IN THE HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD

FRIDAY ,THE FOURTEENTH DAY OF FEBRUARY
TWO THOUSAND AND TWENTY FIVE

PRESENT
THE HON'BLE THE ACTING CHIEF JUSTICE SUJOY PAUL
AND
THE HON'BLE SRI JUSTICE N.V.SHRAVAN KUMAR

O.S.A.NO: 5 OF 2013 in Application No. 495 of 2009 in C.S.No. 7 of 1958

Appeal Under Clause 15 of Letters Patent aggrieved by the order passed in Application No. 495 of 2009 in C.S.No. 7 of 1958 dated 30-12-2011 on the file of the High Court

Between:

Nawab Mohd. Rafiuddin Khan S/o. Late Nb. Mohd. Ahmeduddin Khan, Age 40 yrs., Occ: landlord R/o 17-1-18210/3, Banu Nagar Madanapet, Hyderabad

...APPELLANT/ Respondent

AND

1. D.V.S.R. RANGA VERMA , S/o D.A.N. Raju R/o Flat No. 406, Nagarjuna Homes, Vijaya Durga Block A Hydernagar, Kukatpally, Hyderabad
2. D.S.R.N. Raju, S/o D.A.N. Raju R/o Flat No. 406, Nagarjuna Homes, Vijaya Durga BlockA Hydernagar, Kukatpally, Hyderabad
3. D. Suryanarayana Raju, S/o D.A.N. Raju R/o Flat No. 406, Nagarjuna Homes, Vijaya Durga BlockA Hydernagar, Kukatpally, Hyderabad
4. K. Naga Veera Venkata Konda Raju, S/o Atcheeta Rama Raju R/o Flat No. 406, Nagarjuna Homes, Vijaya Durga BlockA Hydernagar, Kukatpally, Hyderabad
5. Patan Mahaboob, S/o Patan Vazeer R/o Flat No. 406, Nagarjuna Homes, Vijaya Durga Block At Hydernagar, Kukatpally, Hyderabad.

(Other respondents in the above order are not necessary parties to the present appeal) **...RESPONDENTS/ Applicants/ Purchases**

I.A. NO: 2 OF 2013(APPL. NO: 58 OF 2013)

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to stay of all further proceedings in pursuance of the order passed in the application of 495 of 2009 in CS No. 7 of 1958 dated 30.12.2011 in the file of this Hon'ble Court pending disposal of the above OSA or otherwise I will be put to great irreparable loss and inconvenience.

IA NO: 1 OF 2023

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to implead the proposed petitioner as Respondent No.6 in O.S.A No. 5 of 2013.

Counsel for the Appellant: Ms. ANITA SWAIN

Counsel for the Respondent: SRI N. M. KRISHNAIAH

The Court made the following ORDER:

THE HONOURABLE THE ACTING CHIEF JUSTICE SUJOY PAUL
AND
THE HONOURABLE SRI JUSTICE N.V. SHRAVAN KUMAR

O.S.A. No.5 of 2013 in Application No.495 of 2009 in C.S. No.7 of 1958

JUDGMENT: *(Per the Hon'ble Sri Justice N.V. Shravan Kumar)*

MS. Anitha Swain, learned counsel for the appellant.

Mr. N.M. Krishnaiah, learned counsel for the respondents.

This Original Side Appeal has been filed under Clause 15 of Letters Patent aggrieved by the order dated 30.12.2011 passed by the learned Single Judge of this Court in Application No.495 of 2009 in C.S. No.7 of 1958.

2. The appellant herein submits that he is the Respondent/ Defendant No.6(i) and the respondents herein are the Applicants/purchasers in Application No.495 of 2009 in C.S. No.7 of 1958.

3. For the sake of convenience, the parties hereinafter will be referred to as they are arrayed in the present appeal i.e. Appellant/ Respondent and Respondents/Applicants/Purchasers.

4. The Respondents/Applicants/Purchasers have filed Application No.495 of 2009 in C.S. No.7 of 1958 seeking to pass final decree in their favour in respect of the application schedule land admeasuring Acs.5.00 guntas in Sy.No.57 (Part) of Shamshiguda village, Balangar

Mandal, Ranga Reddy district, with the boundaries as stated in the affidavit filed in support of the application.

