

## **Juguna Bai and Another Vs Sardar Surjeet Singh and Others**

**Court:** Andhra Pradesh High Court

**Date of Decision:** Nov. 30, 2007

**Acts Referred:** Constitution of India, 1950 " Article 141

**Citation:** (2008) 2 ALD 837

**Hon'ble Judges:** L. Narasimha Reddy, J

**Bench:** Single Bench

**Advocate:** G. Manohar, for M. Rajamalla Reddy, in CRP No. 3914 of 2007 and M. Rajamalla Reddy, in CRP No. 3144 of 2007, for the Appellant; V. Rama Chandra Rao, for the Respondent

**Final Decision:** Allowed

### **Judgement**

L. Narasimha Reddy, J.

These two revisions are filed, challenging the final decree dated 5.2.2007, passed by the Court of Senior Civil

Judge, Karimnagar, in O.S. No. 54 of 1981. CRP No. 3144 of 2007 is filed by defendant No. 4, and CRP No. 3914 of 2007 is filed by

defendant Nos.2 and 3, in the suit. The 1st respondent, in both the revisions, is the plaintiff. The 1st defendant died, and the plaintiff claims to be

her sole legal representative. The dispute, between the parties, has a chequered career.

2. The circumstances that gave rise to the filing of the CRPs are as under:

For the sake of convenience, the parties are referred to, as arrayed in the suit.

One Sri Sardar Santh Singh had two wives by name Rama Bai and Juguna Bai, i.e. defendants 1 and 2. The plaintiff was adopted son of Santh

Singh and his wife Rama Bai. The 3rd defendant by name, Sathnam Kaur, is the daughter of Santh Singh, through Juguna Bai, the 2nd defendant.

The plaintiff filed the suit for partition of suit schedule properties. The trial Court passed a preliminary decree, on 11.10.1990, holding that the

plaintiff is entitled to 1/3rd share of the suit schedule property; the two widows of Santh Singh, i.e., defendants 1 and 2, shall be entitled to 1/3rd

share in common; and the 3rd defendant is entitled to the balance of 1/3rd share.

3. Feeling aggrieved by the preliminary decree, the plaintiff filed A.S. No. 1689 of 1991, before this Court. During the pendency of the suit, the 1st

defendant died. Thereupon, he filed CMP No. 1 1316 of 1991, with a prayer that he be recorded as the legal representative of the deceased. The

same was ordered on 27.8.1991. Subsequently, he has withdrawn the appeal, as not pressed. Afterwards, he filed LA. No. 697 of 1993, with a

prayer to pass final decree, and I.A. No. 89 of 1999, for appointment of a Commissioner.

4. Before the final decree came to be passed in the suit, one Smt. Nimma Kaur, filed I.A. No. 1491 of 1993, stating that she is the foster daughter

of Santh Singh and Rama Bai, and that under a deed of settlement, dated 30.12.1978, she was allotted 1/3rd share in the properties of Santh

Singh. The trial Court dismissed the I.A., on 12.7.1996. Thereupon, she filed CRP No. 3124 of 1996 before this Court. It was allowed on

28.7.1997, and she was added as defendant No.4, to the suit.

5. After the 4th defendant was added, the trial Court re-opened the preliminary decree and carried necessary changes in the plaint and other

proceedings, through two separate orders, dated 26.11.2002. The plaintiff filed CRP Nos.6088 of 2002 and 620 of 2003, against the said orders,

and through common order dated 8.12.2003, this Court allowed the CRPs., and set aside the orders. Consequently, the trial Court took up the

enquiry into I.A. No. 697 of 1993, for passing the final decree.

6. The plaintiff pleaded that on account of the death of the 1st defendant, he became entitled to her share, i.e., half share in the 1/3rd, that is

allotted to defendants 1 and 2, together, and thereby, his share is enlarged to half. The defendants raised several objections, as to the claim of the

plaintiff, as the sole legal representative of the deceased, 1st defendant, and the denial of share to the 4th defendant. The trial Court overruled the

objections, and passed a final decree, directing that the plaintiff is entitled to half of the suit schedule properties; 2nd defendant, to 1/6th; and the

3rd defendant, to 1/3rd. The 4th defendant was denied share in the property.

