



HIGH COURT OF ANDHRA PRADESH
WEDNESDAY ,THE TWENTY SECOND DAY OF JUNE
TWO THOUSAND AND TWENTY TWO

PRESENT

THE HONOURABLE MS JUSTICE B S BHANUMATHI
CIVIL REVISION PETITION NO: 754 OF 2018

Between:

1. Kodumur Saraswathi W/o.K.Nagappa,
r/o.H.No.4, Shroff Bazar, Kurnool
2. Kodumur Varalakshmi W/o.K.Nagappa,
r/o.H.No.4, Shroff Bazar, Kurnool

...PETITIONER(S)

AND:

1. VALE NAGAMMA (DIED) PER LRS Kurnool
3. Mandlem Veeramma Alias Eramma (died) per LRS Kurnool
4. V. Kalavathamma W/o.V.eswarappa
R/o.3/317, Birmal Street, Nandyal, Kurnool district
5. M.Eranna (Died) PER LRS kurnool
6. A. Bhagyamma (Died) Per LRS Kurnool
7. Smt.Bhagyamma W/o.Late M. Veeranna
R/o.71/69, Kallur Village, Kurnool district
8. M.Nagappa S/o.Late M. Veeranna
R/o.71/69, Kallur Village, Kurnool district
9. M.Naveen S/o.Late M. Veeranna
R/o.71/69, Kallur Village, Kurnool district
10. Smt. Indira W/o.Nageswarappa
R/o.14-109-A, Kummari Street, Kodumur Village and Mandal, Kurnool
District
11. K.Satyamma W/o.K.Venkataramanachari
r/o.H.No.76/97, Plot No.20 and 21, Near Radio Station, Elkuru Bunglow,
Kurnool town
12. Y.ramababu S/o.Late Y.Satyanarayana
R/o.H.No.19/24, Elkuru Estate, Nandikotkur road, Kunrool district
13. Y.Rukminamma W/o.Y.Rambabu R/o.H.No.19/24, Elkuru Estate,
Nandikotkur road, Kunrool district
14. Y.S.Prasanth babu S/o.Y.Rambabu R/o.H.No.19/24, Elkuru Estate,
Nandikotkur road, Kunrool district
15. J.Kavitha W/o.Y.R.Prasanth Babu R/o.H.No.19/24, Elkuru Estate,
Nandikotkur road, Kunrool district
16. Sagire Nagendramma W/o.Late S.Nagaraju
R/o.H.No.45-115/B, Narasimha Reddy Nagar, Kurnool

...RESPONDENTS

Counsel for the Petitioner(s): P RAJASEKHAR

Counsel for the Respondents:

The Court made the following: ORDER

**THE HON'BLE Ms. JUSTICE B. S. BHANUMATHI****Civil Revision Petition No.754 of 2018****ORDER:**

The main grievance of the revision petitioners is that the final decree petition pending for a decade has not been taken up for enquiry.

2. Heard *Sri P. Rajasekhar*, learned counsel appearing for the revision petitioners/defendants. Though the respondent was not served with notice, in view of the nature of the relief sought for, the revision petition is taken up for disposal.

3. This revision petition, under Article 227 of the Constitution of India, is filed by the petitioners/defendants aggrieved by the inaction in disposing of the application in I.A.No.959 of 2012 in O.S.No.33 of 1988 on the file of the Court of Principal Senior Civil Judge, Kurnool, filed for passing final decree in spite of the observations of the Supreme Court in **Shub Karan Bubna v. Sita Saran Bubna**¹.

