (Item No. 236 of Schedule "A" to the preliminary decree dt. 06.04.1959 in CS. No. 7 of 1958).

APPLN. 201 OF 2010 FILED BY APPLICANT FOR IMPLEADMENT IN APPLN. 455 OF 2009 BASED ON JUDGMENT IN OSA. 30 AND 31/2003:

19. Since the applicant in application No. 210 of 2010 was held to be a person interested by the Division Bench in its order dt. 10.06.2003 in OSA. No. 30 and 31 of 2003, the counsel for the applicant Syed Mujtaba Ali, Sri M.V.S. Suresh Kumar contends that he is a necessary party and is entitled to be impleaded in Final decree Appln. No. 455 of 2009 in CS. No. 7 of 1958 now filed. In the alternative, he also contended that considering the observations by the Division Bench in the order dt. 10.06.2003 in OSAs. 30 and 31 of 2003 and batch, the applicant Syed Mujtaba Ali is also entitled to invoke Order 1 Rule 8A of CPC.

OTHER CONTENTIONS RAISED BY APPLICANT IN APPLN. 210 OF 2010:

20. Apart from the above submissions of the counsel for the applicant in Appln. No. 210 of 2010, the counsel also submitted that the preliminary decree in CS. No. 7 of 1958 is itself a conditional decree dependent as regards items 230 to 254 of Schedule "A" on the restoration or release of the said item in favour of Paigah Asman Jahi [as per Clause 4(g) of the preliminary decree] by the Board of revenue in the appeal under the A.P. (Telangana Area) Atiyat enquiries Act, 1952; that Muntakhab No. 3 dt. 14.02.1983 was issued in respect of Paigah Asman Jahi by the Commissioner of Surveyor, Settlements and Land Records (Atiyat Branch), Government of Andhra Pradesh, Hyderabad; in the said Muntakhab, it was specifically recited that the Board of Revenue in the above

appeal has confirmed only 60 villages shown in Appendix - E as Zaat Jagir villages and 151 1/2 villages shown in Appendix - F as Paigah, i.e., Jamiat villages; that Somajiguda is not one of the villages included in the Appendix E and Appendix F; that the Muntakhab records that the Board of Revenue had dismissed the appeal in respect of all other claims of the Paigah Asman Jahi; therefore, in respect of Somajiguda, the appeal was rejected by the Board of Revenue, the competent authority under the Andhra Pradesh (Telangana Area) Atiyat Enquiries Act, 1952; consequently, Somajiguda (Item No. 236) was not released or restored to Paigah Asman Jahi; and therefore, there is no question of passing any final decree in respect of this item.

21. In addition to the above submissions, and in order to establish his interest in Item No. 236 i.e., Somajiguda Maktha in which a final decree is sought in respect of survey Nos. 1 to 40, the applicant pleaded that an extent of Acs. 0.10 gts. in Sy. No. 20/4 of Somajiguda Village was transferred to him under a hiba executed by one Raheemunissa Begum alias Hadeesunnisa Begum, W/o. K.A. Latif on 30.10.1963, which was confirmed by a document dt. 12.01.1964; that he constructed a house bearing No. 6-3-1099/1/7 therein in 1974; that there was a proposal to notify the land for acquisition under the Land Acquisition Act, 1894 in 1983 and 1987 for Buddha Poornima Project, but the land was de-notified in 1991; that the predecessors-in-title of applicants 1 and 2, applicant No. 12, predecessors-in-title of applicants 23 to 25, the predecessors-in-title of applicants 36, 37, applicant No. 40, 41, predecessors-in-title of applicants 26 to 32, applicant Nos. 42, 45 and 46 in application No. 455 of 2009, had filed LGC. No. 76 of 2002 before the Special Court constituted under the A.P. Land Grabbing (Prohibition) Act, 1982 against him and twenty others to declare them as land grabbers in respect of land in Sy. Nos. 20/4, 23 to 25 of Somajiguda village, Ameerpet Mandal; that it was dismissed on 05.05.2004; this order has become final and binds the respondents; therefore, the applicants in Appln. No. 455 of 2009 were aware of his possession and enjoyment but deliberately did not make him a party therein; and since his interests are vitally affected, he is entitled to be impleaded as a party respondent in Appln. No. 455 of 2009.

22. He also filed Appln. No. 330 of 2010 to receive certified copies of the Muntakhab No. 3 dt. 14.02.1983, order dt. 05.05.2004 in LGC. No. 76 of 2002, Gazette Notification dt. 24.12.1983, 22.01.1987, etc. to be marked as exhibits B. 1 to B. 20.

