

Parameswar Panda Vs. Adikanda Panda and ors.

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Court : Orissa

Decided On : Sep-01-2004

Reported in : 98(2004)CLT481

Judge : A.S. Naidu, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Order 1, Rule 10(2)

Appeal No. : W.P. (C) No. 10186 of 2003

Appellant : Parameswar Panda

Respondent : Adikanda Panda and ors.

Advocate for Def. : A.K. Rath, Adv.

Advocate for Pet/Ap. : S.P. Misra, Adv.

Disposition : Writ petition allowed

Judgement :

A.S. Naidu, J.

1. The moot question which needs determination in this Writ Petition is whether a person who is not a party to a suit but has purchased certain property after the preliminary decree was passed in the suit for partition can be impleaded as a party in the final decree proceeding.

2. The short facts of the case are that the present Opp. Party No. 1 had filed title Suit No. 12 of 1990 for partition in the Court of the Civil Judge (S.D.), Balasore. Judgment and preliminary were passed in the suit on 16.11.1992 and 28.11.1992 respectively declaring the shares of the plaintiff and the defendants. Since the parties could not amicably partition the property as per the preliminary decree, the plaintiff initiated final decree proceeding. While the matter stood thus, the present petitioner claiming to have purchased some land from Anadi Panda, a co-sharer (original defendant No. 1, since deceased) by a registered sale deed dated 6.1.1995 filed an application in the final decree proceeding with a prayer before the Court below to direct the survey-knowing commissioner to allot the land purchased by him in his favour. He also filed another petition under Order 1, Rule 10(2), CPC to implead him as a party to the final decree proceeding. The prayer of the petitioner having been rejected, the present Writ Petition has been filed.

3. According to Mr. S.P. Misra, learned counsel for the petitioner, the petitioner having purchased land from a co-sharer in whose favour the land had been allotted, he is a necessary party to be impleaded in the final decree proceeding. He further submitted that the rights of the petitioner would be affected and great prejudice would be caused to him unless he is impleaded as a party in the final decree proceeding and the land purchased by him is allotted to his share.

4. In support of his contention, Mr. Misra relied upon the decision of this Court in the case of Debendra V. Umakanta, AIR 1988 Orissa 11, and submitted that the events happening subsequent to the preliminary decree can also be taken into consideration and decided at the stage of final decree proceeding. He also relied upon another decision of this Court in the case of Jamal Mohammad V. Saukat, 74 (1992), CLT 962, and submitted that the Court even has the suo motu power to implead parties for final adjudication of the inter se disputes. According to him, the Court below has acted illegally and with material irregularity in rejecting the petition filed by the petitioner, who has purchased the share of one of the co-sharers in whose favour the land purchased by him had been allotted, to be impleaded as a party to the final decree proceeding.

5. Mr. A.K. Rath, learned counsel appearing for Opp. Party No. 1, at the other hand, forcefully submitted that a transferee pendente lite without the leave of the Court cannot, as of right, seek his impleadment as a party to the suit. In the present case, petitioner being a pendente lite transferee, the Court below has rightly rejected his petition to implead him in the final decree proceeding. According to Mr. Rath, the transfer made in favour of the petitioner is hit by the principles of *Ms pendens*, and as such no right has accrued to him and the Court below has rightly rejected the petition for impleadment. It is also submitted that during pendency of the final decree proceeding the vendor of the petitioner had no title to any particular portion of the joint family property and as such the petitioner cannot claim title over any portion of the joint family property. In support of his contention, Mr. Rath relied upon the decision in the case of *Bibi Zubaida Khatun V. Nabi Hassan Saheb*, reported in (2001) 1 SCC 191.

6. Heard learned counsel for the parties at length. Perused the materials available on record. Admittedly the preliminary decree was passed in the suit as long back as on 28.11.1992. In the judgment and preliminary decree, the shares of all the co-sharers were carved out. It appears that one of the co-sharers sold the land allotted in his favour to the petitioner. Article 351 of *Mutla's Hindu Law* deals with sale and purchase of joint family properties and reads as follows :

'Where a fractional share in a property which forms part of a joint estate has been sold, the purchaser may sue for partition of that property only and for possession of the share brought by him without asking for partition of the whole joint estate.'

In consonance with the aforesaid provision in Hindu Law, an outsider purchaser to a joint family has a right to sue for partition and get the property purchased by him carved out in the said suit. In the case at hand, the suit for partition has already been decreed and the preliminary decree has been passed carving out the shares of different co-sharers. One of the co-sharers is stated to have sold some land in favour of the petitioner. By virtue of that sale, the petitioner claims to have acquired title to the land purchased by him out of the share of his vendor. Thus, though strictly speaking the petitioner is a purchaser pendente lite, he has a right to be impleaded as a party to the final decree proceeding, so that the land which

he has purchased from the determined share of his vendor can be allotted in his favour. It is also necessary to avoid multiplicity of litigations.

7. The main object of Order 1, Rule 10(2), CPC is to facilitate an effectual adjudication of all the material questions arising between the parties inter se vis-a-vis the properties in question. The Court is primarily concerned with the question whether the presence of the party proposed to be impleaded would advance complete and satisfactory adjudication of the subject-matter in controversy. In a given circumstance, if the Court feels that presence of any party is required for effectual adjudication, it has even the suo motu discretion to implead such party in the interest of justice. A reading of Order 1, Rule 10(2), CPC makes it clear that the discretion of a Court to direct impleation of a party is not always confined to filing of an application to that effect. The petitioner claims to have purchased some property from one of the co-sharers, but then he has no right to any particular property. His right is crisped, cabined and curtailed to the share allotted to his vendor. He can only put forth his claim on the undivided share of his vendor. His vendor had also no right to sell any particular portion out of the joint family property, but then he had the right to sell his share only. The title suit for partition in which the preliminary decree has been passed is still a pending suit and the rights of the parties who are added after the preliminary decree can be adjusted at the time of final decree. As has been held in the decision in the case of Debendra V. Umakanta (supra), at the stage of final decree when rights of the parties are to be declared, opportunity should be given to the parties to agitate their claims and prerogatives. While doing so, Courts are also to take into consideration the events/happenings occurring subsequent to passing of the preliminary decree. Law is well settled that all disputes have to be adjudicated once for all in the final decree proceeding, so that parties thereto shall not institute fresh suits in respect of the subject-matter of partition.

8. In view of the aforesaid discussion, I allow this Writ Petition. I quash the order Annexure 2 and direct the Court below to implead the petitioner as a party to the final decree proceeding and proceed with the same strictly in consonance with law. It is needless to say that I have neither examined nor expressed any opinion with regard to validity of the registered sale deed on the basis of which the

petitioner puts forth his claim and it is open to the Court below to decide if such issue is raised.

Parties to bear their own costs.

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