

**HIGH COURT OF ANDHRA PRADESH**  
FRIDAY ,THE SEVENTEENTH DAY OF MARCH  
TWO THOUSAND AND TWENTY THREE

**PRESENT**

**THE HONOURABLE SRI JUSTICE B V L N CHAKRAVARTHI**  
**CIVIL REVISION PETITION NO: 422 OF 2015**

**Between:**

1. MALLIDI SRI SIVA PRABHAKARA REDDY, E.G.DIST & 2 OTHERS  
S/o.DasaraDharamireddy, Hindu, aged 22 years,  
R/o.Ravulapalem, Ravulapalem Mandal,  
East Godavari District.
2. Mallidi Sri Gowri, D/o. Dasara Dharamireddy, Hindu, aged 20 years,  
R/o.Ravulapalem, Ravulapalem Mandal,  
East Godavari District.
3. Mallidi Sri Naga Bhupathi Reddy, S/o. DasaraDharamiieddy, Hindu, aged  
19 years, R/o.Ravulapalem, Ravulapalem Mandal,  
East Godavari District.

**...PETITIONER(S)**

**AND:**

1. MALLIDI DASARADHARAMI REDDY, E.G.DIST & 45 OTHERS  
S/o.Bullabbai Alias Bhupathireddy, Hindu, aged 52 years, Cultivation,  
R/o.D.No.2-164, Ravulapalem,  
Ravulapalem Mandal, E.G.Dist.
4. Mallidi Lakshmi Narayana Reddi, S/o.Bullabbai Alias Bhupathireddy,  
Hindu, aged 55 years, Cultivation, R/o.D.No.2-164, Ravulapalem,  
Ravulapalem Mandal, E.G.Dist.
5. Mallidi Kaniki Reddi, S/o.Bullabbai Alias Bhupathireddy, Hindu, aged 58  
years, Cultivation, R/o.D.No.2-164, Ravulapalem,  
Ravulapalem Mandal, E.G.Dist.
6. Padala Satyavani, W/o.Ramireddi, Hindu, Aged 37 years., Housewife,  
R/o.D.No. 2-85, Ravulapalem, Ravulapalem Mandal,  
East Godavari District.
7. Padala Rami Reddy, S/o.Satyanarayana Reddi, Hindu, aged 43 years,  
R/o.D.No. 2-86, Ravulapalem, Ravulapalem Mandal,  
East Godavari District.
8. Guluguri Venkata Reddi, S/o.Venkata Reddi, Hindu, aged 49 years,  
R/o.D.No.6-149/7/1, Ravulapalem,  
Ravulapalem Mandal,  
East Godavari District.
9. Tetali China Reddi, S/o.Satyanarayana Reddi, Hindu, aged 51 years,  
Cultivation, R/o.D.No. 4-43, Ravulapalem,  
Ravulapalem Mandal, East Godavari District.
10. Vegisena Pushpavathi W/o.Ramaraju, Hindu, aged 43 years, Housewife,  
R/o.D.No. 4-43, Ravulapalem, Ravulapalem Mandal,  
East Godavari District.
11. Goluguri Adilakshmi, W/o.Peda Veerreddi, Hindu, aged 49 years,  
Cultivation, R/o.D.No. 2-86, Ravulapalem, Ravulapalem Mandal,  
East Godavari District
12. Padala Chinnareddi (DIED) -
13. Sathi Markandeyareddi, S/o.Veerreddi, Hindu, aged 45 years, Cultivation,  
Ravulapalem, Ravulapalem Mandal,  
East Godavari District.