THE RESPONDENT'S CONTENTIONS:

23. Sri K.V. Satyanarayana, senior counsel appearing for respondent No. 70, contended that since Appln. No. 455 of 2009 is an application filed to pass final decree, and since the Appln. No. 210 of 2010 is filed for impleadment of the applicant therein in Appln. No. 455 of 2009, it is not maintainable. He contended that after passing of preliminary decree, no application to add a party can be allowed. He relied upon the decision of the Supreme Court in Shub Karan Bubna @ Shub Karan Prasad Bubna Vs. Sita Saran Bubna and Others, and M.

Purnachander Rao Vs. Sri Nawab Mazaharuddin Khan (D) thr. L.Rs. and Others, .

24. Sri Satyanarayana Prasad, Senior Counsel appearing on behalf of Sri V. Vijayaramaraj, counsel for respondent Nos. 8 to 10 (legal representatives of D.4) contended that the applicant in Appln. No. 210 of 2010 has not shown his interest in the subject property at all and therefore, he is not entitled to be impleaded as a party in Appln. No. 455 of 2009. He relied upon *Pannala Renuka and Another Vs. Kavali (Rajumouni) Venkataiah and Others*, , *S.D. Samiulla v. K.L. Narayana* 2012 (1) Decisions Today (AP) 441, and *M/s. Saraswati Industrial Syndicate Ltd. Vs. The Commissioner of Income Tax, Haryana, Rohtak*, . He further contended that it would open a Pandora's box, as any third party having independent title would seek to get in and dispute the rights of the parties to the suit; that this Court is acting as a Civil Court and not dealing with a Writ proceeding under Article 226 of the Constitution of India where concept of locus is more liberal; that the application of the applicant is traceable to Order XXII Rule 10 CPC, but since leave for devolution of interest in the applicant's favour was not obtained by applicant's vendor, he cannot be impleaded as he is only seeking to advance a private interest. He contended that at best the applicant may be allowed to participate in the proceedings as an intervener and not as a party, so that he may only assist the Court.

25. Sri Vedula Venkataramana, learned Senior Counsel appearing for respondents (applicants in Appln. No. 455 of 2009) opposed the impleadment of the applicant, contending that the suit being one for partition, parties such as the applicant, who do not claim through any of the parties in the suit and who set up independent title, cannot be allowed to be impleaded, as his title cannot be gone into in this suit. He further contended that in any event, such an application is not maintainable as no party can be impleaded after passing of final decree.

26. The counsel appearing for respondent No. 48 (defendant No. 22 in CS. No. 7 of 1958) contended that the applicant in Appln. No. 210 of 2010 is a stranger to the lis in CS. No. 7 of 1958, that he must establish his right, title and interest in a separate suit, and he cannot be impleaded in the Appln. No. 455 of 2009. She further contended that the alleged hiba (a Xerox copy of which is filed at Pg. 305 to 307 in the paper book filed along with Appln. No. 210 of 2010) contains the forged signature of the executant Raheemunnissa begum alias Hadeesunnisa Begum through whom the applicant claims and therefore, he cannot be impleaded.

REPLY OF COUNSEL FOR APPLICANT TO RESPONDENT'S CONTENTIONS:

27. Sri M.V.S. Suresh Kumar, counsel for the applicant in Appln. No. 210 of 2010, reiterated his submissions in reply and contended that the contentions raised by the respondents are not correct; that it is permissible to add a party in a partition suit even after passing of preliminary decree therein provided it is sought before passing of final decree as held in *Ramader Appala Narasinga Rao Vs. Chunduru Sarada*, . He further contended that the applicant is also entitled to

invoke Order 1 Rule 8A of CPC and seek to get impleaded in the Appln. No. 455 of 2009 because the following questions of law arise for consideration, directly and substantially in the suit, necessitating in public interest such impleadment, to enable the Court to present its opinion and take such part in the proceedings of the suit as the Court may specify:

(a) Whether there can be schedules appended to a compromise decree without such schedule being part of the plaint in CS. No. 7 of 1958?

(b) When appeal under the Andhra Pradesh (Telangana Area) Atiyat Enquiries Act, 1952, was rejected in respect of Somajiguda Maktha by the Board of Revenue as stated in the Muntakhab No. 3 dt. 04.02.1983 of the Commissioner of Survey and Settlement (Atiyat Branch) Government of Andhra Pradesh, Hyderabad and the said Maktha was not restored or released to the Paigah Asman Jahi, whether an application for passing of final decree would be maintainable?

(c) Whether a petition for passing of final decree could be filed by the applicants in Appln. No. 455 of 2009, without satisfying the Court that applicants had succeeded before the Board of Revenue?