4. The learned counsel for the revision petitioners submitted that there is inordinate delay in disposing petition for final decree before several Courts, though there is no need even to file a separate application to pass final decree since passing of final decree after the preliminary decree is continuation of the same suit. He further submitted that recently, the Supreme Court in **Kattukandi Edathil Krishnan v. Kattukandi Edathil Valsan**², while referring to its earlier decisions in **Shub Karan Bubna v. Sita Saran Bubna** (1

¹ (2009) 9 SCC 689

² Civil Appeal Nos.6406-6407 of 2010, decided on 13.06.2022



supra) and **Bimal Kumar and Another v. Shakuntala Debi and others** [(2012) 3 SCC 548], particularly the decision in **Shub Karan Bubna**, regarding the suggestions for debate and legislative action, has given directions to the subordinate Courts for disposal of the final decree petitions in the manner indicated and further directed such directions to be circulated to all concerned trial Courts by the Registrar Generals of all High Courts. It is pertinent to refer to the observations, directions and suggestions, which are as follows:

“30. It is clear from the above that a preliminary decree declares the rights or shares of the parties to the partition. Once the shares have been declared and a further inquiry still remains to be done for actually partitioning the property and placing the parties in separate possession of the divided property, then such inquiry shall be held and pursuant to the result of further inquiry, a final decree shall be passed. Thus, fundamentally, the distinction between preliminary and final decree is that:- a preliminary decree merely declares the rights and shares of the parties and leaves room for some further inquiry to be held and conducted pursuant to the directions made in preliminary decree and after the inquiry having been conducted and rights of the parties being finally determined, a final decree incorporating such determination needs to be drawn up.

31. Final decree proceedings can be initiated at any point of time. There is no limitation for initiating final decree proceedings. Either of the parties to the suit can move an application for preparation of a final decree and, any of the defendants can also move application for the purpose. By mere passing of a preliminary decree the suit is not disposed of. [See: **Shub Karan Bubna v. Sita Saran Bubna; Bimal Kumar and Another v. Shakuntala Debi and Others**]



32. Since there is no limitation for initiating final decree proceedings, the litigants tend to take their own sweet time for initiating final decree proceedings. In some States, the courts after passing a preliminary decree adjourn the suit sine die with liberty to the parties for applying for final decree proceedings like the present case. In some other States, a fresh final decree proceedings have to be initiated under Order XX Rule 18. However, this practice is to be discouraged as there is no point in declaring the rights of the parties in one proceedings and requiring initiation of separate proceedings for quantification and ascertainment of the relief. This will only delay the realization of the fruits of the decree. This Court, in *Shub Karan Bubna (supra)*, had pointed out the defects in the procedure in this regard and suggested for appropriate amendment to the CPC. The discussion of this Court is in paragraphs 23 to 29 which are as under:

“A suggestion for debate and legislative action

23. The century old civil procedure contemplates judgments, decrees, preliminary decrees and final decrees and execution of decrees. They provide for a “pause” between a decree and execution. A “pause” has also developed by practice between a preliminary decree and a final decree. The “pause” is to enable the defendant to voluntarily comply with the decree or declaration contained in the preliminary decree. The ground reality is that defendants normally do not comply with decrees without the pursuance of an execution. In very few cases the defendants in a partition suit voluntarily divide the property on the passing of a preliminary decree. In very few cases, defendants in money suits pay the decretal amount as per the decrees.



Consequently, it is necessary to go to the second stage, that is, levy of execution, or applications for final decree followed by levy of execution in almost all cases.

24. A litigant coming to court seeking relief is not interested in receiving a paper decree when he succeeds in establishing his case. What he wants is relief. If it is a suit for money, he wants the money. If it is a suit for property, he wants the property. He naturally wonders why when he files a suit for recovery of money, he should first engage a lawyer and obtain a decree and then again engage a lawyer and execute the decree. Similarly, when he files a suit for partition, he wonders why he has to first secure a preliminary decree, then file an application and obtain a final decree and then file an execution to get the actual relief. The commonsensical query is: why not a continuous process? The litigant is perplexed as to why when a money decree is passed, the court does not fix the date for payment and if it is not paid, proceed with the execution; when a preliminary decree is passed in a partition suit, why the court does not forthwith fix a date for appointment of a Commissioner for division and make a final decree and deliver actual possession of his separated share. Why is it necessary for him to remind the court and approach the court at different stages?