7. Sri M. Rajamalla Reddy, learned Counsel for the petitioner in CRP No. 3144 of 2007 (defendant No. 4), submits that, once his client was

added as a party to the suit, before the final decree came to be passed, it was obligatory on the part of the trial Court, to decide her claim. Placing

reliance upon the judgment of the Supreme Court in Phoolchand and Another Vs. Gopal Lal, , he contends that a preliminary decree passed in a

suit for partition is liable to be changed, or modified, whenever a new party is added, or the existing one is deleted or omitted. He submits that the

view taken by the trial Court is contrary to the law laid down by the Supreme Court. Learned Counsel contends that the common order passed by

this Court in CRP Nos. 6088 of 2002 and 620 of 2003, cannot defeat the rights of the 4th defendant, which was specifically conferred upon her,

by this Court, in its order in CRP No. 3124 of 1996. He raises an objection, as to the claim of the plaintiff, as the sole legal representative of the

deceased, 1st defendant.

8. Sri G. Manohar, learned Counsel for the petitioners in CRP No. 3914 of 2007 (defendants 2 and 3), had advanced arguments, opposing the

claim of the plaintiff, as the sole legal representative of the deceased, 1st defendant. Reliance is placed upon the judgment of this Court, in G.N.

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9. Sri V. Ramachandra Rao, learned Counsel for the plaintiff, on the other hand, submits that, both the revisions are untenable, on facts, and in law.

He contends that once this Court held in CRP Nos. 6088 of 2002, and 620 of 2003, that the preliminary decree cannot be re-opened at the

instance of the 4th defendant, who was added as a party, at a subsequent stage, she cannot repeat her claim in the final decree proceedings. By

placing reliance upon several judgments of the Supreme Court and High Courts, he submits that once the preliminary decree has become final,

because of the appeal not being filed, or dismissal of the appeal, it cannot be re-opened, at the instance of third parties. It is also his case that a

final decree must conform to the preliminary decree, and no one can claim rights, otherwise than under a preliminary decree.

10. The proceedings initiated by the plaintiff, way back in the year 1981, for partition of the properties, left by late Santh Singh; did not attain

finality, even after 26 years. Both the parties have contributed for such a state of affairs. It has already been pointed out that late Santh Singh had

two wives, i.e. defendants 1 and 2. While the 2nd defendant had a daughter, by name, Sathanam Kaur, the 3rd defendant; the 1st defendant did

not have any children. Herself and Santh Singh adopted the plaintiff. Nimma Kaur, is said to have been fostered by them, and that a deed of

settlement was executed way back in the year 1978. Either, not being aware of the deed of settlement, dated 30.12.1978, or not feeling the

necessity of the presence of the said Nimma Kaur, in the suit, the plaintiff did not implead her. The preliminary decree was passed on 11.10.1990,

directing division of properties into three shares; one for the plaintiff; another jointly for defendants 1 and 2, and the other for defendant No. 3.

11. Plaintiff filed appeal before this Court, and did not invite decision on merits. The only development in the appeal was, that the 1st defendant,

i.e. adoptive mother of plaintiff, died and he alone was recorded as her legal representative. Thereafter, the appeal ended in withdrawal. The

plaintiff filed I.A. No. 697 of 1993 for final decree. Before the final decree passed, Nimma Kaur filed an I.A., to get herself impleaded as

defendant No.4. On dismissal of the I.A., she filed CRP No. 3124 of 1996. The plea raised by the plaintiff, that the preliminary decree cannot be

modified, once it has become final; was turned down by this Court, by adopting the principle laid down by the Supreme Court in Phoolchand's

case (supra). After extracting the relevant portion of the judgment of the Supreme Court, this Court held in CRP No. 3124 of 1996, as under:

It is thus amply clear that as long as the partition suit is pending and until a final decree is actually passed, application for impleading a party is

maintainable. That a duty is cast on the Court in a partition suit to adjudicate upon the claims of all the parties who claim a share in the subject-

matter of the suit and that there is nothing in the CPC which prohibits the passing of more than one preliminary decree, if circumstances justify the

same. It is not only convenient to the Court and advantageous to the parties, specially in partition suits to have disputed rights finally settled before

a final decree is prepared.

12. As to the consequences that must follow, from the impleadment of the 4th defendant, this Court observed as under:

In the circumstances, it cannot be denied that the petitioner is a necessary and proper party whose presence is required for complete and final

adjudication of the points involved in the suit I do not see any reason why the dispute raised by the petitioner herein as to her claim based on

Ex.B.2 should not be decided by the Court which passed the preliminary decree. The Court undoubtedly has jurisdiction to decide all disputes

including those that may arise after the preliminary decree and before the final decree has been passed, as in the instant case.