14. Goluguri Venkata Satyanarayanareddi, S/o.Venkatareddi, aged 42 years, 2023:APHC:11486  
Cultivation,  
R/o. Ravulapalem, Ravulapalem Mandal,  
East Godavari District.
15. Goluguri Vijayalakshmi, W/o.Venkata SatyaNarayanareddi Hindu, aged 37  
years, Ravulapalem, Ravulapalem Mandal,  
East Godavari District.
16. Dr.S.Gopal, Skin Sex Specialist M.K.Reddi Complex, Ravulapalem,  
Ravulapalem Mandal, East Godavari District.
17. K.Vishnu, S/o. Not known, aged 44 years, Ravulapalem, Ravulapalem  
Mandal, East Godavari District.
18. Karri Vijayabhaskareddi, S/o.Kallikharjuna Rao, Hindu, aged 46 years,  
Ravulapalem, Ravulapalem Mandal,  
East Godavari District.
19. Kovvuri Sanjeevareddi, S/o.Satyanarayanareddi, Hindu, aged 46 years,  
R/o.M.K.Reddi Complex, Ravulapalem,  
Ravulapalem Mandal,  
East Godavari District.
20. Karri Vijaya Bhaskarareddi, S/o.Satyanarayana Reddi, Prop of Tea Shop,  
M.K.Reddi Complex, Ravulapalem, Ravulapalem Mandal, E.G.Dist.
21. Sri Ramireddi. S/o.Not known, Prop: Pan Shop No.5, M.K.Reddi Complex,  
Ravulapalem, Ravulapalem Mandal,  
East Godavari Dist.
22. Sri Brahman, S/o.Not known, aged 47 years, Hindu, Tailoring Machine  
Repairing Works, Shop No.27, M.K.,.Reddi Complex, Ravulapalem,  
Ravulapalem Mandal, East Godavari Dist.
23. Kalyani Sigars, rep. By its Prop. L.M.V,Reddi, S/o.Ramakrishnareddi, Shop  
No.8, M.K.Reddi Complex, Ravulapalem, Ravulapalem Mandal, East  
Godavari District.
24. Foundry Shop, rep. By its Prop. Sappa Rama Mohanarao, Shop No.9,  
M.K.Reddi Complex, Ravulapalem,  
Ravulapalem Mandal, E.G. Dist.
25. G.Munireddi, S/o.Veerreddi, aged 57 years, Shop No.10, M.K.Reddi  
Complex, Ravulapalem, Ravulapalem Mandal,  
East Godavari District.
26. Ch.Somasundara Reddi, S/o Jogireddi, Aged 70 years, Congress  
Karyalam,  
Shop No.11, MK Reddi Complex,  
Ravulapalem, Ravulapalem Mandal, E.G. Dist.
27. A.Srinivasareddy, S/o Seethareddi, Hindu, Aged about 44 years, Chit Fund  
Business, Shop No.12, MK Reddi Complex,  
Ravulapalem, Ravulapalem Mandal, E.G. Dist.
28. Karri Satyanarayanareddi, S/o Ammireddi, Hindu, aged 54 years, Ome  
Namassivaya Lorry Transport Business, Shop No.13, MK Reddi Complex,  
Ravulapalem, Ravulapalem Mandal, E.G. Dist
29. Mallidi Satyanarayana Reddy, S/o Veerreddi, Aged 46 years, Prasanthi  
Coffee Hotel Business, MK Reddi Complex, Ravulapalem,  
Ravulapalem Mandal, E.G. Dist.
30. Tamalampudi Ganesh Reddy, S/o not known, Aged about 47 years, Auto  
Mobile business, Shop No.15, MK Reddi Complex,  
Ravulapalem, Ravulapalem Mandal, E.G. Dist.
31. Ramana, S/o not known, aged 69 years,  
Sridevi Oil Business, Shop No.17, MK Reddi Complex, Ravulapalem,  
Ravulapalem Mandal, E.G. Dist.