5. The learned Single Judge vide order dated 30.12.2011 allowed the application and directed the Registry to issue final decree after engrossment on stamp papers. Assailing the same, the appellants filed the present appeal on the grounds that the respondents have obtained the assignment deed from their vendors who are not parties to the proceedings and the impugned order is unsustainable for the reason that a final decree cannot be passed with regard to piece of land in a suit for partition.

6. Heard the learned counsel for the parties and perused the material made available on the record.

7. It was the case of the respondents/applicants/purchasers that they have purchased the application schedule land under registered sale deed dated 22.04.2006 bearing Document No.9538 of 2006 from the their vendors, who purchased the same from the defendants No.12, 14, 15, 19, 20 and legal heirs of the defendants No.3, 5, 6, 7, 8, 9 and 11 under registered sale deed dated 12.03.2004. Since the respondents/applicants/purchasers are purchasers from the original defendants, they have filed the aforesaid application seeking for passing of final decree.

8. The learned Single Judge, while considering the said application, had made to issue substituted service by way of paper publication calling for objections, if any, thereto. Pursuant to the said notice, only one objection was filed vide Application SR. No.3817 of 2009. The said application was filed by the appellant herein i.e. Nawab Mohd.Rafiuddin Khan, legal representative of defendant No.6 in the suit. In the said objection, it is submitted that he is not the vendor of the vendors' and as there is no assignment of decretal right as such, the application for passing of final decree is liable to be dismissed. In this regard, the learned Single Judge has held that there is no dispute about the acquisition of right by the respondents/ applicants/purchasers and the appellant herein, who is the objection petitioner has not made any claim for passing of final decree for the share which he has got as per the preliminary decree and left it open to him to file an application for final decree for the extent of share, if any, which he got under the preliminary decree and the said objection was held to be devoid of any merit and the Application No.495 of 2009 was allowed. Hence, the contentions urged by the appellant are unsustainable.

9. It is pertinent to note here that the Division Bench of this Court in Application No.58 of 2013 (I.A. No.1 of 2013) in O.S.A. No.5 of 2013 on 03.01.2023 passed the following interim order, which reads as under:

"This appeal is directed against the order dated 30.12.2011 passed in Application No.495 of 2009 in C.S.No.7 of 1958.

By the aforesaid order, "final decree" was passed in respect of land admeasuring Ac.5.00 gts in Sy.No.57 (Part) of Shamshiguda Village, Balanagar Mandal, Ranga Reddy District (subject land).

Application No.495 of 2009 was filed by 5 persons i.e.,

(i) D.V.S.R.Ranga Varma

(ii) D.S.R.N.Raju

(iii) D.Suryanarayna Raju

(iv) K.Naga Veera Venkata Konda Raju

(iv) Patan Mahaboob

Admittedly, the petitioners are third parties unrelated to Sahabzadi Sultan Jahan Begum i.e., plaintiff in C.S.No.7/1958. They had purchased the subject land in terms of registered sale deed dated 22.04.2006 from defendant Nos.12, 14, 15, 19 & 20 and legal heirs of defendant Nos.3, 5, 6, 7, 8, 9 & 11.

C.S.No.7 of 1958 was filed for partition of Matruka properties of Asman Jahi Paigah. Preliminary decree was drawn up on 06.04.1959. Final decree is yet to be drawn up.

In such circumstances, prima facie, we are of the view that the said defendants could not have alienated the property to third parties i.e., the petitioners and petitioners could not have obtained "final decree" as ordered on 30.12.2011.

We find that this Court by order dated 26.02.2013 had granted interim stay of the aforesaid order which was subsequently made absolute.

In paragraph 9 of the appeal memo, the following ground has been taken by the appellant, which reads as follows:

> *"The judgment under appeal is unsustainable because a final decree cannot be passed with regards to piece of land in a suit for partition "if a co-owner under Mohammedan law alienate any specific piece of property. It is submitted that in a suit for partition no specific piece of property can be sold by any of the share holder. If at all such sale takes place the proper remedy for the transferee is to transfer of interest in a preliminary decree, and to file an application for final decree praying the Court to partitioned the whole items, not the item allotted the transferee."*

We have already appointed a new set of receivers – cum – commissioner and have requested them to submit final report by 06.03.2023.