(d) In the light of the observations of the Division Bench in OSA. No. 30 of 2003 and batch dt. 10.06.2003 that no details of property such as survey numbers, extents or boundaries are mentioned in the plaint or in the preliminary decree, and several villages/Makthas are included wherein even public properties would be covered, whether apart from the applicant, officials such as the District Collector, Hyderabad, Principal Secretary, Revenue Department, Government of Andhra Pradesh, etc. are required to be impleaded to protect public interest?

28. I have noted the submissions of the respective parties.

THE ISSUES FOR DETERMINATION:

29. The following issues arise for consideration from the above submissions:

(1) Whether as a matter of law, a party can be impleaded after passing of a preliminary decree in a partition suit and before passing of final decree?

(2) Whether the applicant is entitled to be impleaded in the Appln. No. 455 of 2009 filed by the respondents for passing of final decree in respect of survey Nos. 1 to 40 of Somajiguda Maktha (Item Nos. 236 of Schedule "A") to the preliminary decree in CS. No. 7 of 1958?

(3) Whether it is necessary, in the facts and circumstances of the case, to implead the District Collector, Hyderabad or the Principal Secretary, Revenue Department, Government of Andhra Pradesh, the Jagir Administrator, etc. as parties in Appln. No. 455 of 2009?

Issue No. 1:

30. Co-owners of property can file a suit for partition. The CPC contemplates the

passing of a preliminary decree in which the Court will decide (i) who are the parties entitled to a share, (ii) what are the shares, (iii) what are the joint liabilities on the property and (iv) what are the properties to be divided. This presumes that there is a schedule of properties shown for division.

31. The next stage is the stage when the property will be divided by metes and bounds allocating distinct parts of the property to each of the co-owners.

32. Now, if at the stage when the final decree proceedings are pending and the parties are still co-owners, if a third party comes to know that the co-owners have included in the schedule to the plaint in their suit, an item belonging to him, can he not intervene at that stage and seek exclusion of his property?; or should he invariably be asked to come before the court only after the final decree is passed by way of an application under Or. 21 R. 97 CPC?; or should he be compelled to file a civil suit separately to protect his possession and prove his title?

33. It is obvious that the third party has no concern whether the claim by the co-owners against his property is made by these persons as co-owners or by any one of them to whom this disputed property is allotted, after the final decree is passed.

34. The following rulings support the contention of the applicant that even though he is a third party, and not claiming any interest through a party to the suit C.S. No. 7 of 1958, he is entitled to be impleaded even after passing of a preliminary decree therein, since final decree has not yet been passed:

Syed Mohiddin (died) and Another Vs. Abdul Rahim and Others, , Ramader Appala Narasinga Rao Vs. Chunduru Sarada, , Sriramula Ramachandram and others Vs. Sriramula Bhoodamma and others, , Ch. Yashoda Devi and Another Vs. B. Dayakar Reddy and Others, .

35. In Ramader Appala Narasinga Rao Vs. Chunduru Sarada, , a Division Bench of this Court held that the Executive Officer of a charitable institution is entitled to be impleaded, after passing of an ex-parte preliminary decree, in a suit filed by a daughter of the executor of the Trust creating the said institution, against him and other trustees, to (i) declare the Trust deed as a sham and nominal transaction and not binding on her and (ii) for specific performance of an agreement allegedly executed in her favour by the executor of the Trust agreeing to give her a half share in the "A" schedule properties therein. It held that as no final decree was passed when the application for impleadment was made by the Executive Officer, the suit is still pending, and hence a petition under Order I Rule 10 CPC is maintainable. It further held that he can also maintain an application u/s 151 CPC to set aside the ex-parte decree. It observed that extensive and valuable property belonging to a public trust were involved in the suit and there was obviously collusion between the plaintiff and the trustees. This decision completely supports the applicant and is also binding on me.

36. However, the counsel for the respondents placed reliance upon the observations in para. 6 of *Shub Karan Bubna @ Shub Karan Prasad Bubna Vs. Sita Saran Bubna and Others*, that "a partition of a property can be only among those having a share or interest in it and a person who does not have a share in such property cannot obviously be a party to a partition", and contended the applicant, not being a member of the family of Late Nawab Moinuddowla Bahadur and of Late Asman Jah Bahadur, cannot be impleaded in the suit. I am unable to accept this contention because the observations therein refer only to who can be a party to a "partition", but cannot be construed as laying down the law as to who can be a party to a "partition suit". Instances of transferees prior to suit, transferees pendente lite, tenants of properties which are subject matter of the partition suit, legal representatives of deceased share holders, sometimes even Official Receiver etc., being impleaded in a partition suit are too numerous to be cited and it cannot be presumed that the Supreme Court was oblivious of these instances when it rendered the above judgment.

