

HIGH COURT OF ANDHRA PRADESH
TUESDAY ,THE FOURTH DAY OF JULY
TWO THOUSAND AND TWENTY THREE

PRESENT

THE HONOURABLE MS JUSTICE B S BHANUMATHI

CIVIL REVISION PETITION NO: 329 OF 2022

Between:

1. Chinni Lakshmi Rajyam W/o Ramanaiah, aged about 62 years, R/o 3-4-14, Lakshmipuram, Stonehousepet, Nellore, SPSR Nellore District.

...PETITIONER(S)

AND:

1. Anumalasetty Sreemannarayana (died) Anumalasetty Sreemannarayana (died)
2. Anumalasetty Anand S/o Late Dharmiah, aged about 52 years, Occ. Business D.No.3-12-45A, Kotha Bazar, Trunk Road, Kavali town, SPSR Nellore District.

...RESPONDENTS

Counsel for the Petitioner(s): P GANGA RAMI REDDY

Counsel for the Respondents:

The Court made the following: ORDER

*** THE HON'BLE Ms. JUSTICE B.S.BHANUMATHI**
+ CIVIL REVISION PETITION No.329 OF 2022

%04.07.2023

#Chinni Lakshmi Rajyam w/o.
Ramanaiah, Age about 62 years, R/o.
3-4-14, Lakshmipuram,
Stonehousepet, Nellore, SPSR Nellore
District.

.....Petitioner/plaintiff

And:

\$1. Anumalasetty Sreemannarayana (died)

2. Anumalasetty Anand s/o. late Dharmaiah, aged about 52 years,
occu: Business, D.No.3-12-45A, Kotha Bazar, Trunk Road, Kavali
Town, SPSR Nellore District.

....Respondents/ defendants

!Counsel for the petitioner

: Sri P.Gangarami Reddy

^Counsel for the respondents

: Sri K.Prudhvi Raj

<Gist:

>Head Note:

? Cases referred: (2011) 6 SCC 462

HIGH COURT OF ANDHRA PRADESH
CIVIL REVISION PETITION No.329 OF 2022

Chinni Lakshmi Rajyam w/o. Ramanaiah,
Age about 62 years, R/o. 3-4-14,
Lakshmipuram, Stonehousepet,
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D.No.3-12-45A, Kotha Bazar, Trunk Road,
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....Respondents/ defendants

DATE OF JUDGMENT PRONOUNCED: 04.07.2023.

SUBMITTED FOR APPROVAL:

THE HON'BLE MS. JUSTICE B.S. BHANUMATHI

1. Whether Reporters of Local newspapers may
be allowed to see the Judgments? Yes/No
2. Whether the copies of judgment may be marked
to Law Reporters/Journals? Yes/No
3. Whether Your Lordships wish to see the fair
Copy of the Judgment? Yes/No

B.S. BHANUMATHI, J

THE HON'BLE Ms. JUSTICE B.S.BHANUMATHI
CIVIL REVISION PETITION No.329 OF 2022

ORDER:

This civil revision petition is filed under Article 227 of the Constitution of India, against the order dated 08.11.2021 rejecting the unnumbered petition in C.F. No.1972 of 2021 in O.S. No.124 of 2018 on the file of the Court of the Principal District Judge, Nellore, SPSR Nellore District, filed under Section 151 of the Code of Civil Procedure, 1908 ('CPC') to pass the revised or additional preliminary decree by way of amendment of preliminary decree dated 17.03.2020 in the suit by allotting half share to the petitioner/ plaintiff and half share to the 2nd respondent/ 2nd defendant out of the plaint-A schedule property and to put the petitioner/ plaintiff in possession of such half share allotted to her and to put the 2nd respondent/ 2nd defendant in possession of his half share allotted to him out of the plaint-A schedule property.

02. The parties will hereinafter be referred to as they were arrayed in the petition.

02. The facts leading to file this revision petition are that, in a suit filed by the petitioner/ plaintiff for partition, a preliminary decree was passed on 17.03.2020 directing the division of plaint schedule property into three equal shares by metes and bounds by allotting one such share each to the defendants 1 and 2 and further directing the defendants to pay the plaintiff a sum of Rs.25,312/- as suit costs. After passing the preliminary decree and before passing the final decree, the 1st respondent/ 1st defendant died on 11.06.2020.

