
Goutham Chand Jain and Others Vs Baqtawar Begum and Others

Appl. (SR) No"s. 7845, 7846, 7847 and 7848 of 2004 in CS No. 13 of 1958

Court: Andhra Pradesh High Court

Date of Decision: Nov. 23, 2004

Acts Referred:

Civil Procedure Code, 1908 (CPC) & Order 20 Rule 18

Citation: (2005) 1 ALD 402

Hon'ble Judges: L. Narasimha Reddy, J

Bench: Single Bench

Advocate: Vedula Venkata Ramana, for the Appellant; D. Krishna Reddy, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

L. Narasimha Reddy, J.

These applications are listed before this Court for orders on office objections.

2. The applications are filed for the relief of passing a final decree in C.S. No. 13 of 1958, in relation to various extents of land, referred to in the

respective applications. The Registry raised three objections, namely, (a) that the parties to the suit be impleaded as respondents in the

applications; (b) requisite stamps for engrossing the final decree be filed, and, (c) the Government, through its Revenue Department, be made as

parties. The applications were re-presented by the Counsel for the petitioners, by stating that the property, in respect of which the final decree is

sought for, was already allotted in favour of Defendant No. 2, and since the parties are claiming through Defendant No. 2, it is not necessary to

implead other defendants in the suit. They undertook to file the stamps for engrossing the stamp duty, after the final decree is passed. As regards

the 3rd objection, it was stated that the suit was withdrawn against Defendants 14, 15, 16 and 17, namely, the Government of A.P., Union of

India, Salar Jung Estate, and Jagir Administrator. Hence, it is not necessary to implead them.

3. Learned Counsel for the petitioners addressed extensive arguments, touching on the merits of the matter, by referring to the various orders and

decrees passed by this Court, as well as the other material on record.

4. One Syed Hassan filed C.S. No. 13 of 1958 in this Court, for partition of the properties of Nawab Salar Jung-III; for possession of his share of

the property, and for a declaration, as to his right to receive the share of commutation paid or payable, in respect of the Jagir held by Nawab Salar

Jung-III. As in the case of similar suits, namely, C.S.No.7 of 1959 and C.S.No.14 of 1958, in this suit also, the parties entered into a compromise,

and on the basis of the same, a preliminary decree was passed on 5-3-1959. One Sri Najaf Ali Khan, retired Secretary to Government was

appointed as the Receiver of the suit property and to take further steps in the matter. A final decree was passed in Appl.No.417 of 1961 through

Order dated 9-2-1962. All the properties, including lands, buildings, jewellery, fairam, vehicles were partitioned among the parties. However, the

right to collect Nuzul (rents) on certain properties known as Nuzul lands (leased lands) in Hyderabad and Aurangabad, was not partitioned, on the

ground that such lands were proposed to be handed over to the tenants permanently, in lieu of fixed compensation. Further steps in that direction

were deferred. The relevant portion of the Order in Appl.No.417 of 1961 reads as under:

Nuzul lands both in Hyderabad and Aurangabad could not be partitioned as they were proposed to be handed over to tenants permanently in lieu

of fixed compensation amounts (vide Application No. 328/59 dated 27-7-1959). A considerable number of Nuzuldars, as would appear from the

Administration Report, have obtained certificates by payment of the required amounts.

In conclusion, it was observed:

Ordinarily there will be only one final (decree) in a suit. But, special circumstances may require the passing of more than one final decree in the

same suit. In the present suit, as the property yet to be disposed of is, to a large measure, earmarked for the expenses to be met and the Court-fee

to be paid, I do not think it necessary to stay delivery of the partitioned property till all the properties are sold. This may involve unnecessary

burden on the partition, for, as it is the monthly expenses alone incurred for the establishment of the Receiver's (office) itself will be not less than

Rs. 15,000/-per month. The delivery of possession of almost all the movable and immovable properties which are distributed among the parties

will relieve considerably the estate from this burden. The final decree therefore may be directed to be drawn. If found necessary, the drawing of

supplemental final decree, in relation to the remaining property will not be against law.

5. Subsequently, Appl.No.82 of 1962 was filed by the plaintiff under Rule 1 of Order 40 C.P.C., for appropriate directions to the Receiver, in

relation to the Nuzul lands in Hyderabad and Aurangabad. This Court passed an Order on 22-3-1962, directing the Receiver to the effect that, the

right to collect Nuzul from 100 Nuzuldars, from Hyderabad, and 116 from Aurangabad, is to be partitioned, according to the information

available, and be, allotted to 16 groups. An exercise was undertaken by the Commissioner/Receiver, on the basis of this. At one stage, he

submitted a report to the effect that, after partitioning the right to collect the Nuzul among the 16 groups, he received a letter from the Defendant

No. 2, complaining that the distribution in his favour was unequal, and that further allotment be made in his favour. On the basis of that request, the

following items are said to have been allotted in his favour:

(i) ""Dry land admeasuring acres 100.00 guntas, in Sy.No.201 at Saheb Nagar Kalan, Taluq Eastern Circle, Hyderabad District.

(ii) Dry land admeasuring Acres 8.00 guntas, in Sy. No. 157/1 at Tokatta Village, Taluq Western Circle, Hyderabad District.

(iii) Dry land admeasuring acres 25.00 guntas, adjacent to Cantonment Workshop, from out of total land admeasuring acres 351.16 guntas in Sy.

No. 170, Tokatta Village, Western Circle, Hyderabad District.

