Devamma Vs Sharadamma

Court: Karnataka High Court

Date of Decision: March 26, 2014

Acts Referred: Civil Procedure Code, 1908 (CPC) â€" Order 20 Rule 18, 97
Constitution of India, 1950 â€" Article 14, 15, 15(3)
Hindu Succession Act, 1956 â€" Section 6

Citation: (2014) 4 AKR 122 : (2014) 3 KCCR 2633

Hon'ble Judges: N. Kumar, J

Bench: Single Bench

Advocate: A.S. Mahesha, Advocate for the Appellant; Kempegowda, Advocate for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

N. Kumar, J.
The plaintiffs have preferred these Writ Petitions challenging the order passed by the final decree Court refusing to enlarge

the share of the plaintiffs''-daughters equal to that of the sons.

2. Plaintiffs-two daughters filed the suit for partition and separate possession of their legitimate share in the suit schedule properties. They claimed

1/3rd share each. The suit was contested. The trial Court decreed the suit of the plaintiffs granting them 2/3rd share and the defendant 1/3rd share.

Aggrieved by the same, the defendant preferred an appeal. The Appellate Court modified the decree of the trial Court and granted 1/6th share

each, to each of the daughters and the remaining share was given to the son. The said decree was passed in appeal on 8.6.2006. The said

judgment is in accordance with the unamended Section 6 of the Hindu Succession Act. However, Section 6 of the Hindu Succession Act was

amended and the present Section 6 is substituted in place of the earlier Section. The amendment came into force from 9.9.2005. Probably the said

amendment was not brought to the notice of the Court and also there was a dispute whether the said amendment was prospective or retrospective.

Thereafter, the plaintiffs filed the final decree proceedings.

3. In the final decree proceedings, in view of the pronouncement of the law by the Apex Court making it clear that, the amended Section 6 is

retrospective in operation and the daughter is entitled to a share equal to that of the son and only in cases where a partition is effected by a decree

of the Court prior to the commencement of this amended provision, they could be denied the said right, the daughters filed an application claiming

1/3rd share in the property. In support of their contention they relied on two judgments of the Supreme Court in the case of Prema Vs. Nanje

Gowda and Others, and Ganduri Koteshwaramma and Another Vs. Chakiri Yanadi and Another, . However, the final decree Court rejected the

said application on the ground that the daughters have not challenged the judgment and decree passed in R.A. No. 7/2005, it has reached finality,

the prayer of the petitioners-plaintiffs to reopen O.S. No. 422/1997 for further trial is unknown to law. The Court cannot alter the preliminary

decree and shares allotted by the appellate Court. The principle laid down in the aforesaid judgments is not applicable to the facts of the case on

hand. In the present proceedings already Court Commissioner is appointed and he has submitted a report in compliance to the decree. Aggrieved

by the said order, the petitioners have preferred the present Writ Petitions.

4. The Apex Court in Prema''s Case (supra) has held as under:--

15. In the present case, the preliminary decree was passed on 11.8.1992. The first appeal was dismissed on 20.3.1998 and the second appeal

was dismissed on 1.10.1999 as barred by limitation. By the preliminary decree, shares of the parties were determined but the actual

partition/division had not taken place. Therefore, the proceedings of the suit instituted by respondent No. 1 cannot be treated to have become final

so far as the actual partition of the joint family properties is concerned and in view of the law laid down in Phoolchand v. Gopal Lal (supra) and S.

Sai Reddy v. S. Narayana Reddy (supra), it was open to the appellant to claim enhancement of her share in the joint family properties because she

had not married till the enforcement of the Karnataka Act No. 23 of 1994. Section 6A of the Karnataka Act No. 23 of 1994 is identical to

Section 29A of the Andhra Pradesh Act. Therefore, there is no reason why ratio of the judgment in S. Sai Reddy v. S. Narayana Reddy (supra)

should not be applied for deciding the appellant''s claim for grant of share at par with male members of the joint family. In our considered view, the

trial Court and the learned Single Judge were clearly in error when they held that the appellant was not entitled to the benefit of the Karnataka Act

No. 23 of 1994 because she had not filed an application for enforcing the right accruing to her u/s 6A during the pendency of the first and the

second appeals or that she had not challenged the preliminary decree by joining defendant Nos. 1, 4 and 5 in filing the second appeal.