37. The other judgment relied upon by the respondents *M. Purnachander Rao Vs. Sri Nawab Mazaharuddin Khan (D) thr. L.Rs. and Others*, also has no application. There the application for impleadment was made by a purchaser of property which was subject matter of C.S. 7 of 1958 (Item No. 234) after a final decree was passed in respect of the said item on 26-12-2003 in I.A. No. 1409 of 2003. The Supreme Court held that the appellant before it being a stranger to the proceedings, he is not entitled to be impleaded and he can initiate a separate proceeding to establish his right in the property. This judgment has no application as Appln. No. 210 of 2010 has been filed by Syed Mujtaba Ali to implead him before passing of final decree and not after passing of final decree in respect of item No. 236 of the schedule A to the preliminary decree.

38. Order I Rule 10(2) CPC permits the Court, at any stage of the proceedings in the suit, to implead a party, either upon or without the application of either party in order to enable the Court effectively and completely to adjudicate upon and settle all the questions involved in the suit or to strike off the name of a party improperly joined. Section 2(2) of CPC defines the term "decree" and the explanation appended thereto states:

Explanation: - A decree is preliminary when further proceedings have to be taken before the suit can be completely disposed of. It is final when such adjudication completely disposes of the suit. It may be partly preliminary and partly final.

39. Section 75(d) of CPC enables the Court to issue a Commission to make a partition. Order XX Rule 18 states:

Decree in suit for partition of property or separate possession of a share therein:--

Where the Court passes a decree for the partition of property or for the separate possession of a share therein, then,--

(1) if and in so far as the decree relates to an estate assessed to the payment of revenue to the Government, the decree shall declare the rights of the several parties interested in the property, but shall direct such partition or separation to be made by the Collector, or any gazetted subordinate of the Collector deputed by him in this behalf, in accordance with such declaration and with the provisions of Section 54.

(2) if and in so far as such decree relates to any other immovable property or to movable property, the Court may, if the partition or separation cannot be conveniently made without further inquiry, pass a preliminary decree declaring the rights of the several parties interested in the property and giving such further directions as may be required.

Order XXVI Rules 13 and 14 CPC state:

13. Commission to make partition of immovable property:--

Where a preliminary decree for partition has been passed, the Court may, in any case not provided for by Section 54, issue a commission to such person as it thinks fit to make the partition of separation according to the rights as declared in such decree.

14. Procedure of Commissioner:-

(1) The Commissioner shall, after such inquiry as may be necessary, divide the property into as many shares as may be directed by the order under which the commission was issued, and shall allot such shares to the parties, and may, if authorised thereto by the said order, award sums to be paid for the purpose of equalizing the value of the shares.

(2) The Commissioner shall then prepare and sign a report or the Commissioners (where the commission was issued to more than one person and they cannot agree) shall prepare and sign separate reports appointing the share of each party and distinguishing each share (if so directed by the said order) by metes and bounds. Such report or reports shall be annexed to the commission and transmitted to the Court, and the Court, after hearing any objection which the parties may make to the report or reports, shall confirm, vary or set aside the same.

(3) Where the Court confirms or varies the report or reports it shall pass a decree in accordance with the same as confirmed or varied; but where the Court sets aside the report or reports it shall either issue a new commission or make such other order as it shall think fit.

40. All these provisions indicate that a preliminary decree does not close the suit and until a final decree is passed, the suit cannot be said to have ended.

41. Therefore it has to be held that a third party who has a claim against the co-owners, can get impleaded at any stage of the proceedings i.e., even after preliminary decree, where final decree proceedings are pending. He cannot be

told by the co-owners, "you wait till we get a final decree and the property which you are claiming is allotted to one of us in the final decree, and then file an application under Or. 21 R. 97 CPC or go and file a separate suit".

42. The courts have also held that if such third party is impleaded, the burden of proving that the property in question is the property of the co-owners should be discharged by the co-owners and only then the burden shifts to the other party (the third party) to prove his title (see Rangammal Vs. Kuppaswami and Another, .

43. In the present case only a preliminary decree is passed and Appln. No. 455 of 2009 has been filed to pass a final decree in respect of Item No. 236 of the Schedule "A" to the preliminary decree. As the final decree has not been passed, an application for impleadment under Order I Rule 10 CPC is maintainable.

44. Therefore, I hold on issue No. 1 that as a matter of law, a party can be impleaded after passing of a preliminary decree in a partition suit and before passing of final decree.

