SUPREME COURT OF INDIA

Rachakonda Venkat Rao

Vs.

R. Satya Bai

C.A.No.2508 of 1997

(Brijesh Kumar and Arun Kumar, JJ.)

11.09.2003

JUDGEMENT

ARUN KUMAR, J.:-

1. This appeal is directed against an order dated 19th June, 1998 of the High Court of Andhra Pradesh whereby the order of the trial Court rejecting an application of the plaintiff under O. XXVI, Rr. 13 and 14 read with S. 151 of the Code of Civil Procedure was set aside and the trial Court was directed to take steps towards passing a final decree. Briefly the facts are :

2. Parties to the suit are closely related being members of a family of four brothers. Plaintiff No. 1 was the widow of the eldest brother. On 14th May, 1975 she filed a suit for partition of the joint family immoveable properties in the Court of the District Judge, Adilabad (A.P.). Plaintiff No. 2 is the daughter of plaintiff No. 1. Defendants are younger brothers of husband of plaintiff No. 1 and members of their families. During the pendency of the suit, parties arrived at a compromise. A joint application was filed under O.XXIII, R. 3, C.P.C. praying that the compromise be recorded and a decree in terms of the compromise be passed. The learned District Judge passed the decree on 13th

July, 1978 on the basis of the said compromise application.

The entire controversy in the present appeal revolves around the decree dated 13th July, 1978. The question is whether the said decree was a final decree or a preliminary decree. Defendants are the appellants in this appeal while plaintiff is the respondent. We will refer to the parties as plaintiff and defendants.

3. On 20th September, 1991 plaintiff No. 2 (plaintiff No. 1 had died in the meanwhile) moved an application under O. XXVI, Rr. 13 and 14 read with S. 151, C.P.C. praying that a Commissioner be appointed to divide the joint properties by metes and bounds and to allot separate shares as per the decree dated 13th July, 1978. In the body of the affidavit filed in support of the said application, the plaintiff stated that she had been put in separate possession of properties at Serial Nos. 1, 2, 3 and 5 in Schedule I to the decree dated 13th July, 1978 while properties at Serial Nos. 4, 6 and 7 were put in joint possession. According to the plaintiff, a Commissioner had to be appointed in pursuance of the decree to divide the joint properties as per shares of parties by metes and bounds and to allow separate possession and enjoyment thereof. Only defendant No. 1 filed a reply to the said application opposing the same. According to the defendant with the passing of the decree dated 13th July, 1978 pursuant to the compromise arrived at between the parties, the final partition had taken place and nothing remained for taking any further steps for partition. He averred that in view of change in value of the properties with the passage of time, the plaintiff was trying to wriggle out of the decree dated 13th July, 1978. In October, 1985 in view of such an attitude of the plaintiff a further arrangement had taken place between the parties. The said arrangement had also been acted upon. Even during the pendency of the application, a compromise in writing had taken place between the parties on 5th July, 1992. It was a Memorandum of family arrangement to which the plaintiff was a party. The same had been arrived at in the presence of parties and others including some Advocates. The defendant pleaded that in view of the subsequent developments, the Court may pass a decree in accordance with the Memorandum of family arrangement executed between the parties. In any case as per the stand of the defendant, the application under reply was not maintainable and was also hopelessly barred by time having been made more than 12 years after the decree dated 13th July, 1978. The learned District Judge framed the following points for consideration for deciding the application :

1. Whether the application is maintainable under law?

2. Whether there was any settlement between the parties subsequent to the passing of the compromise decree and for that reason the petitioner is not entitled to ask for appointment of Commissioner for the purpose of further division by metes and bounds?

3. To what relief?

4. The trial Court recorded oral evidence on the said application. The defendants examined five witnesses. The plaintiff, however, did not examine herself nor she lead any documentary evidence. Defendants also proved certain documents on record. The stand of the defendants is clear. According to them nothing remained for taking any further steps by the Court which means that according to defendants the decree dated 13th July, 1978 was a final decree and, therefore, such an application was not maintainable. Defendants lead oral evidence regarding October, 1985 oral settlement between the parties which was said to have been also acted upon. They led evidence regarding the 5th July, 1992, settlement by way of Memorandum of family arrangement. The learned District Judge dismissed the plaintiff's application by order dated 4th February, 1993. The application was held to be not maintainable. The learned District Judge accepted the 1985 arrangement by way of mutual agreement between the parties and stated that the said arrangement had been acted upon. The District Judge, however, did not take into consideration the subsequent family arrangement dated 5th July, 1992 because it was alleged to have taken place after the application under consideration had already been moved.