03. The petitioner/ plaintiff contends that the 1st respondent/ 1st defendant died leaving the petitioner/ plaintiff and the 2nd respondent/ 2nd defendant as his legal heirs and except them there is no other legal heir, as the 1st respondent/ 1st defendant died issue less and his wife predeceased him. Initially, the petition filed by the petitioner/ plaintiff seeking an additional preliminary decree or an amendment to the preliminary decree was returned on 31.03.2021 with the objection "lack of / proof of L.Rs. of the 1st respondent to be filed". After the petitioner resubmitted the petition answering the

objection that the 1st respondent/ 1st defendant died intestate on 11.06.2020 leaving the petitioner/ plaintiff and the 2nd respondent/ 2nd defendant as his sole legal heirs, as his wife Anumalasetty Lakshmi pre-deceased him issueless on 17.09.2018. However, on 08.11.2021 the trial court rejected the petition with the following observations:

“Affidavit averments itself reveals that there cannot be any dispute on the question of passing preliminary decree dated 17.03.2020 and 1st defendant died on 11.06.2020. Petitioner herein intends to seek relief of revised or additional preliminary decree by way of amendment to the preliminary decree even without showing the provision/ rule how the petition is maintainable to revise or an additional preliminary decree by way of amendment to an undisputed preliminary decree dated 17.03.2020 based on subsequent event. Hence the petition is not maintainable to number. Hence rejected”

04. Having aggrieved by the same, the revision petition is preferred contending that the trial court ought to have seen that after passing preliminary decree, the 1st respondent/ 1st defendant died and final decree proceedings are pending and

that except the petitioner/ plaintiff and the 2nd respondent/ 2nd defendant, there are no heirs left by him and further contended that the trial court ought to have registered the application after considering the objections, if any, and that the application ought not to have rejected at the threshold.

05. During hearing, the learned counsel for the petitioner/ plaintiff submitted that the court is not precluded from passing any number of preliminary decrees before passing the final decree and that in view of the circumstances stated by the petitioner/ plaintiff, the trial court committed an error in rejecting the petition on the ground that no provision has been cited. Learned counsel placed reliance on the judgment of the Apex Court in a case between **Prema v. Nanje Gowda and others**¹ stating that it was held therein that in a suit for partition of joint family property even if a preliminary decree is confirmed in an appeal, the same does not become final till passing of the final decree and that during interregnum period of passing the preliminary decree and final decree, if rights and

¹ (2011) 6 SCC 462

shares of parties are altered by virtue of change in law or the like, another preliminary decree can be passed modifying the earlier preliminary decree.

06. Learned counsel representing the 2nd respondent/ 2nd defendant submitted to pass appropriate orders giving the 2nd respondent liberty to argue the legal aspect before the trial court in the enquiry in the said petition.

07. In the case of **Prema** (supra) it was held at paragraphs 16, 18 & 29 as follows:

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

.....

18. The issue which remains to be considered is whether the learned Single Judge of the High Court was justified in refusing to follow the law laid down in S.Sai Reddy v. S.Narayana Reddy² on the ground that the same was based on the judgment of the three-Judge Bench in Phoolchand v. Gopal Lal³ and a contrary view had been expressed by the larger Bench in Venkata Reddy v. Pethi Reddy⁴.

....

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

² (1991) 3 SCC 647

³ AIR 1967 SC 1470

⁴ AIR 1963 SC 992

v. Gopal Lal⁵ and S.Sai Reddy v. S.Narayana Reddy⁶ 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 6-A of Karnataka Act 23 of 1994.”

07. In view of the above legal proposition, the trial court committed an error in rejecting the petition at the threshold, that too, observing no provision of law has been cited. Even if a wrong provision of law is cited, it is settled law that if the relief sought is permissible based on the facts and circumstances established in the case, the court is not debarred from passing any appropriate order. As such the order impugned in the revision petition is liable to be set aside.

08. In the result, the civil revision petition is allowed and the order dated 08.11.2021 in unnumbered I.A. in C.F. No.1972 of 2021 in O.S. No.124 of 2018 on the file of the Court of the Principal District Judge, Nellore is set aside. The trial court is directed to register the petition, if it is otherwise in order and

⁵ AIR 1967 SC 1470

⁶ (1991) 3 SCC 647

dispose of the petition on merits after affording opportunity to the 2nd respondent/ 2nd defendant to contest the petition. There shall be no order as to costs.

Pending miscellaneous applications, if any, shall stand closed.

B.S.BHANUMATHI, J

Dt.04.07.2023
BV

Note:-

L.R. Copy to be marked