16. We may add that by virtue of the preliminary decree passed by the trial Court, which was confirmed by the lower appellate Court and the High

Court, the issues decided therein will be deemed to have become final but as the partition suit is required to be decided in stages, the same can be

regarded as fully and completely decided only when the final decree is passed. If in the interregnum any party to the partition suit dies, then his/her

share is required to be allotted to the surviving parties and this can be done in the final decree proceedings. Likewise, if law governing the parties is

amended before conclusion of the final decree proceedings, the party benefited by such amendment can make a request to the Court to take

cognizance of the amendment and give effect to the same. If the rights of the parties to the suit change due to other reasons, the Court ceased with

the final decree proceedings is not only entitled but is duty bound to take notice of such change and pass appropriate order.

17. In this case, the Act was amended by the State legislature and Sections 6A to 6C were inserted for achieving the goal of equality set out in the

Preamble of the Constitution. In terms of Section 2 of the Karnataka Act No. 23 of 1994, Section 6A came into force on 30.7.1994, i.e. the date

on which the amendment was published. As on that day, the final decree proceedings were pending. Therefore, the appellant had every right to

seek enlargement of her share by pointing out that the discrimination practiced against the unmarried daughter had been removed by the legislative

intervention and there is no reason why the Court should hesitate in giving effect to an amendment made by the State legislature in exercise of the

power vested in it under Article 15(3) of the Constitution.

29. In our view, neither of the aforesaid three judgments can be read as laying down a proposition of law that in a partition suit, preliminary decree

cannot be varied in the final decree proceedings despite amendment of the law governing the parties by which the discrimination practiced against

unmarried daughter was removed and the statute was brought in conformity with Articles 14 and 15 of the Constitution. We are further of the view

that the ratio of Phoolchand v. Gopal Lal and S. Sai Reddy v. S. Narayana Reddy has direct bearing on this case and the trial Court and the High

Court committed serious error by dismissing the application filed by the appellant for grant of equal share in the suit property in terms of Section

6A of the Karnataka Act No. 23 of 1994.

5. In Ganduri Koteshwaramma''s Case (supra) it was observed as under:--

14. 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 redetermining the rights and interests of the parties having regard to the changed

situation.

19. The High Court was clearly in error in not properly appreciating the scope of Order XX Rule 18 of C.P.C. In a suit for partition of immovable

property, if such property is not assessed to the payment of revenue to the government, ordinarily passing of a preliminary decree declaring the

share of the parties may be required. The court would thereafter proceed for preparation of final decree. In Phoolchand, this Court has stated the

legal position that C.P.C. creates no impediment for even more than one preliminary decree if after passing of the preliminary decree events have

taken place necessitating the readjustment of shares as declared in the preliminary decree. The court has always power to revise the preliminary

decree or pass another preliminary decree if the situation in the changed circumstances so demand. A suit for partition continues after the passing

of the preliminary decree and the proceedings in the suit get extinguished only on passing of the final decree. It is not correct statement of law that

once a preliminary decree has been passed, it is not capable of modification. It needs no emphasis that the rights of the parties in a partition suit

should be settled once for all in that suit alone and no other proceedings.

20. Section 97 of C. P.C. that provides that where any party aggrieved by a preliminary decree passed after the commencement of the Code does

not appeal from such decree, he shall be precluded from disputing its correctness in any appeal which may be preferred from the final decree does

not create any hindrance or obstruction in the power of the court to modify, amend or alter the preliminary decree or pass another preliminary

decree if the changed circumstances so require.

21. It is true that final decree is always required to be in conformity with the preliminary decree but that does not mean that a preliminary decree,

before the final decree is passed, cannot be altered or amended or modified by the trial court in the event of changed or supervening circumstances

even if no appeal has been preferred from such preliminary decree. The view of the High Court is against law and the decisions of this Court in

Phoolchand and S. Sai Reddy.