32. Tetali Gopalareddi, S/o not known, aged 69 years, Sridevi Oil Business, 2023:APHC:11486 Shop No.17, MK Reddi Complex, Ravulapalem, Ravulapalem Mandal, E.G. Dist.
33. Quality Ice Creams, rep. By its Prop. Shop No.18, MK Reddi Complex, Ravulapalem, Ravulapalem Mandal, E.G. Dist.
34. State Bank of Hyderabad, rep;. By its Branch Manager, Shop No.19, Ravulapalem, Ravulapalem Mandal, E.G. Dist.
35. Satyanarayana, S/o not known, Nagasai Lodge, ShopNo.20, Ravulapalem, Ravulapalem Mandal, E.G. Dist.
36. Sri Sitharama Lorry Transport, rep. By its Prop. Shop No.1 of Mallidi Lakshminarayana Reddy, Ravulapalem, Ravulapalem Mandal, E.G. Dist.
37. Sri Vijayalakshmi Electrical Rewinding Works, rep. By its Prop. Shop No.2 of Mallidi Lakshminarayana Reddy, Ravulapalem, Ravulapalem Mandal, E.G. Dist.
38. Sri Vijayalakshmi Battery works, rep. By its Prop. Shop No.3 of Mallidi Lakshminarayana Reddy, Ravulapalem, Ravulapalem Mandal, E.G. Dist.
39. Sri Rajeswari Mill Storres rep. By its Prop. Shop No.4 of Mallidi Lakshminarayana Reddy, Ravulapalem, Ravulapalem Mandal, E.G. Dist
40. Prabhu Mechanic works, rep. By its Prop. Shop No.5 of Mallidi Lakshminarayana Reddy, Ravulapalem, Ravulapalem Mandal, E.G. Dist.
41. Ome Namassivaya Lorry Supply office, rep. By its Prop. Shop No.6 of Mallidi Lakshminarayana Reddy, Ravulapalem, Ravulapalem Mandal, E.G.Dist.
42. Bajaj Auto Spares, rep. By its Prop. Shop No.7 of Mallidi Lakshminarayana Reddy, Ravulapalem, Ravulapalem Mandal, E.G.Dist.
43. Sri Vijaya Tailors, rep. By its Prop. Shop No.8 of Mallidi Lakshminarayana Reddy, Ravulapalem, Ravulapalem Mandal, E.G.Dist.
44. Jattu Narayanamma, W/o late Chinnareddy, Aged about 54 years, 6th ward, Ravulapalem, Ravulapalem Mandal, E.G.District.
45. Padala Mangayamma, W/o late Chinnareddy, Aged 55 years, R/o D.No.8-11-08, Behind Victory Bazar, Ravulapalem, Ravulapalem Mandal, E.G.District.
46. Velagala Vijayalakshmi, W/o Suryabhaskara Reddy, aged 38 years, R/o D.No. 8-11-08, Behind Victory Bazar, Ravulapalem, Ravulapalem Mandal, E.G.District.
47. Karri Sridevi, W/o Srinivasa Reddy, Aged 35 years, Near Ambara Cheraka, Ravulapalem, Ravulapalem Mandal, E.G.District.
48. Padala Venkata Chandrareddy, S/o late Chinnareddy, aged 32 years, D.No.8-11-08, Behind Victory Bazar, Ravulapalem, Ravulapalem Mandal, E.G.District.

...RESPONDENTS

**Counsel for the Petitioner(s): E V V S RAVI KUMAR**

**Counsel for the Respondents: T V JAGGI REDDY**

**The Court made the following: ORDER**

**HIGH COURT OF ANDHRA PRADESH AT AMARAVATI**

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**CIVIL REVISION PETITION NO.422 OF 2015****Between:**

1. Mallidi Sri Siva Prabhakara Reddy, S/o.Dasaradharamireddy, Hindu, 22 years, R/o.Ravulapalem, Ravulapalem Mandal, East Godavari District.
2. Mallidi Sri Gowri, D/o. Dasaradharamireddy, Hindu, 20 years, R/o.Ravulapalem, Ravulapalem Mandal, East Godavari District.
3. Mallidi Sri Naga Bhupathi Reddy, S/o.Dasaradharamireddy, Hindu, 19 years, R/o.Ravulapalem, Ravulapalem Mandal, East Godavari District.

... Petitioners/Petitioners/Plaintiffs

*Versus*

1. Mallidi Dasaradharami Reddy, S/o. Bullabbai Alias Bhupathireddy, Hindu, 52 years, Cultivation, R/o.D.No.2-164, Ravulapalem, Ravulapalem Mandal, East Godavari District.
2. Mallidi Lakshmi Narayana Reddi, S/o. Bullabbai Alias Bhupathireddy, Hindu, 55 years, Cultivation, R/o. D.No.2-164, Ravulapalem, Ravulapalem Mandal, East Godavari District.
3. Mallidi Kaniki Reddi, S/o. Bullabbai Alias Bhupathireddy, Hindu, 58 years, Cultivation, R/o.D.No.2-164, Ravulapalem, Ravulapalem Mandal, East Godavari District.
4. Padala Satyavani, W/o. Ramireddi, Hindu, 37 years, Housewife, R/o. D.No.2-85, Ravulapalem, Ravulapalem Mandal, East Godavari District.
5. Padala Rami Reddy, S/o. Satyanarayana Reddi, Hindu, 43 years, R/o. D.No.2-86, Ravulapalem, Ravulapalem Mandal, East Godavari District.
6. Guluguri Venkata Reddi, S/o. Venkata Reddi, Hindu, 49 years, R/o. D.No.6-149/7/1, Ravulapalem, Ravulapalem Mandal, East Godavari District.
7. Tetali China Reddi, S/o. Satyanarayana Reddi, Hindu, 51 years, Cultivation, R/o. D.No.4-43, Ravulapalem, Ravulapalem Mandal, East Godavari District.