Issue No. 2:

OR. 22 R. 10 CPC IS NOT ATTRACTED:

45. Order XXII Rule 10 CPC deals with assignment, creation or devolution of any interest during pendency of a suit and thereby implies that such assignment etc. would be by a party to the suit or flowing from a party to the suit, on his death. Admittedly, the applicant in Appln. No. 210 of 2010 is not claiming through any of the parties to C.S. No. 7 of 1958. He has not alleged that he has acquired title on account of a transfer made in his favour by a party to the above suit. That was why he did not invoke Order XXII Rule 10 CPC. Therefore, I do not agree with the contention of the counsel for respondents that this application has to be treated as an application under Order XXII Rule 10 CPC, and because permission of the Court was not sought for the transfer in favour of the applicant, as held in Raj Kumar Vs. Sardari Lal and Others, , he cannot be impleaded.

THE APPLICANT IS ALSO NOT A TRANSFEREE PENDENTE LITE:

46. As stated supra, the applicant is not claiming any right, title or interest through a party to the suit C.S. 7 of 1958. His claim in Appln. 201 of 2010 is an independent one. So he cannot be treated in stricto sensu as a purchaser pendente lite either. Therefore the contentions of the respondents that he is to be considered as a transferee pendente lite cannot be accepted.

EVEN IF HE CONSIDERED AS A PURCHASER PENDENTE LITE, STILL HE IS ENTITLED TO BE IMPEADED:

47. In my opinion, even assuming for the sake of argument without conceding that he is a purchaser pendente lite, on the ground that he acquired title to the property claimed by him after the suit, he can still maintain an application under Or. 1 R. 10 CPC and get impleaded.

48. It is settled law that a co-owner can sell his undivided interest in joint property to a stranger to the family, and that the only right of the purchaser is to sue for partition of the property and ask for allotment to him, of that which on partition might be found to fall to the share of his vendor. He is not entitled for possession of what he has purchased. Mamidi Venkata Satyanarayana Manikyala Rao and Another Vs. Mandela Narasimhaswami and Others, and Khemchand Shankar Choudhari and Another Vs. Vishnu Hari Patil and Others,

49. A case where Or. 1 R. 10 CPC was applied and a purchaser pendente lite was impleaded after passing of preliminary decree is Dhanalakshmi and Others Vs. P. Mohan and Others, . The apex court held that transferees pendente lite from co-owners in a partition suit are necessary parties to the suit and a preliminary decree passed by trial court in their absence cannot stand. It observed:

5. Section 52 deals with a transfer of property pending suit. In the instant case, the appellants have admittedly purchased the undivided shares of Respondents 2, 3, 4 and 6. It is not in dispute that the first respondent P. Mohan has got an undivided share in the said suit property. Because of the purchase by the appellants of the undivided share in the suit property, the rights of the first respondent herein in the suit or proceeding will not affect his right in the suit property by enforcing a partition. Admittedly, the appellants, having purchased the property from the other co-sharers, in our opinion, are entitled to come on record in order to work out the equity in their favour in the final decree proceedings. In our opinion, the appellants are necessary and proper parties to the suit, which is now pending before the trial court....

50. A three Judge Bench of the Supreme Court in Savitri Devi Vs. District Judge, Gorakhpur and Others, held that in a suit for a decree of maintenance filed by the appellant against her sons and for creation of charge over ancestral property of the family, purchasers from a share holder, provided they are bonafide transferees for value in good faith, could be impleaded in order to avoid multiplicity of proceedings. It followed Khemchand Shankar Choudhari and Another Vs. Vishnu Hari Patil and Others, and Ramesh Hirachand Kundanmal Vs. Municipal Corporation of Greater Bombay and Others, . It held that though the plaintiff is a "dominus litis" and not bound to sue every possible adverse claimant in the same suit, the Court may at any stage of the suit direct addition of parties and that it is a matter of judicial discretion which is to be exercised in view of the facts and circumstances of a particular case. It reiterated that the test for impleading parties prescribed in Razia Begum Vs. Sahebzadi Anwar Begum and Others, that the person concerned must be having a direct interest in the action, has to be applied.

51. Recently, in Thomson Press (India) Ltd. Vs. Nanak Builders and Investors P. Ltd. and Others, , the Supreme Court summed up the law as under:

55.... Decisions of this Court have dealt with similar situations and held that a transferee pendente lite can be added as a party to the suit lest the transferee

suffered prejudice on account of the transferor losing interest in the litigation post transfer.

Several decisions of the Supreme Court were considered there.

52. Summing up the legal position, it is clear that in order to be impleaded, a party seeking impleadment must have a direct and substantial interest in the subject matter of the suit and his presence before the Court is considered necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit. He may be a transferee pendente lite also. If so, notwithstanding Section 52 of the Transfer of Property Act, 1882, he may be impleaded. Such addition of parties is a matter of judicial discretion and is to be exercised in view of the facts and circumstances of the case. This would avoid multiplicity of proceedings.