6. From the aforesaid judgments it is clear that, a final decree is always required to be in conformity with the preliminary decree. But, that does not

mean that a preliminary decree, before the final decree is passed, cannot be altered or amended or modified in the event of changed or supervening

circumstances even if no appeal is preferred against the preliminary decree. Though Section 97 of the CPC provides that, where any party

aggrieved by a preliminary decree passed after the commencement of the Code does not appeal from such decree, he shall be precluded from

disputing its correctness in any appeal which may be preferred from the final decree would not come in the way of the Court modifying, amending

or altering the preliminary decree or pass another preliminary decree in view of the change in the law, in particular in view of the explanation added

to Section 6 of the Act.

7. In this regard it is useful to refer to the definition of partition in the explanation to Section 6 of the Act after amendment. It reads as under:--

For the purposes of this section ''Partition'' means any partition made by execution of a deed of partition duly registered under the Registration

Act, 1908 (16 of 1908) or partition effected by a decree of a court"".

8. It is a very narrow definition of partition and is to be confined only to Section 6 of the Act as is clear from the opening words. It is because

under general law of partition, a partition may be oral. It need not be reduced into writing. A palupatti or a memorandum recording a partition

which is already effected need not be registered. When the State legislatures introduced amendment in the year 1994 conferring right on a

daughter, the status of a coparcener and made it clear that such a right is not available to a daughter in the joint family, if already partition has taken

place, in order to deprive the legitimate share of a daughter spurious documents came into existence to defeat the operation of the amendment by

antedating the documents on stamp papers. This past experience weighed with the Parliament and, therefore, this explanation was added to

Section 6 to see that the benefit conferred by the Parliament is not defeated by creation of such spurious documents. The only way to prevent such

spurious documents coming into existence was to make it clear that, partition means any partition made by execution of a deed of partition duly

registered under the Registration Act, 1908 or partition effected by a decree of a Court. The words used are partition effected by a decree of

Court. It means mere passing of a decree for partition, whether preliminary or final, would not take away the right of a daughter. What takes away

the right of a share conferred on her u/s 6 of the Act is, on the appointed date, i.e., 20th December 2004, if in terms of a decree passed by a

Court partition is effected, in other words properties are divided by metes and bounds, and possession is delivered to the parties and thereafter the

daughter cannot put forth any claim for partition u/s 6. Therefore, mere pendency of a final decree proceedings, submission of a Commissioner''s

report suggesting how partition is to be effected, would not amount to the partition decree being given full effect to.

9. Therefore, merely because no appeal was filed against the judgment and decree in R.A. No. 7/2005, the daughters'' right to seek for equal

share along with the son in view of the amended Section 6 of the Hindu Succession Act is not taken away. The submission of the report by the

Commissioner in compliance with the decree do not amount to Court effecting a partition in terms of the decree of the Court. It is after receipt of

the Commissioner''s report, after hearing the parties, if the Court accepts the Commissioner''s report, then further orders have to be passed for

effecting partition in terms of the Commissioner''s report. It is only thereafter partition is effected. It is after such partition, the rights of the parties

cannot be altered.

10. In the instant case, admittedly the final decree Court has not reached that stage. As partition is not effected in terms of the decree by the Court,

in view of the aforesaid judgments of the Apex Court, the amended provision is applicable to all pending proceedings and, therefore, the plaintiffs-

daughters were entitled to modification of the share in the preliminary decree which had attained finality and were entitled to equal share with the

sons. In that view of the matter, the impugned order cannot be sustained.

11. Hence, I pass the following order:--

(i) Writ Petitions are allowed.

(ii) The impugned order is hereby set aside.

(iii) In view of the amended Section 6 of the Hindu Succession Act, the daughters would be entitled to 2/3rd share together and the son would be

entitled to 1/3rd share and the final decree Court shall take note of the said change in law and suitably pass a final decree.

(iv) Ordered accordingly.