8. Vegisena Pushpavathi, W/o. Ramaraju, Hindu, 43 years, Housewife, R/o. D.no.4-43, Ravulapalem, Ravulapalem Mandal, East Godavari District.
9. Goluguri Adilakshmi, W/o. Peda Veerreddi, Hindu, 49 years, Cultivation, R/o. D.No.2-86, Ravulapalem, Ravulapalem Mandal, East Godavari District.
10. Padala Chinnareddi (Died)  
(Per Legal Representatives 43 to 46 added as per Orders in I.A.No.111 of 2009, dated 07.02.2011)
11. Sathi Markandeyareddi, S/o. Veerreddi, Hindu, 45 years, Cultivation, Ravulapalem, Ravulapalem Mandal, East Godavari District.
12. Goluguri Venkata Satyanarayanareddi, S/o.Venkatareddi, 42 years, Cultivation, Ravulapalem, Ravulapalem Mandal, East Godavari District.
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14. Dr. S.Gopal, Skin Sex Specialist M.K.Reddi Complex, Ravulapalem, Ravulapalem Mandal, East Godavari District.
15. K.Vishnu, S/o. Not Known, 44 years, Ravulapalem, Ravulapalem Mandal, East Godavari District.
16. Karri Vijayabhaskareddi, S/o. Kallikharjuna Raom, Hindu, 46 years, Ravulapalem, Ravulapalem Mandal, East Godavari District.
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18. Karri Vijaya Bhaskarareddi, S/o. Satyanarayana Reddi, Proprietor of Tea Shop, M.K.Reddi Complex, Ravulapalem, Ravulapalem Mandal, East Godavari District.
19. Sri Ramireddi, S/o. Not Known, Proprietor: Pan Shop No.5, M.K.Reddi Complex, Ravulapalem, Ravulapalem Mandal, East Godavari District.
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21. Kalyani Sigars, represented by its Proprietor of L.M.V.Reddi, S/o.Ramakrishnareddi, Shop No.8, M.K.Reddi Complex, Ravulapalem, Ravulapalem Mandal, East Godavari District.
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24. Ch.Somasundara Reddi, S/o. Jogireddi, 70 years, Congress Karyalayam, Shop No.11, M.K.Reddi Complex, Ravulapalem, Ravulapalem Mandal, East Godavari District.
25. A.Srinivasareddy, S/o.Seethareddi, Hindu, 44 years, Chit Fund Business, Shop No.12, M.K.Reddi Complex, Ravulapalem, Ravulapalem Mandal, East Godavari District.
26. Karri Satyanarayanareddi, S/o. Ammireddi, Hindu, 54 years, Ome Namassivaya Lorry Transport Business, Shop No.13, M.K.Reddi Complex, Ravulapalem, Ravulapalem Mandal, East Godavari District.
27. Mallidi Satyanarayana Reddi, S/o. Veerreddi, 46 years, Prasanthi Coffee Hotel Business, M.K.Reddi Complex, Ravulapalem, Ravulapalem Mandal, East Godavari District.
28. Tamalampudi Ganesh Reddy, S/o. Not Known, 47 years, Auto Mobile Business, Shop no.15, M.K.Reddi Complex, Ravulapalem, Ravulapalem Mandal, East Godavari District.
29. Ramana, S/o. Not Known, 69 years, Sridevi Oil Business, Shop No.17, M.K.Reddi Complex, Ravulapalem, Ravulapalem Mandal, East Godavari District.
30. Tetali Gopalareddi, S/o. Not Known, 69 years, Sridevi Oil Business, Shop No.17, M.K.Reddi Complex, Ravulapalem, Ravulapalem Mandal, East Godavari District.
31. Quality Ice Creams, represented by its Proprietor, Shop No.18, M.K.Reddi Complex, Ravulapalem, Ravulapalem Mandal, East Godavari District.

32. State Bank of Hyderabad, represented by its Branch Manager, Shop No.19, Ravulapalem, Ravulapalem Mandal, East Godavari District.
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42. Jattu Narayanamma, W/o. Suryanarayana, 54 years, 6<sup>th</sup> ward, Ravulapalem, Ravulapalem Mandal, East Godavari District.
43. Padala Mangayamma, W/o. Late Chinnareddy, 55 years, R/o. D.No.8-11-08, Behind Victory Bazar, Ravulapalem, Ravulapalem Mandal, East Godavari District.