5. The plaintiff filed a revision-petition under S. 115, C.P.C. in the High Court against the order of the District Judge dated 4th February, 1993. The High Court by its impugned judgment dated 19th June, 1996 allowed the civil revision petition setting aside the order of the District Judge. The High Court treated the decree dated 13th July, 1978 as a preliminary decree and, therefore, it entertained the application for final decree. The High Court rejected the evidence led by defendants to establish the oral agreement of 1985. It weighed with the High Court that even as per defendant No. 1 the oral arrangement of 1985 stood superseded by an arrangement of 1992. The High Court further noted that according to both the parties the 1985 arrangement did not survive. The July, 1992 arrangement was rejected also on the ground that it was not signed by all the parties. It was signed only by three parties. In addition, it was observed that the said document was neither properly stamped nor it was registered. The High Court refused to accept that the decree dated 13th July, 1978 stood satisfied for the reason that satisfaction of the decree had not been recorded in accordance with provisions of O.XXI, R. 2, C.P.C. For all these reasons, the High Court directed the trial Court to proceed with the application and take steps for passing a final decree in the suit.

6. The main question for consideration before us is; whether the decree dated 13th July, 1978 was a final decree or it was only a preliminary decree? We have heard learned counsel for the parties at length. We have been taken through the relevant legal provisions. The parties' counsel cited judgments in support of their respective contentions. However, we are of the view that the decision of the case really turns on the interpretation of the compromise application and the decree dated 13th July, 1978. Before we set down to interpret the decree dated 13th July, 1978, we would like to refer to relevant provisions of the Code of Civil Procedure. Sub-section (2) of S. 2 of the Code defines a decree as :

"Sub-section (2) :

"decree" means the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint and the determination of any question within S. 144, but shall not include-

(a) any adjudication from which an appeal lies as an appeal from an order, or

(b) any order of dismissal for default.

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."

7. The application in question was moved by the plaintiff under the provisions of O. XXVI, Rr. 13 and 14. They are reproduced as under :

"Rule 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 S. 54, issue a commission to such person as it thinks fit to make the partition or separation according to the rights as declared in such decree.

Rule 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.

8. A bare reading of the definition of the word 'decree' shows that :

(a) a decree conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit; and

(b) a decree may be preliminary or final.

9. The explanation to the sub-section makes it clear that 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. A decree may be partly preliminary and partly final.

10. It is settled law that there can be more than one preliminary decrees in a suit. Similarly, there can be more than one final decrees in a suit.

11. In this background of the legal position, we proceed to examine the decree dated 13th July, 1978. The suit in question was a suit for partition and separate possession of ⅓th share of the plaintiff in the suit properties. The plaintiff had desired to be in separate possession of their share by effecting the partition by metes and bounds. The application for compromise which is an admitted document contains the following pleadings :

"(1) That the parties have effected the partition of the suit schedule immoveable properties. The properties which are allotted to each branch of the family shown in the Schedule as Nos. I to IV.

The properties shown in Schedule I are allotted to plaintiff Nos. 1 and 2.

The properties shown in Schedule II are allotted to Krishna Rao, defendant No. 3 and his branch, that is, defendants Nos. 3 to 13.

The properties shown in Schedule III are allotted to R. Venkat Rao, defendant No. 1.

The properties shown in Schedule IV are allotted to R. Sudhakar Rao, defendant No. 2.

2. The parties are put in possession of their respective shares of immovable properties.

3 and 4. . . . . .

The your honour may be please to accord the compromise and pass the decree in terms of compromise."

12. With the application, Schedules I to IV were appended which shows whatever properties were allotted to each party. There is no dispute about the application or the Schedules attached to it regarding distribution of the joint properties.