13. This order became final. Therefore, it became necessary for the trial Court to close I.A. No. 697 of 1993, filed for final decree proceedings,

and to undertake enquiry into the claim of the 4th defendant. The orders passed in this regard, were challenged by the plaintiff in CRP Nos. 6088

of 2002 and 620 of 2003.

14. In its common order dated 8.12.2003, in those two CRPs., this Court took note of the order in CRP No. 3124 of 1996, dated 28.7.1997. It

was held that the impleadment of the 4th defendant shall be confined to the stage of the final decree proceedings, and that the preliminary decree

cannot be re-opened. The relevant observation reads as under:

...By allowing any such application for impleading, it cannot be said that the decree, which has become final, is reopened. In fact, no proper steps

have been taken by way of an appeal or otherwise by respondent No. 4 herein to set aside the decree. A decree once passed, cannot be set aside

unless and until an appeal is filed. Mere allowing an impleading petition and that too at the final decree proceedings, would not entitle respondent

No. 4 to plead that the preliminary decree has got reopened. If at all respondent No.4 has any say, the same can be submitted in the final decree

proceedings, which can be taken into account....

Virtually there was nothing that the 4th defendant could have claimed in the final proceedings, since she was not a party to the preliminary decree.

15. If one compares or contrasts the views taken by this Court in CRP No. 3124 of 1996, on the one hand, and the common order in CRP Nos.

6088 of 2002 and 620 of 2003, on the other hand, a clear contradiction becomes visible. In the former, a right was conferred upon the 4th

defendant, to pursue her remedies, and it was even observed that, if the facts warrant, the preliminary decree can be modified. However, in the

latter, her rights were confined to those in final decree proceedings. Since both the orders assumed finality, this Court faces a typical situation. The

consoling factor, however, is that the view taken by this Court in the first order accords with the law laid down by the Supreme Court in

Phoolchand's case (supra); whereas no such authority sustains the latter. Assuming that both the orders command the same respectability and

authority, a way needs to be found, lest the tangle continues to be a riddle.

16. In Ushodaya Enterprises Ltd. Vs. Commissioner of Commercial Taxes, A.P., Hyderabad, , a Full Bench of this Court was faced with two

judgments of the Supreme Court, in which conflicting views were expressed. Justice P. Venkatarama Reddi, as His Lordship then was, speaking

for the Full Bench, held as under:

Para-24: Without making inroads into the settled principles governing the binding force of a decision of the Supreme Court either by virtue of its

precedential value or the mandate of Article 141, we can safely evolve the principle that in a case of conflict arising from the decisions of co-equal

Benches of the Supreme Court, the High Court is free to disregard the decision which is based on an obvious mistake of fact or the one which

purports to follow the ratio of an earlier decision though such ratio is found to be non-existent. The High Court can legitimately decline to follow

such decision and follow the earlier decision which is backed by reasoning-whether it is acceptable to the High Court or not, and which is free

from any such apparent flaw. We are unable to persuade ourselves to subscribe to the view that the later decision should be automatically followed

despite the fact that it rests on a conclusion based on an erroneous impression that an earlier decision took a particular view which in fact it has not

taken. By doing so, we are neither questioning the hierarchical superiority of the Supreme Court nor the higher wisdom of the Hon"ble Judges of

the Supreme Court. We are preferring one decision to the other - both rendered by Division Benches, for obvious reasons so as to avoid an

incongruity leading to travesty of justice.

17. Strength was derived from the judgments of the Supreme Court on this very point, such as the one, in B. Shama Rao Vs. The Union Territory

of Pondicherry, . When such is the freedom of a High Court in choosing an authoritative precedent from the conflicting judgments, rendered by the

Supreme Court, there must not be any problem in adopting one of the judgments, rendered by the same High Court, that too as between the same

parties. On application of the principle laid down by the Full Bench, this Court is virtually left with no alternative, except to hold that the order

passed by this Court in CRP No. 3124 of 1996 would continue to govern the rights of the parties, since it accords with the law laid down by the

Supreme Court, where as the other is almost bereft of such authority.