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45. Karri Sridevi, W/o. Srinivasa Reddi, 35 years, near Ambara Cheraka, Ravulapalem, Ravulapalem Mandal, East Godavari District.
46. Padala Venkata Chandrareddi, S/o. Chinnareddi, 32 years, D.No.8-11-08, Behind Victory Bazar, Ravulapalem, Ravulapalem Mandal, East Godavari District.

... Respondents/Respondents/Defendants  
\* \* \* \* \*

DATE OF ORDER PRONOUNCED : 17.03.2023.

SUBMITTED FOR APPROVAL:

**HON'BLE SRI JUSTICE B.V.L.N.CHAKRAVARTHI**

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|---|--------|
| 1. Whether Reporters of Local Newspapers may be allowed to see the Order? | Yes/No |
| 2. Whether the copy of Order may be marked to Law Reporters/Journals?     | Yes/No |
| 3. Whether His Lordship wish to see the fair copy of the Order?           | Yes/No |

**B.V.L.N.CHAKRAVARTHI, J**



**\* HON'BLE SRI JUSTICE B.V.L.N.CHAKRAVARTHI**

**+ CIVIL REVISION PETITION NO.422 of 2015**

**% 17.03.2023**

**# Between:**

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  26. Karri Satyanarayanareddi, S/o. Ammireddi, Hindu, 54 years, Ome Namassivaya Lorry Transport Business, Shop No.13, M.K.Reddi Complex, Ravulapalem, Ravulapalem Mandal, East Godavari District.
  27. Mallidi Satyanarayana Reddi, S/o. Veerreddi, 46 years, Prasanthi Coffee Hotel Business, M.K.Reddi Complex, Ravulapalem, Ravulapalem Mandal, East Godavari District.
  28. Tamalampudi Ganesh Reddy, S/o. Not Known, 47 years, Auto Mobile Business, Shop no.15, M.K.Reddi Complex, Ravulapalem, Ravulapalem Mandal, East Godavari District.
  29. Ramana, S/o. Not Known, 69 years, Sridevi Oil Business, Shop No.17, M.K.Reddi Complex, Ravulapalem, Ravulapalem Mandal, East Godavari District.
  30. Tetali Gopalareddi, S/o. Not Known, 69 years, Sridevi Oil Business, Shop No.17, M.K.Reddi Complex, Ravulapalem, Ravulapalem Mandal, East Godavari District.

31. Quality Ice Creams, represented by its Proprietor, Shop No.18, M.K.Reddi Complex, Ravulapalem, Ravulapalem Mandal, East Godavari District.
32. State Bank of Hyderabad, represented by its Branch Manager, Shop No.19, Ravulapalem, Ravulapalem Mandal, East Godavari District.
33. Satyanarayana, S/o. Not Known, Nagasai Lodge, Shop No.20, Ravulapalem, Ravulapalem Mandal, East Godavari District.
34. Sri Sitharama Lorry Transport, represented by its Proprietor, Shop No.1 of Mallidi Lakshminarayanareddi, Ravulapalem, Ravulapalem Mandal, East Godavari District.
35. Sri Vijayalakshmi Electrical Rewinding Works, represented by its Proprietor, Shop No.2 of Mallidi Lakshminarayana Reddy, Ravulapalem, Ravulapalem Mandal, East Godavari District.
36. Sri Vijayalakshmi Battery Works, represented by its Proprietor, Shop No.3 of Mallidi Lakshminarayana Reddy, Ravulapalem, Ravulapalem Mandal, East Godavari District.
37. Sri Rajeswari Mill Stores, represented by its Proprietor, Shop No.4 of Mallidi Lakshminarayana Reddy, Ravulapalem, Ravulapalem Mandal, East Godavari District.
38. Prabhu Mechanic Works, represented by its Proprietor, Shop No.5 of Mallidi Lakshminarayana Reddy, Ravulapalem, Ravulapalem Mandal, East Godavari District.
39. Ome Namassivaya Lorry Supply Office, represented by its Proprietor, Shop No.6 of Mallidi Lakshminarayana Reddy, Ravulapalem, Ravulapalem Mandal, East Godavari District.
40. Bajaj Auto Spares, represented by its Proprietor, Shop No.7 of Mallidi Lakshminarayana Reddy, Ravulapalem, Ravulapalem Mandal, East Godavari District.
41. Sri Vijaya Tailors, represented by its Proprietor, Shop No.8 of Mallidi Lakshminarayana Reddy, Ravulapalem, Ravulapalem Mandal, East Godavari District.
42. Jattu Narayanamma, W/o. Suryanarayana, 54 years, 6<sup>th</sup> ward, Ravulapalem, Ravulapalem Mandal, East Godavari District.