(iv) Total land in Block No. 9, Part of Sy.No.15, at Baijipura Village, Aurangabad, Maharashtra.

(v) Land admeasuring acres 4.31 guntas in Sy.No. 2/2, at Baijipura Village, Aurangabad, Maharashtra.

6. Taking this into account, this Court passed Order dated 28-6-1963 in Appl.No.82 of 1962, closing the same. The concluding portion of the

order reads as under:

A scheme on the lines shown in the Order dated 22-3-1962 was directed to be prepared and filed. That scheme having been filed and the

partition according to that having been ordered, the Receiver partitioned the same and under the directions of the Court gave constructive

possession in the manner provided and a report thereof has been now submitted. This report relates to the right to collect Nuzul from Nuzuldars in

Aurangabad and Hyderabad, who are 100 plus 116, 216 in number. Since no further Nuzul lands are left, proceedings in this behalf may be

closed.

7. It is doubtful whether delivery of possession of Nuzul lands is contemplated in the suit at all. In the final decree, what was left, is the right to

collect Nuzuls. That, however, is a different aspect. In the recent past, the legal representatives of Defendant No. 2 have come on record, and

they, in turn have assigned their rights in favour of some third parties, in parts. The third parties in turn, filed applications for impleading them in the

suit. Those applications were also ordered. Petitioners in the four applications are the L. Rs of the 2nd defendant, or their assignees, as the case

may be.

8. Now the question remains as to whether the L.Rs of Defendant No. 2 can file application for final decree, in respect of bids of land, that are

said to have been allotted to Defendant No. 2 in Appl.No.82 of 1962, without impleading the other defendants.

9. As observed in the preceding paragraphs, the partition was complete in all respects, except for the partition of the right to collect Nuzuls from

the Nuzuldars. The Nuzul lands themselves are of very vast extent, and have acquired value and prominence with the passage of time. It is true that

this Court made an observation in the Order in Appl. No. 417 of 1961 to the effect that drawing of supplemental final decree, in relation to the

remaining property will not be against law. The remaining properties are Nuzul lands. If all anything, the supplemental final decree is to be drawn

for the right to collect the Nuzuls. Till today, no final decree has been passed in respect of the same. The present applications relate to the two

items of land (Items 2 and 3), which are said to have been allotted to Defendant No. 2, in the report of the Commissioner.

10. Learned Counsel submits that since the allotment made by the Commissioner has become final, with the order of this Court, dated 28-6-2003

in Appl.No.82 of 2002, it is open to the petitioners herein to seek final decree, as regards some of the lands allotted to Defendant No. 2. In this

regard, it may be noted that, in a partition suit, the extent of the rights of the parties and the properties available for partition, are determined in the

preliminary decree, and allotment of the shares and the properties divided by metes and bounds, are undertaken at the final decree. The actual

right, vis-a-vis a particular item of property stands conferred only after the final decree is passed. Any step or exercise undertaken in the

meanwhile does not confer any right (See C.S. No. 14 of 1958). In IDPL Employees Co-operative Housing Building Society Ltd. and Another

Vs. B. Rama Devi and Others, , which arose under similar circumstances, this Court observed as under:

It is a matter of common knowledge that in a suit for partition, the important aspects to be undertaken by the Court are ascertainment of the

shares, identification of the property available for partition, division of the available property by metes and bounds and allotment of the divided

parts to the parties, commensurate with their shares. The nature of decree to be passed therein is provided for under Rule 18 of Order XX C.P.C.

In Rachakonda Venkat Rao and Others Vs. R. Satya Bai (D) by Lr. and Another, , the Supreme Court explained the various steps involved in a

suit for partition. Depending on the outcome of the adjudication, or area of agreement between the parties, the suit can be disposed of in one

stroke, or by way of two decrees namely the preliminary and final. Where the subject-matter of the partition is a land, being part of estate and

assessed to revenue, the steps subsequent to preliminary decree are required to be undertaken by the District Collector u/s 54 C.P.C. In other

matters, the Court has to undertake steps to divide the properties by metes and bounds and deliver the same to the parties concerned in

accordance with their respective shares. A party can seek delivery of possession in accordance with the final decree only after it is engrossed on a

stamp of adequate value and by initiating executing proceedings. Any other step in between a preliminary and final decree is almost impermissible.

11. The final decree in a suit for partition can be passed only in the presence of all the parties to the suit. The reason is that, till the final decree is

passed, no party to the suit can claim absolute or exclusive right with respect of an item or part of the suit schedule property, to the exclusion of

others. Allotment of a share, in the process of passing of a final decree, can take place only after taking the views of the other parties to the suit,

whether the plaintiffs or defendants. In given circumstances, more final decrees than one, can be passed. However, all the parties to the suit must

be present in such proceedings. It is impermissible to draw a final decree at the instance of some of the parties, even in relation to some of the

items. In such event, the decree partakes the character of a declaration than partition.

12. If the contention of the learned Counsel for the petitioners that the allotment became final, in view of the Order dated 28-6-1963, is to be

accepted, the present applications become superfluous. On the other hand, if final decree is to be passed, at this stage, the question of allotment

has to be undertaken afresh, may be after taking into account the material, which is already available on record. For this purpose, the presence of

all the parties to the suit is necessary. Further, the supplementary, final decree that was left to be passed, has to be in respect of the entire leftover

properties, and not small bits, picked up by the parties, according to their convenience. Therefore, the objections raised by the office are sustained,

and the applications are directed to be returned for compliance.