13. On the said application, the following decree was passed :

"Decree :

The suit coming on before me for final disposal on 13-7-1978 in the present of Mr. Ramulu, Advocate for the plaintiff and of Mr. R. V. Kishan Rao, Advocate for the defendant No. 1 and of Mr. P. Sridhar Rao, Advocate for the defendants Nos. 2 to 13 and agreed to compromise the matter of the suit and they have put into (Court) a deed of compromise praying that this Court will pass a decree in accordance with the term there, this Court, in pursuance of the said deed of compromise, do order and decree :

1. That the plaintiffs suit be and hereby is decreed as against D1 to D13 in terms of the compromise so far as it relates to the subject-matter of the suit.

2. That the plaintiffs Nos. 1 and 2 are allotted the properties shown in Schedule No. 1 (in compromise).

3. That the parties are put in possession of their respective share of immoveable properties.

4. That the defendants 1 to 13 are to pay the amount of Rs. 7500/- towards the 1/8th share in the value of the house bearing No. 25-11 situated at Mancherial within three months from the date of compromise to the plaintiffs (1 and 2). In case of failure, the plaintiffs will have right to recover the said amount by executing the

decree.

5. That the parties will bear their own costs."

14. Schedule I properties which fell to the share of the plaintiffs as per the said decree is as under :

SCHEDULE-I

The properties towards the 1/8th share allotted to Smt. R. Satya Bai d/o Sri Late S. Ra, Gopal Rao and Smt. Raj Kumar w/o V. Jagannath Rao (plaintiffs Nos. 1 and 2)

Sl. No.	Survey No.	Extent Ac. Gts.	Nature	Situated	Remarks
1.	274	1.21	W.D.C.	Naspur(V)	
2.	280	1.34	-do-	-do-	
3.	314	Total 12.05	Dry	-do-	To the extent of Ac. 3.20 Gts. toward eastern side.
4.	75) 77) 94) 107)	Total extent Ac.23.28 Gts. 1/4th share i.e.., 5.37	Dry	-do-	These lands are enjoyed jointly.

5. House No. 4-1 situated at Naspur old titled roof house (27? * 15?) Bounded as follows :

South : House of R.Krishnan Rao

North : Open space

East : House of R.Krishna Rao

West : House of R.Sudhakar Rao

6. House No. 25-11 situated as Mancherial, plaintiff 1/8th share in terms of cash i.e., 7500/-

recoverable from R.Venkat Rao, R. Sudhakar Rao.

Plot No. 7-49 and 7-50 total 0.28 gts situated at Mancherial to the extent of 1/8th share.

Sd/-

Defandant No. 1

Sd/-

Advocate for D-2 t0 13

Sd/-

Advocate for plaintiff"

15. We have carefully considered the compromise application as well as the decree passed by the trial Court on the basis thereof on 13th July, 1978. The tenor of the entire compromise application in our view clearly indicates that the parties settled the entire controversy in the suit and reached a compromise with respect thereto. They effected partition of the Schedule immovable properties and allotment was made as per Schedules I to IV. Schedule I which alone is relevant for the present purpose shows that the properties at Serial Nos. 1 to 3 and 5 were placed in exclusive possession of the plaintiffs. So far as property No. 4 is concerned, the same was under acquisition and, therefore, only compensation had to be received which could be shared by the parties as and when it was received. Regarding Property No. 6, the plaintiff's share had been converted into an equivalent in cash amounting to Rs. 7500/- recoverable from the other three brothers. Property at Serial No. 7 was under litigation as it was occupied by outsiders. The evidence on record shows that in view of the uncertainty about the litigation with respect to property at Serial No. 7, its partition was neither practical nor desirable. Therefore, for all practical purposes, there was a complete partition of the suit properties. The compromise further shows that the partition of suit properties in this manner was acceptable to the plaintiffs, that is why, they moved the joint compromise application and prayed for decree in terms thereof. The compromise application further records the fact that parties accepted that they had been put in possession of their respective share of immovable properties. The admission on the part of the parties including the plaintiffs in our view leaves no scope for argument that the decree dated 13th July, 1978 was only a preliminary decree and a final decree is yet to be passed. When parties have been put in possession of their respective shares of immovable properties by way of decree dated 13th July, 1978, nothing remains for final decree proceedings. In fact, nothing remains to be performed further. If under that partition some property or properties were kept joint, it was because the parties agreed to that course of action. Having agreed to keep the properties joint and having had the suit finally disposed of as per prayer made to the Court, it did not lie in the mouth of the plaintiffs to ask for final decree proceedings again and to reopen the partition. The only course open to the plaintiff in such a case would be to file a fresh suit for partition with respect to properties which were kept joint.