43. Padala Mangayamma, W/o. Late Chinnareddy, 55 years, R/o. D.No.8-11-08, Behind Victory Bazar, Ravulapalem, Ravulapalem Mandal, East Godavari District.
44. Velagala Vijayalakshmi, W/o. Suryabhaskara Reddy, 38 years, R/o. D.No.8-11-08, Behind Victory Bazar, Ravulapalem, Ravulapalem Mandal, East Godavari District.
45. Karri Sridevi, W/o. Srinivasa Reddi, 35 years, near Ambara Cheraka, Ravulapalem, Ravulapalem Mandal, East Godavari District.
46. Padala Venkata Chandrareddy, S/o. Chinnareddy, 32 years, D.No.8-11-08, Behind Victory Bazar, Ravulapalem, Ravulapalem Mandal, East Godavari District.

... Respondents/Respondents/Defendants

**! Counsel for the Revision-petitioners/**

**petitioners/plaintiffs** : Sri E.V.V.S.Ravi Kumar

**^ Counsel for the**

**Respondent Nos.6 to 9, 12 and 13** : Sri T.V.Jaggi Reddy

**^ Counsel for the**

**Respondent No.10** : Respondent No.10 'Died'

**^ Counsel for the**

**Respondent No.45** : Sri K.Narsi Reddy

**^ Counsel for the**

**Respondent Nos.11, 14 to 44 & 46** : Notice sent, not yet returned  
(Proof of service not filed)

**< Gist:**

**> Head Note:**

**? Cases referred:**

1. **2009 (9) SCC 689.**
2. **1967 AIR (SC) 1470.**

This Court made the following:

**HONOURABLE SRI JUSTICE B.V.L.N.CHAKRAVARTI****CIVIL REVISION PETITION NO.422 OF 2015****O R D E R:**

This Civil Revision Petition is directed under Article 227 of the Constitution of India against the Order, dated 04.02.2008 in I.A.No.838 of 2007 in O.S.No.68 of 1999 on the file of the II Additional District Judge, Amalapuram, East Godavari District, where under the interlocutory application filed under Order XX Rule 18 of the Code of Civil Procedure, 1908 (for brevity 'CPC') by the revision-petitioners/plaintiffs, for passing of final decree in terms of preliminary decree, was 'Allowed' holding at para Nos.13 and 14 which are extracted hereunder:

"13. *In view of the above discussion, I hold that the total extent remaining in item Nos.1 and 2 of plaint A schedule must be taken to have been allotted to the plaintiffs towards a part of their 1/4<sup>th</sup> share and on the request of the plaintiffs, the commissioner may divide that available extent in items 1 and 2 of plaint A schedule into 3 parts for allotment to each of the plaintiffs 1 to 3 only. The Commissioner will divide the items of plaint B schedule into 4 equal shares by metes and bounds and may show the value of each of the items according to nature and potentiality of the property. The allotment may be taken up by the Court taking into consideration of the values of the items. So as order can be passed as stated above.*"

“14. In the result, this petition is ordered directing physical division of the extent available out of items 1 and 2 of plaint A schedule i.e., 360 square yards in item No.1 of plaint A schedule and 1113.2 square yards of site in item No.2 of plaint A schedule into 3 equal parts and for furnishing market value each of such part either plot wise or rate wise. Each of the items 1 to 8 in plaint B schedule are directed to be divided into 4 equal parts by metes and bounds with their value either item wise or rate wise. The Commissioner to be appointed shall effect division by metes and bounds as stated above and the Commissioner will file a detailed report with detailed measurements including G-line and offsets wherever required and would file plan with surrounding locations to exactly localize the item. The Commissioner will give the market value of each of the item of the plaint schedule or the market rate of each of the item of plaint schedule. The Commissioner shall not allot the plots to the parties as it would be taken up by the Court. The working out equities will be decided at the final hearing of this petition.”

2. Aggrieved by the impugned Order passed by the Trial Judge, the revision-petitioners/plaintiffs preferred the revision contending that instead of directing the Commissioner for division of property in terms of preliminary decree, the Trial Court made modifications to the terms of the preliminary decree and directed to divide the property as per the extent available on record.

