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K. ADIVI NAIDU AND ORS.

v.

E. DURUVASULU NAIDU AND ORS.

SEPTEMBER 11, 1995

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[K. RAMASWAMY AND B.L. HANSARIA, JJ.]

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*Hindu Law—Joint family property—Undivided share in—Purchase from alienee of Karta prior to institution of partition suit—Preliminary decree allowed to become final—Held alienees of an alienee have no right to equity—Co-parcener has no right to sell undivided share—Though purchasers have no equity yet as a special case held entitled to respective share to which principal alienor was entitled to.*

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In a partition suit the Trial Court passed a decree directing that schedule properties be divided by metes and bunds into two equal shares - half to the plaintiff and the other half to the first defendant - taking the good and bad qualities thereon. A single judge of the High Court confirmed the decree but the Division Bench set it aside and remitted the case to the trial court for passing the final decree. In appeal to this court it was contended for the appellants that since the alienation was made prior to institution of the partition suit and the appellants are purchasers from the alienee of the karta of joint family, they cannot be deprived of the specific properties sold to them.

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Allowing the appeal in part, this Court

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HELD : Since the preliminary decree was allowed to become final, the trial Court need to give effect to it. It is settled law the alienees of the alienees have no right to equities. Equally a coparcener has no right to sell his undivided share in the joint family property and any such sale does not bind the co-parceners. Since the specific properties were purchased prior to the institution of the suit for partition, though appellants have no right to equities, it could be said that the respective share to which their principal alienor was entitled would be allottable to them as a special case. As the preliminary decree specifically directed that the good and bad qualities of the land should be taken into consideration in effecting the partition, it should, in letter and spirit, be given effect to. Thus, while

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passing final decree, if the lands purchased by the appellants are found

more valuable than the lands to be allotted to the respondents, the respective values thereof should be ascertained and the respondents need to be compensated in monetary value. The Trial Court would pass the final decree accordingly. [526-D-G]

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 8416 of 1995

From the Judgment and Order dated 24.8.94 of the Andhra Pradesh High Court in L.P.A. No. 261 of 1991.

K. Madhava Reddy, G. Prabhakar for the Appellants.

C. Sitaramiah and Ms. Vrindra Dhar, for the Respondents.

The following Order of the Court was delivered :

Leave granted.

It is not necessary to dilate all the details of the chequered history of the litigation. Suffice it to state that in O.S. No. 2/75 the Trial Court passed a preliminary decree on April 24, 1982 thus :

"(1) that the Plaint item 1 of 'B', 'C' and 'D' schedule properties be divided by metes and bounds into two equal shares taking the good and bad qualities thereon.

(2) that one such share be delivered to the plaintiff and the remaining half share be delivered to the Ist defendant ;.....".

In the application for passing the final decree, there was a controversy which resulted in LPA No. 2651/91. By judgment and decree dated August 24, 1994, the Division Bench directed thus :

"This, in our view, is not the correct position in law. We are, therefore, constrained to set aside the judgment of the learned Single Judge dated 16th August, 1991 in A.S. No. 2391 of 1990 confirming the order of the trial Court dated 4th June, 1990 in I.A. No. 626 of 1983 in O.S. No. 2 of 1975 and remit the case to the trial Court to pass final decree keeping in view the observations made above.

It is needless to mention that as the matter is pending final

A determination for quite some time, the trial Court should dispose of the same without any avoidable delay."

Sri K. Madhava Reddy, the learned senior counsel appearing for the appellants, contended that since the alienation was made prior to institution of the suit and the appellants being the purchasers from the alienee of the karta of the joint family, they cannot be deprived of the specific properties sold to them under the sales made in the year 1972. Shri C. Sitaramiah, learned senior counsel for the respondents, in particular for the son of the principal alienor, submitted that since the appellants are only alienees of the alienees they have no right to seek equities. As the preliminary decree directed to work out the rights of the parties taking into account the good and bad qualities of the lands in effecting partition, in passing final decree, the respondents are entitled to the equities. The High Court was, therefore, right in giving the direction in the impugned order.

Having considered the respective contentions, we are of the view that since the preliminary decree was allowed to become final, the trial Court need to give effect to it. It is settled law that alienees of the alienees have no right to equities. Equally, it is settled law that a coparcener has *no* right to sell his undivided share in the joint family property and any sale of undivided and specified items does not bind the other co- parceners. Since the specific properties were purchased prior to the institution of the suit for partition, though the appellants have no right to equities, it could be said that the respective share to which their principal alienor was entitled would be allottable to them as a special case. However, since the preliminary decree specifically directed that the good and bad qualities of the land should be taken into consideration in effecting the partition, it should, in letter and spirit, be given effect to. While passing final decree, if the lands purchased by the appellants are found more valuable than the lands to be allotted to the respondents, the respective values thereof should be ascertained and the respondents need to be compensated in monetary value. That would be the effect of the preliminary decree as well. Considered from this perspective, the direction issued by the Division Bench would be modified as above, and the trial Court would pass the final decree accordingly.

The appeal is allowed in part as above. Parties are directed to bear their own costs.

T.N.A.

Appeal allowed.