18. The Supreme Court maintained a distinction, in the matter of attaching finality to the decrees, in the suits for partition, compared to other

categories of suits. It was pointed out that a suit for partition terminates only with the passing of final decree, and any changes that take place,

between the preliminary decree and final decree, leading to alteration, it must result in amendment or alteration of the preliminary decree. The

relevant portion of the judgment in Phoolchand"s case (supra), reads as under:

Para-7: ...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. We should

however like to point out that what we are saying must be confined to partition suits, for we are not concerned in the present appeal with other

kinds of suits in which also preliminary and final decrees are passed. There is no prohibition in the CPC against passing a second preliminary

decree in such circumstances and we do not see why we should rule out a second preliminary decree in such circumstances only on the ground that

the CPC does not contemplate such a possibility....

19. It is not uncommon that after a preliminary decree is passed in a suit for partition, but before the preliminary (sic final) decree is passed,

strangers came to be added as parties, or existing ones are deleted, due to death, transfers etc. Depending on the nature of the rights that accrue to

the parties, on account of such changes, it becomes necessary to alter the preliminary decree and to redefine the shares. Such an exercise cannot

be treated, either, as a review, or setting aside of the preliminary decree.

20. There is intrinsic evidence, in the present case itself. The share of the plaintiff was determined at 1/3rd in the preliminary decree. On account of

the death of the 1st defendant, the plaintiff laid a claim for her share also, and in the final decree, he pleaded that he is entitled to half share. If the

plaintiff himself proceeded on the assumption that the determination under the preliminary decree is not final, and his share is liable to be revised,

there is no reason why, the 4th defendant, who was not a party to the preliminary decree, cannot seek adjudication of her claim, and seek re-

determination of | shares.

21. Learned Counsel for the plaintiff placed reliance upon the judgments of the Supreme Court in Venkatrao Anantdeo Joshi and Others Vs. Sau.

Malatibai and Others, ; Mool Chand and others Vs. Dy. Director, Consolidation and others, and Muthangi Ayyanna Vs. Muthangi Jaggarao and

Others, , in support of his contention that a final decree cannot go beyond the scope and ambit of a preliminary decree, and that a third party

cannot claim any rights at the stage of final decree, once the preliminary decree has become final. There is absolutely no quarrel with these

propositions. In all those cases, no attempt was made by the parties to seek modification of preliminary decree, on the strength of rights that have

accrued to them. Claims were put forward in the final decree proceedings, contrary to the preliminary decree. Such is not the case here. Therefore,

the rejection of the claim of the 4th defendant, for determination of her rights; cannot be countenanced.

22. Another question that has fallen for consideration was, as to whether the plaintiff was entitled to be treated as the sole legal representative of

the 1st defendant, and thereby, her legal heir to the exclusion of others. His claim was accepted by the trial Court and the undivided share of the

1st defendant, out of the 1/3rd; was assigned to the plaintiff, exclusively.

23. In this regard, it needs to be observed that the 1st defendant died, when A.S. No. 1689 of 1991, filed by the plaintiff, was pending, and the

plaintiff was brought on record as the legal representative, by orders passed in CMP No. 11316 of 1991. At that stage, the rights of the other

parties were not examined. At any rate, the recognition of the plaintiff, as the legal representative of the 1st defendant, was only for the purpose of

carrying on the proceedings. By itself, such recognition does not defeat the rights of the persons, if they are otherwise entitled to be treated as legal

heirs. In G.N. Kishore Reddy v. R. Venugopal Rao (supra), this Court explained the distinction between the legal heir and legal representative, and

held as under:

Para-23: What emerges out of the discussion in preceding paragraphs is that it is not necessary that in every case, a legal heir is entitled to be

treated as legal representative also. The permission granted to represent the estate of a deceased party to a proceeding cannot be treated as a final

adjudication on the rights, except where it is decided as a specific issue. All the claims relating to the property or subject-matter need to be dealt

within the same proceedings, instead of the parties being required to institute parallel or tangent proceedings.

24. Therefore, unless there was any independent examination of the matter, as to who are the legal heirs, as distinguished from legal

representatives, of the deceased, 1st defendant; there was no basis in allotting her share, exclusively to the plaintiff.

25. For the foregoing reasons, the CRPs., are allowed, and the order under revision is set aside.

26. The trial Court shall examine the claim of the 4th defendant, independently, and if she is able to establish her claim vis-a-vis the property, left

by Sardar Santh Singh, preliminary decree shall be modified to the extent needed. The trial Court shall also decide as to who succeeded to the

estate of the deceased, 1st defendant, and re-determine the shares accordingly. This exercise shall be completed within a period of three months

from the date of receipt of the copy of this order, and the parties shall co-operate, without seeking any adjournments.

27. There shall be no order as to costs.