Rachakonda Venkat Rao and Others

Vs

R. Satya Bai, by L.R's. Smt. Rajkumari and Others

Civil Appeal No. 207 of 1996

(B.P. Jeevan Reddy, S.B. Majmudar JJ)

05.01.1996

JUDGMENT

1. Leave granted. Heard counsel for the parties.

2. Original Suit No. 4 of 1975 on the file of the learned District Judge. Adilabed was instituted by R. Satyabai widow of R. Gopal Rao against the three brothers of her husband. On July 13, 1978, a decree was made by the Court on the basis of a compromise between the parties. Under this compromise, the plaintiff was given certain properties exclusively while in some others she was given a joint interest. Plaintiff having died, her daughter and sole legal representative applied, in 1991, for passing a final decree. The defendants (appellants herein ) objected inter alia on the ground that under a settlement arrived at in 1985, the parties have finally settled the issue of partition and hence there is no question of passing a final decree now. They also submitted that when certain differences arose again between plaintiff and defendants, they were settled under a memo of family arrangement dated July 5, 1992 , which was said to be signed by all the parties.

3. The learned District Judge held, after an enquiry that the 1985 settlement put forward by the defendants is true and, therefore, the application for passing a final decree is liable to fail. On revision (filed by the plaintiff), a learned single Judge of the High Court held that Order 23 Rule 3, as amended in 1976, does not recognize an oral settlement and hence the 1985 settlement could not have been accepted by the Court. The learned single Judge pointed out further that when even according to the defendants the 1985 settlement has been superseded by the 1992 settlement, the 1985 settlement could not be held to bar final decree proceedings. The learned single Judge also referred to the finding of the learned District Judge that the 1992 settlement/family arrangement is not established by the defendants.

4. Sri. K. Madhava Reddy, learned counsel for the defendants-appellants pointed out that by virtue of clause (S) in sub-section (2) of Section 97 of the Civil Procedure Code (Amendment) Act, 1976, the amendment effected in Order 23, Rule 3 of the Civil Procedure Code has no application to pending suits and proceedings and, therefore, the learned single Judge was in error in holding that 1985 settlement, being oral, cannot be looking into by the Court. Learned counsel pointed out that the learned District Judge has found the said settlement to be true on the basis of the evidence adduced by the parties. An other objection raised by him is that the compromise decree passed in 1978 was itself a final decree and that it does not contemplate any proceedings being taken for passing a final decree. Learned counsel also stated that his clients are prepared to stand by either the 1985 settlement or the 1992 arrangement if either of them is acceptable to the plaintiff.

5. Learned counsel for the appellants is right in his submission that by virtue of Section 97 (2) (S) of the Civil Procedure Code (Amendment) Act, 1976, "the amendment as well as substitution made in Order XXIII of the First Schedule by Section 74 of this (Amendment) Act shall not apply to any suit or proceeding pending before the commencement of the said Section 74." The present suit was instituted in 1975. Hence there is no legal bar to the defendants putting forward the oral settlement of 1985 as a bar to the application filed by the plaintiff for passing a final decree. Unfortunately, this aspect was not brought to the notice of the learned single Judge. Inasmuch as the judgment of the learned single Judge. is substantially influenced by reliance upon amended Order 23, Rule 3 of the Civil Procedure Code, the proper course in our opinion is to send the matter back to the High Court for a reconsideration of the revision petition (C. R. P. 1594 of 1993) in accordance with law. We make it clear that we should not be understood to have expressed any opinion on any issue between the parties and all such issues as are arising in the C. R. P. shall be open for consideration by the High Court. We have expressed ourselves only on the effect of Section 97 (2) (S) of the Civil Procedure (Amendment) Act' 1976 and on no other question.

6. The appeal is accordingly allowed. The impugned judgment of the High Court is set aside and the matter remitted to the High Court with the above directions. No costs. Appeal allowed.