25. Because of the artificial division of suits into preliminary decree proceedings, final decree proceedings and execution proceedings, many trial Judges tend to believe that adjudication of the right being the judicial function, they should concentrate on that part. Consequently,



adequate importance is not given to the final decree proceedings and execution proceedings which are considered to be ministerial functions. The focus is on disposing of cases rather than ensuring that the litigant gets the relief. But the focus should not only be on early disposal of cases, but also on early and easy securement of relief for which the party approaches the court. Even among lawyers, importance is given only to securing of a decree, not securing of relief. Many lawyers handle suits only till preliminary decree is made, then hand it over to their juniors to conduct the final decree proceedings and then give it to their clerks for conducting the execution proceedings.

26. Many a time, a party exhausts his finances and energy by the time he secures the preliminary decree and has neither the capacity nor the energy to pursue the matter to get the final relief. As a consequence, we have found cases where a suit is decreed or a preliminary decree is granted within a year or two, the final decree proceeding and execution takes decades for completion. This is an area which contributes to considerable delay and consequential loss of credibility of the civil justice system. Courts and lawyers should give as much importance to final decree proceedings and executions, as they give to the main suits.

27. In the present system, when preliminary decree for partition is passed, there is no guarantee that the plaintiff will see the fruits of the decree. The proverbial observation by the Privy Council is that the difficulties of a litigant begin when he obtains a decree. It is necessary



to remember that success in a suit means nothing to a party unless he gets the relief. Therefore, to be really meaningful and efficient, the scheme of the Code should enable a party not only to get a decree quickly, but also to get the relief quickly. This requires a conceptual change regarding civil litigation, so that the emphasis is not only on disposal of suits, but also on securing relief to the litigant.

28. We hope that the Law Commission and Parliament will bestow their attention on this issue and make appropriate recommendations/ amendments so that the suit will be a continuous process from the stage of its initiation to the stage of securing actual relief.

29. The present system involving a proceeding for declaration of the right, a separate proceeding for quantification or ascertainment of relief, and another separate proceeding for enforcement of the decree to secure the relief, is outmoded and unsuited for present requirements. If there is a practice of assigning separate numbers for final decree proceedings, that should be avoided. Issuing fresh notices to the defendants at each stage should also be avoided. The Code of Civil Procedure should provide for a continuous and seamless process from the stage of filing of suit to the stage of getting relief.”

33. We are of the view that once a preliminary decree is passed by the Trial Court, the court should proceed with the case for drawing up the final decree suo motu. After passing of the preliminary decree, the Trial Court has to list the matter for taking steps under Order XX Rule 18 of the CPC. The courts should not adjourn the matter



sine die, as has been done in the instant case. There is also no need to file a separate final decree proceedings. In the same suit, the court should allow the concerned party to file an appropriate application for drawing up the final decree. Needless to state that the suit comes to an end only when a final decree is drawn. Therefore, we direct the Trial Courts to list the matter for taking steps under Order XX Rule 18 of the CPC soon after passing of the preliminary decree for partition and separate possession of the property, suo motu and without requiring initiation of any separate proceedings.

34. We direct the Registry of this Court to forward a copy of this judgment to the Registrar Generals of all the High Courts who in turn are directed to circulate the directions contained in paragraph '33' of this judgment to the concerned Trial Courts in their respective States."

5. In view of the decision of the Supreme Court (supra), the trial Court is directed to scrupulously follow the above directions and expedite proceedings in the petition for final decree pending before it and dispose of the same, as expeditiously as possible, preferably, within six months from the date of receipt of a copy of this order.

6. Accordingly, the Civil Revision Petition is disposed of.

There shall be no order as to costs.

Pending miscellaneous petitions, if any, in this revision shall stand closed.

B. S. BHANUMATHI, J

22-06-2022
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