CASES CITED BY RESPONDENTS ARE DISTINGUISHABLE:

53. In Pannala Renuka and Another Vs. Kavali (Rajumouni) Venkataiah and Others, , relied on by counsel for respondents, this court held that it is impermissible to implead pendente lite transferees. It relied on Ramesh Chawla Vs. N. Srihari and Others, which in turn had relied on Surjit and others Vs. Harbans Singh and others etc. etc., , Bibi Zubaida Khatoon Vs. Nabi Hassan Saheb and Another, , Sarvinder Singh Vs. Dalip Singh and Others, . Firstly, Pannala Renuka and Another Vs. Kavali (Rajumouni) Venkataiah and Others, is a suit for declaration of title and recovery of possession and not a suit for partition. Surjit and others Vs. Harbans Singh and others etc. etc., , was a case where an alienation pendente lite was made in a partition suit by one of the co-owners, violating an injunction granted by the Court against the parties prohibiting alienation. Sarvinder Singh Vs. Dalip Singh and Others, is also not a suit for partition and in that case a suit for declaration of title and injunction was filed basing on a Will. Bibi Zubaida Khatoon Vs. Nabi Hassan Saheb and Another, also would not apply, as in that case it was a suit for redemption of a mortgage and a finding was given therein that alienation was not bonafide. The observation in Pannala Renuka and Another Vs. Kavali (Rajumouni) Venkataiah and Others, that an alienation pending suit violates S. 52 of the Transfer of Property Act, 1882 and such alienee has no enforceable right, is in my opinion, not correct in law. This is because S.52 makes an alienation pendente lite, subject to the result of the suit and does not prohibit alienations. (see A. Nawab John and Others Vs. V.N. Subramaniam, , Jayaram Mudaliar v. Ayyaswami (1972) 2 SCC 200). Therefore, I respectfully disagree with the said decision and hold that in view of Dhanalakshmi and Others Vs. P. Mohan and Others, , it is no longer good law.

54. In S.D. Samiulla and two others Vs. K.L. Narayana and two others, , relied on by respondents, this Court held that purchasers of property, pending a suit for specific performance of an agreement of sale relating to the said property, are not entitled to come on record. It relied on Mumbai International Airport Pvt. Ltd. Vs. Regency Convention Centre and Hotels Pvt. Ltd. and Others, . In this case

the Supreme Court held:

Let us consider the scope and ambit of Order 1 Rule 10(2) CPC regarding striking out or adding parties. The said sub-rule is not about the right of a non-party to be impleaded as a party, but about the judicial discretion of the court to strike out or add parties at any stage of a proceeding. The discretion under the sub-rule can be exercised either suo motu or on the application of the plaintiff or the defendant, or on an application of a person who is not a party to the suit. The court can strike out any party who is improperly joined. The court can add anyone as a plaintiff or as a defendant if it finds that he is a necessary party or proper party. Such deletion or addition can be without any conditions or subject to such terms as the court deems fit to impose. In exercising its judicial discretion under Order 1 Rule 10(2) of the Code, the court will of course act according to reason and fair play and not according to whims and caprice.

It held on facts that a person, who expects to get a lease from the defendant in a suit for specific performance in the event of the suit being dismissed, cannot be said to be a person having some semblance of title in the property in dispute. He therefore cannot be impleaded in a suit for specific performance. Such is not the situation here. So this decision also has no application.

55. On facts, in this case, the Decree Holders or persons claiming through them have applied for passing of a final decree in respect of item No. 236 of schedule-A to the preliminary decree dt. 05-04-1959 in C.S. No. 7 of 1958. It was not a preliminary decree passed on contest but was the result of a compromise recorded by the Court in Appln. No. 126 of 1958. In the order dt. 10-06-2003 in O.S.A. No. 30 and 31 of 2003 and batch, the Division Bench dealing with this item and also other items observed that they had perused the original plaint with the assistance of Official Translator and also the translated copy thereof and observed that in the body of the plaint, or elsewhere the details of properties were not mentioned. For the first time the details of the properties and schedules are mentioned in the memorandum of compromise. The preliminary decree dt. 05-04-1959 mentions item No. 236 as Somajiguda Maktha. No details of the Sy. Nos., boundaries or extents are mentioned in it. In Appln. No. 455 of 2009, filed by the respondents to pass final decree for the said item, for the first time Sy. Nos. 1 to 40 of Somajiguda Maktha are referred to. No boundaries and extent are given. When questioned on this aspect, Sri Vedula Venkata Ramana, Sr. Counsel for the respondents stated that these details would come through the Advocate Receiver-cum-Commissioner and the Court need not concern itself with it.