16. The fact that the plaintiffs applied for final decree proceedings after a lapse of more than 13 years further shows that this was an after thought on the part of the plaintiffs and we are inclined to believe defendant No. 1 when he says that in view of change in values of the properties due to passage of time, the plaintiffs were trying to wriggle out of the partition decree dated 13th July, 1978.

17. The Court while dealing with the compromise application of the parties containing a prayer for passing a decree observed that the suit had come before the Court for final disposal on 13th July, 1978. The Court further observed that parties had agreed to compromise the matter of the suit and they had put in Court a deed of compromise praying that a decree be passed in accordance with the terms of compromise. This shows that the Court also proceeded on the basis that it was finally disposing of the suit be recording a compromise between the parties with respect to subject-matter of the suit. The Court further observed that the suit of the plaintiff was decreed in terms of the compromise and the plaintiffs 1 and 2 "are allotted the properties shown in Schedule I (in compromise)." Again it was observed that the parties are "put in possession of their respective share of immovable properties." The money decree was passed for Rs. 7500/- in favour of plaintiffs and against defendants 1 to 3 regarding property at Serial No. 6 in Schedule 1 with the direction to the defendants to pay the said amount within three months failing which the plaintiffs were given a right to execute the decree to recover the said amount. All this clearly shows that the suit was finally disposed of. Parties were put in possession of respective properties which fell to their share. This was as per the agreement reached by the parties about the partition of the properties. In the agreement, the parties had accepted that they had been put in separate possession of the various immovable properties allotted to each group. These proceedings dated 13th July, 1978 in our view leave no scope for an argument that they were only by way of a preliminary decree and a final decree was yet to be passed. In a partition suit, a Court is required to define the shares of the parties, identify the joint properties which are to be partitioned, allocate properties to parties as per their respective shares and put the parties in possession of properties allocated to them. All this happened with agreement of parties when the Court passed the decree on 13th July, 1978. No step is missing in those proceedings. Therefore, nothing remained to be done.

18. If at all any party was aggrieved by any provision contained in the decree dated 13th July, 1978 only course it was by way of a fresh suit for partition with respect to immovable properties which were agreed to remain joint in the decree dated 13th July, 1978.

19. Learned counsel for the respondents (plaintiffs) argued that the 1978 decree was partly preliminary and partly final. In support of this argument he drew our attention to the application of the plaintiff O. XXVI, Rr. 13 and 14, C.P.C. where it is stated that in the decree dated 30th July, 1978, separate possession of properties at Serial Nos. 1, 2, 3 and 5 of Schedule I had been allotted to the plaintiffs while properties at Serial Nos. 4, 6 and 7 of the said Schedule remained joint. From this the learned counsel submits that so far as properties at Sl. Nos. 1, 2, 3 and 5 of Schedule I are concerned, the decree was a final decree while for rest of the properties it was only a preliminary decree. It is further submitted by the learned counsel for plaintiffs that in the plaint they had asked for separate possession of all the properties falling to their share. Accordingly a final decree with