Therefore, we are of the view that the appeal would have to abide by the final decree that may be drawn up on the basis of the report that may be submitted by the receivers – cum – commissioner.

In the interregnum, interim stay would continue.

List the matter on 06.03.2023."

10. At this juncture, it is significant to note that the Division Bench of this Court vide order dated 09.01.2025 closed the C.S. No.7 of 1958 wherein at para No.36 observed as under:

> "36. On a perusal of the paragraph 4(g) of the preliminary decree dated 06.04.1959, it is evident that the defendant Nos.2 to 22 were entitled to the properties mentioned at item Nos 230 to 254 of Schedule 'A' annexed to the preliminary decree, in case the same are restored or released in favour of Asman Jahi Paigah. In the instant case, admittedly, there is no material to indicate that the properties mentioned at serial No 230 to 254 of Schedule 'A' to the preliminary decree have been restored or released in favour of Asman Jahi Paigah. It is pertinent to note that as per para 4(g) of the preliminary decree dated 06.04.1959, the Commissioners-cum-Receivers have the power to sell the property by way of public auction and exercise all powers necessary for effecting the division of the sale between the defendants No.2 to 12 and 14 to 22. Accordingly, each son would get 2/33 and each daughter would get 1/33 in the properties of Schedule 'A' except items 230 to 254 of the Schedule and items of properties allotted to the plaintiff. The defendant Nos.2 to 22 will get their share, namely, each son getting 2/35 and each daughter getting 1/35 from the arrears of income future income, compensation or commutation or sale proceeds of the items 230 to 254 of Schedule 'A' detailed under the head of "Makthas" in case of the same are restored or released in favour of Paigah Asman Jahi."

11. The subject property under appeal is in respect of Item No.252 (Shamshiguda) of Schedule-A of the suit. The Division Bench of this Court vide order dated 09.01.2025 had closed the C.S. No.7 of 1958 wherein at Para No.40 it was observed that *"As such, the submissions made on behalf of the objectors are unsustainable and in that view of the matter, it can safely be concluded that no lands are available for partition in item Nos.230 to 254 of Schedule 'A' attached to the preliminary decree. In the absence of preliminary decree for item Nos.230 to 254 in Schedule 'A', no final decree could have been passed. Therefore, reports filed earlier are without proper verification, are fictitious and the same are treated as nullity and are hereby rejected."*

12. Since the C.S. No.7 of 1958 was closed with specific observation that no lands are available for partition in Item No.252 Schedule-A and the subject land i.e. admeasuring Acs.5.00 guntas in Sy.No.57 (Part) of Shamshiguda village of Schedule 'A' of the suit Balangar Mandal, Ranga Reddy District in the Application No.495 of 2009 in C.S. No.7 of 1958, as such no further adjudication is required in this appeal.

13. Accordingly, this OSA. No.5 of 2013 in Application No.495 of 2009 in C.S. No.7 of 1958 is dismissed. There shall be no order as to costs.

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

SD/-K.SRINIVASA RAO
JOINT REGISTRAR

//TRUE COPY//

SECTION OFFICER

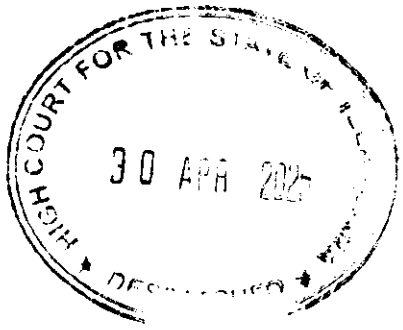
To

1. The S.O. O.S. Section, High Court for the State of Telangana at Hyderabad.
2. One CC to Ms. ANITA SWAIN Advocate [OPUC]
3. One CC to SRI. N. M. KRISHNAIAH Advocate [OPUC]
4. Two CD Copies

kul/gh

HIGH COURT

DATED:14/02/2025



JUDGMENT

O.S.A.NO: 5 OF 2013 in Application No. 495 of 2009 in C.S.No. 7 of 1958

DISMISSING THE O.S.A. NO. 5 OF 2013

WITHOUT COSTS

(6)

kyr

24/4/25