56. Normally in any suit for partition, there would be an allegation that the properties in respect of which partition is sought are in the possession and enjoyment of one of the defendants to the suit. Strangely there is no such averment in Appln. No. 455 of 2009. The Division Bench in the above O.S.As., considered these facts and wondered whether the Decree Holders would be entitled to all public roads, lanes, parks, bridges, ditches, rivers, streams, tanks,

ponds, canals, lakes etc., which would otherwise vest in the Government. This observation was made after noticing that the Decree Holders are claiming villages after villages in Rangareddy District and localities after localities of twin cities of Hyderabad and Secunderabad and that apart from the State, there could be thousands of private properties in the villages which are included by the Decree Holders in the schedule to the preliminary decree. The Bench observed that a person in possession thereof would be thrown out under orders passed by this Court without any notice to any of them. Precisely for this reason the Division Bench in OSA No. 30 and 31 of 2003 impleaded the applicant herein as a party to the IA. No. 1456 of 2000.

57. Even in respect of this item No. 236, the applicant is contending that respondents are aware of his possession in Sy. No. 20/4, since some of them or their predecessors are parties in L.G.C. No. 76 of 2002 which was dismissed on 05-05-2004. It is the primary contention of the applicant that Somajiguda Maktha has not been released or restored to Paigah Asman Jahi by the Board of Revenue in the appeal filed under the A.P. (Telangana Area) Atiyat Enquiries Act, 1952 and this fact is clear from the Muntakhab No. 3 dt. 14-02-1983 issued by the Commissioner of Survey, Settlement and Land Records, Atiyat Branch, Government of Andhra Pradesh, Hyderabad. He has filed certified copies of the order in L.G.C. and also the Muntakhab apart from several other documents. He contends that in view of this, there cannot be any final decree in this suit in respect of the said item. Prima facie, there is substance in the contention of the applicant. Although this Court may not probe his title to the land in Somajiguda in detail, as it is prima facie evident that he has a direct and substantial interest in the above item, his presence is necessary to decide, whether or not this item 236 is available for passing of a final decree and to completely and effectually adjudicate upon and settle the questions involved in relation thereto. So, in my opinion, he can be impleaded as a party to the Appln. No. 455/2009.

58. This Court cannot be oblivious of the facts set out above and proceed to pass a final decree without first verifying whether or not this item is available for passing such a decree. All the time and effort of the parties/counsel and the Court would go waste, if this issue is not thrashed out and decided first. Therefore since the Court is seized of the matter, even after passing of preliminary decree in this partition suit, it is certainly open to it to go into the issue whether the property in respect of which final decree is sought is available for passing of such a decree. To decide this issue, the participation of the applicant is necessary.

59. The recent decision of the Supreme Court in Rangammal Vs. Kuppuswami and Another, holds that in a suit for partition, plaintiff should include only those properties which are unambiguously those belonging to the family. It held that if a third party's property is included, he can get impleaded in the suit. Then the burden is first on the plaintiff to prove that the property belongs to the joint family and is partible. It held:

31. It hardly needs to be highlighted that in a suit for partition, it is expected of the plaintiff to include only those properties for partition to which the family has clear title and unambiguously belong to the members of the joint family which is sought to be partitioned and if someone else's property meaning thereby disputed property is included in the schedule of the suit for partition, and the same is contested by a third party who is allowed to be impleaded by order of the trial court, obviously it is the plaintiff who will have to first of all discharge the burden of proof for establishing that the disputed property belongs to the joint family which should be partitioned excluding someone who claims that some portion of the joint family property did not belong to the plaintiff's joint family in regard to which decree for partition is sought.

The Court did not say that such enquiry cannot be done if this issue crops up after the preliminary decree. If such issue can be raised in a proceeding under Or. 21 R. 97 CPC by a third party or in a separate suit filed by him, there is really no reason why it cannot be done after passing of a preliminary decree, but before a final decree.

60. The Supreme Court had declared in *Phoolchand and Another Vs. Gopal Lal*, , that events which transpire after a preliminary decree necessitate a change in shares of co-owners after passing of a preliminary decree. It held:

So far therefore as partition suits are concerned we have no doubt that if an event transpires after the preliminary decree which necessitates a change in shares, the court can and should do so; and if there is a dispute in that behalf, the order of the court deciding that dispute and making variation in shares specified in the preliminary decree already passed is a decree in itself which would be liable to appeal.