3. In the light of above contentions, the point for consideration is as under:

**“Whether the Trial Court committed any irregularity in the Order, dated 04.02.2008 passed in I.A.No.838 of 2007 in O.S.No.68 of 1999?”**

4. **P O I N T**: -

There is no dispute with regard to filing of suit by the revision-petitioners against the respondents for partition of (a) item No.1 of plaint ‘A’ schedule property into three (03) equal shares; (b) item No.2 of plaint A schedule and B schedule property into four (04) equal shares by metes and bounds and to allot three shares to the revision-petitioners. Besides that the revision-petitioners also sought the relief to declare that the alienations made by D.1 and D.2 in respect of portion of plaint A schedule property as illegal, unenforceable and not binding on the plaintiffs; to direct D.2 and D.3 to render true and correct accounts of the income derived on M.K.Reddy Complex constructed by D.3 and another complex constructed by D.2; to direct D.1 to render true and correct accounts in respect of the income derived by him out of item No.2 of plaint A and B schedule properties; to direct D.14 to D.42 the tenants to deposit the rents into the Court till the properties are partitioned by metes and bounds and deliver possession to the plaintiffs.



5. The Trial Court after full-fledged trial, passed preliminary decree, directed division of Ac.0.29 cents out of Item No. 1 of Plaintiff A Schedule and Item No. 2 of Plaintiff A Schedule and entire extent of Plaintiff B Schedule into 4 equal shares and to allot one share to the plaintiffs.

6. Consequent to passing of preliminary decree, the plaintiffs filed the impugned petition under Order XX Rule 18 of CPC for passing final decree as per terms of the preliminary decree, wherein the Trial Court in its Order, dated 04.02.2008 at para No.9 went beyond the terms of preliminary decree, which is extracted hereunder:

*“that while dividing the property D.6 to D.10 be and hereby are entitled for equity and the property purchased by them shall be allotted to D.1 and through D.1 the property purchased by D.6 to D.10 shall be allotted to them.”*

Further, at para No.10, it was held as under:

*“According to 10<sup>th</sup> defendant he purchased an extent of Ac.0.50 cents in item No.2 of plaintiff ‘A’ schedule. The total extent of item No.2 of plaintiff ‘A’ schedule is Ac.0.73 cents. Then, the extent remaining in item No.2 of plaintiff B schedule is Ac.0.23 cents. Since the share of the 1<sup>st</sup> defendant in item No.2 of plaintiff ‘A’ schedule is only Ac.0.18 ½ cents and since he sold away more than that extent in item No.2 of plaintiff ‘A’ schedule, the question of 1<sup>st</sup> defendant getting further share in that item does not arise. Therefore, I hold that the extent remaining in item Nos.1 and 2 of plaintiff ‘A’ schedule after sale in favour of defendants 4 and 5 and 10<sup>th</sup> defendant has to be totally allotted to the plaintiffs.”*

7. Once the rights/shares had been determined by a preliminary decree, the division of shares must be done under Order XX Rule 18 of CPC in a final decree petition, which is a ministerial or administrative act requiring the physical inspection, measurements, calculations and considering various permutations/combinations/alternatives of division.

8. The Hon'ble Supreme Court in **Shub Karan Bubna @ Shub Karan v. Sita Saran Bubna**<sup>1</sup>, on partition suits, held at para Nos.4 and 5, as under:

*“[4] 'Partition' is a re-distribution or adjustment of pre-existing rights, among co-owners/coparceners, resulting in a division of lands or other properties jointly held by them, into different lots or portions and delivery thereof to the respective allottees. The effect of such division is that the joint ownership is terminated and the respective shares vest in them in severalty. A partition of a property can be only among those having a share or interest in it. A person who does not have a share in such property cannot obviously be a party to a partition. 'Separation of share' is a species of 'partition'. When all co-owners get separated, it is a partition. Separation of share/s refers to a division where only one or only a few among several co-owners/coparceners get separated, and others continue to be joint or continue to hold the remaining property jointly without division by metes and bounds. For example, where four brothers owning a property divide it among themselves by metes and bounds, it is a partition. But if only one brother wants to get his share separated and other three brothers continue to remain joint, there is only a separation of the share of one brother. In a suit for partition or separation of a share, the prayer is not only for declaration of plaintiff's share in the suit properties, but also division of his share by metes and*

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<sup>1</sup> 2009 (9) SCC 689.