respect to the joint properties remained to be passed. Referring to sub-section (2) of S. 2 of the Code of Civil Procedure it was argued that a suit has to be completely disposed of by a final decree. In the decree dated 13th July, 1978, properties were allotted to the plaintiffs as per Schedule I. The said Schedule shows that certain properties were exclusively allotted to the plaintiffs while certain other properties i.e. properties at Serial Nos. 4, 6 and 7 of Schedule I remained joint. For purposes of determination whether the said decree was a preliminary decree or a final decree or a decree partly preliminary or partly final, reference has to be made to the decree itself. It is also important to gather the intention of the parties from the compromise application because it was a compromise decree. We have already made reference to both these documents. In our view, intention of the parties is clear, i.e. the entire controversy in the suit was sought to be finally settled. In a partition it is not necessary that each and every property must be partitioned and that the parties are put in separate possession of respective portions of properties falling to their share. In the present case, the parties mutually agreed to keep some of the properties joint. The reason for this is also available from the record. The properties which were kept joint were in a state that a partition by metes and bounds was not possible. Property at Serial No. 4 of the Schedule I was under acquisition and there was no point in partitioning it by metes and bounds. Regarding property No. 6 the share of the plaintiff had been quantified in terms of money i.e. Rs. 7500/- (Rupees Seven Thousand Five Hundred only) payable by the defendants and the plaintiffs were given a right to execute the decree to that extent. Property at Serial No. 7 was fully occupied by outsiders with whom litigation was going on. The fate of the litigation was unknown. Therefore, understandably it was not partitioned. These facts clearly show that at the time of compromise itself the parties had taken a final decision with respect to partition of all the joint family properties and the same had been given effect to. The compromise application does not contain any clause regarding future course of action which gives a clear indication that nothing was left for future on the question of partition of the joint family properties. The curtain had been finally drawn.

20. The learned counsel for plaintiff also tried to build argument based on the fact that the 1978 decree has been referred as a preliminary decree by defendant No. 1 in his reply to the plaintiff's application under O. XXVI, Rr. 13 and 14, C.P.C. According to him this shows that defendant himself treated the said decree as a preliminary decree. This argument has no merit. We have to see the tenor of the entire reply and a word here or there cannot be taken out of context to build an argument. The reply by defendant 1 seen as a whole makes it abundantly clear that the defendant was opposing the prayer in the application including the prayer for taking proceedings for passing final decree.

21. We need not refer to the decisions cited by counsel for the parties. The judgments reiterate well settled legal position regarding which there is no controversy. As already observed the case has to be decided on the basis of the proceedings held on 13th July, 1978 including the compromise application which is an accepted document. In view of our decision that the decree dated 13th July, 1978 was a final decree, the question whether there was an oral arrangement between the parties in October, 1985 or there was a fresh family arrangement on 5th July, 1992 becomes wholly irrelevant. In partition matter it is always open to the parties to enter into fresh arrangement. They may even decide to be again joint with respect to the properties which means that they may throw the properties in the common pool again. The parties are free to adopt whatever course of action they may choose in future by way of mutual arrangement.

22. The fact that the compromise in 1978 was a final partition between the parties finds support from absence of any averment in the compromise application regarding reservation of right to the parties to seek partition with respect to properties kept joint in future. The decree as a matter of fact leaves nothing for future. As noticed earlier in a preliminary decree normally the court declares the shares of the parties and specifies the properties to be partitioned in the event of there being a dispute about the properties to be partitioned. After declaring the shares of the parties and the properties to be partitioned, the Court appoints a Commissioner to suggest mode of partition in terms of O. XXVI, R. 13, C.P.C. A perusal of Order XXVI, R. 13, C.P.C. shows that it comes into operation after a preliminary decree for partition has been passed. In the present case, there was no preliminary decree for partition and, therefore, R. 13 of O. XXVI does not come into operation. If the plaintiffs considered the decree dated 13th July, 1978 as a preliminary decree, why did they wait to move the application for final decree proceedings for 13 years? The only answer is that the plaintiffs knew and they always believed that the 1978 decree was a final decree for partition and it was only passage of time and change in value of the properties which was not up to their expectations that drove plaintiffs to move such an application.

23. Without adverting to the above facts of the case noticed by us and on which we have based our decision, the High Court proceeded on the presumption that the decree dated 13th July, 1978 was only a preliminary decree. No effort was made to find out whether it was a preliminary decree or a final decree. No reference was made to the compromise application or the decree. The presumption of the High Court that it was a preliminary decree is the error in the approach of the High Court in deciding the issue. For all these reasons, the impugned judgment of the High Court is set aside. The application of the plaintiffs dated 28th September, 1991 under Order XXVI, Rr. 13 and 14 read with S. 151, C.P.C. is dismissed. The appeal is accordingly allowed leaving the parties to bear their own costs.

Appeal allowed.