61. Similar view was expressed in *Ganduri Koteswaramma and Another Vs. Chakiri Yanadi and Another*, . In that case, the Supreme Court upheld change in shares made after preliminary decree in a partition suit by applying the Hindu Succession Amendment Act, 2005 stating:

A preliminary decree determines the rights and interests of the parties. The suit for partition is not disposed of by passing of the preliminary decree. It is by a final decree that the immovable property of joint Hindu family is partitioned by metes and bounds. After the passing of the preliminary decree, the suit continues until the final decree is passed. If in the interregnum i.e. after passing of the preliminary decree and before the final decree is passed, the events and supervening circumstances occur necessitating change in shares, there is no impediment for the court to amend the preliminary decree or pass another preliminary decree re-determining the rights and interests of the parties having regard to the changed situation.

62. Also in *Maddineni Koteswara Rao Vs. Maddineni Bhaskara Rao and Another*, , it reiterated:

It is competent for the court to examine the validity of the transfers, testate or intestate successions in the final decree proceedings, of which examination had not been done before the passing of the preliminary decree, to take into consideration the changes occurring on account of death of a party or transfer made by him. Therefore, the High Court and the trial court were justified in taking into account the will of the deceased father while passing the final decree in the partition suit.

The Court upheld the action of the High Court which went into the validity of a Will executed by a party to the suit in final decree proceedings after passing of preliminary decree, when it's validity was not gone into prior to passing of preliminary decree in a partition suit, since it's executant was alive then.

63. Therefore where it comes to the notice of a court seized of a final decree petition in a partition suit, that certain facts have come to light which prima-facie throw a serious doubt as to whether the property in respect of which a preliminary decree has been passed, may not belong to the co-owners who are parties to the suit, but might belong to third parties, the Court cannot be expected to fold it's hands and ignore the facts brought to it's notice. It not only has the power but also a duty to determine the said issue.

64. Therefore the contention of counsel for respondents that if this course is followed, it would open a pandora's box; that it would amount to converting the civil suit into a writ proceeding, cannot be accepted. More so, when this Court is seized of the matter, and as a Court of Record, it's powers are plenary. So technical pleas of the nature raised by respondents cannot stand in it's way to implead the applicant, considering the facts narrate supra.

65. Therefore, issue No. 2 is also answered in favour of the applicant and against the respondents.

Issue No. 3:

66. This issue assumes importance for the following reasons. In the order dt. 10-06-2003 in O.S.A. No. 30 and 31 of 2003 and batch, the Division Bench as noted supra had observed that they had perused the original plaint with the assistance of Official Translator and also the translated copy thereof and observed that in the body of the plaint, or elsewhere the details of properties were not mentioned. For the first time the details of the properties and schedules are mentioned in the memorandum of compromise. The preliminary decree dt. 05-04-1959 mentions item No. 236 as Somajiguda Maktha. No details of the Sy. Nos., boundaries or extents are mentioned in it. In Appln. No. 455 of 2009, filed by the respondents to pass final decree, for the first time Sy. Nos. 1 to 40 of Somajiguda Maktha are referred to. No boundaries and extent are given. Normally in any suit for partition, there would be an allegation that the properties in respect of which partition is sought are in the possession and enjoyment of one of the defendants to the suit. There is no such averment in Appln. No. 455 of 2009. The Division Bench in the above O.S. As., considered the

same facts and wondered whether the Decree Holders would be entitled to all public roads, lanes, parks, bridges, ditches, rivers, streams, tanks, ponds, canals, lakes etc., which would otherwise vest in the Government. This observation was made after noticing that the Decree Holders are claiming villages after villages in Ranga Reddy District and localities after localities of twin cities of Hyderabad and Secunderabad. Thus, apart from those of the State, there could be thousands of private properties in the villages which are included by the Decree Holders in the schedule to the preliminary decree. Sy. No. 1 to 40 of Somajiguda in respect of which the application for final decree is filed, might conceivable include Government properties, public roads, many private buildings, (residential or commercial), lanes, parks, bridges, ditches etc.

67. Therefore the larger public interest justifies the suo moto impleadment under Or. 1 R. 10(2) CPC of the District Collector, Hyderabad, the Principal Secretary, Revenue Department, Government of Andhra Pradesh, the Jagir Administrator, Govt. of Andhra Pradesh, Hyderabad as party respondents to Appln. 455 of 2009 apart from the applicant in Appln. No. 210 of 2010. Therefore they are also impleaded as respondents in Appln. No. 455 of 2009. They shall file their affidavits and properly assist the Court in arriving at a just and proper conclusion. Issue No. 3 is therefore answered accordingly. For all the aforesaid reasons, Appln. No. 210 of 2010 is allowed.