*bounds. This involves three issues: (i) whether the person seeking division has a share or interest in the suit property/properties; (ii) whether he is entitled to the relief of division and separate possession; and (iii) how and in what manner, the property/properties should be divided by metes and bounds?*

*[5] In a suit is for partition or separation of a share, the court at the first stage decides whether the plaintiff has a share in the suit property and whether he is entitled to division and separate possession. The decision on these two issues is exercise of a judicial function and results in first stage decision termed as 'decree' under Order 20 Rule 18(1) and termed as 'preliminary decree' under Order 20 Rule 18(2) of the Code. The consequential division by metes and bounds, considered to be a ministerial or administrative act requiring the physical inspection, measurements, calculations and considering various permutations/ combinations/alternatives of division is referred to the Collector under Rule 18(1) and is the subject matter of the final decree under Rule 18(2). The question is whether the provisions of Limitation Act are inapplicable to an application for drawing up a final decree."*

9. The Trial Court surprisingly went beyond the terms of preliminary decree and made certain modifications/alterations in the terms of the preliminary decree referred supra, in the impugned order passed in the final decree petition.

10. If any modifications are required in the terms of the existing preliminary decree, on account of any subsequent changes in circumstances, when deemed fit for reasons such as the death of concerning parties, sale or loss of concerned properties and the like, the parties to the proceedings may approach the concerned Court for a second preliminary decree adjusted to befit the circumstantial changes herein mentioned.

The Hon'ble Supreme Court in **Poolchand v. Gopal Lal**<sup>2</sup> stated at para No.7 as below:

*“[7] We are of opinion that there is nothing in the Code of Civil Procedure which prohibits the passing of more than one preliminary decree if circumstances justify the same and that it may be necessary to do so particularly in partition suits when after the preliminary decree some parties die and shares of other parties are thereby augmented. We have already said that it is not disputed that in partition suits the court can do so even after the preliminary decree is passed. It would in our opinion be convenient to the court and advantageous to the parties, specially in partition suits, to have disputed rights finally settled and specification of shares in the preliminary decree varied before a final decree is prepared. If this is done, there is a clear determination of the rights of parties to the suit on the question in dispute and we see no difficulty in holding that in such cases there is a decree deciding these disputed rights ; if so, there is no reason why a second preliminary decree correcting the shares in a partition suit cannot be passed by the court. 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 Code of Civil Procedure 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 Code of Civil Procedure does not contemplate such a possibility. In any case if two views are possible - and obviously this is so because the High Courts have differed on the question - we would prefer the view*

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<sup>2</sup> 1967 AIR (SC) 1470.

*taken by the High Courts which hold that a second preliminary decree can be passed, particularly in partition suits where parties have died after the preliminary decree and shares specified in the preliminary decree have to be adjusted. We see no reason why in such a case if there is dispute, it should not be decided by the Court which passed the preliminary decree, for it must not be forgotten that the suit is not over to the final decree is passed and the Court has jurisdiction to decide all disputes that may arise after the preliminary decree, particularly in a partition suit due to deaths of some of the parties. Whether there can be more than one final decree does not arise in the present appeal and on that we express no opinion. We therefore hold that in the circumstances of this case it was open to the Court to draw up a fresh preliminary decree as two of the parties had died after the preliminary decree and before the final decree was passed. Further as there was dispute between the surviving parties as to devolution of the shares of the parties who were dead and that dispute was decided by the trial Court in the present case and thereafter the preliminary decree already passed was amended, the decision amounted to a decree and was liable to appeal. We therefore agree with the view taken by the High Court that in such circumstances a second preliminary decree can be passed in partition suits by which the shares allotted in the preliminary decree already passed can be amended and if there is dispute between surviving parties in that behalf and that dispute is decided the decision amounts to a decree. We should however like to make it clear that this can only be done so long as the final decree has not been passed. We therefore reject this contention of the appellant.”*

11. On perusal of impugned order passed by the Trial Court, this Court is of the opinion that the trial court committed a material irregularity and acted in excess of the Jurisdiction vested in it, without any request to pass another preliminary decree. Hence, it is a fit case to remand the matter for fresh adjudication of final decree petition in terms of preliminary

decree. Therefore, the CRP is allowed. Consequently, the impugned order dated 04.02.2008 is set-aside.

12. In the result, the Civil Revision Petition is 'Allowed'. Consequently, the impugned order, dated 04.02.2008 is set-aside, remanding the Final Decree Petition filed under Order XX Rule 18 of CPC, for fresh disposal in accordance with law. There shall be no order as to costs.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

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**B.V.L.N.CHAKRAVARTHI, J**

Date: 17.03.2023.

DNB