

MARIRUDRAIAH & ORS.

v.

B. SAROJAMMA & ORS.
(Civil Appeal No. 2138 of 2009)

APRIL 2, 2009

[DR. ARIJIT PASAYAT, LOKESHWAR SINGH PANTA
AND P. SATHASIVAM, JJ.]

Code of Civil Procedure, 1908 – Impleadment of Pendente lite purchaser and direction to work out equity in his favour – Propriety of – Suit for partition – Pendentelite purchase of a portion of suit property – Impleadment of purchasers at appellate stage – Suit decreed as per terms of compromise – High Court at the instance of purchasers directing the trial court to work out equity in their favour by allotting them the suit property and paying compensation to the vendor and the co-sharers who were not party to the sale-deed – Held: Propriety of impleadment order cannot be disturbed – However, direction to work out equity not sustainable – Purchasers were since impleaded during pendency of final decree proceedings, all the issues relegated in pending final decree proceedings – Courts are not supposed to encourage pendentelite transactions and regularize such conduct by sharing equity in favour of such purchaser – Equity.

In a suit for partition, preliminary decree was granted. The same was challenged in appeal. During pendency thereof, respondents 8 and 9 (pendentelite purchasers of suit item No. 9), were impleaded as respondents in the appeal. The issue in suit was closed by recording compromise between the parties before High Court whereby the parties agreed to the partition. Thereafter, on the application by the purchasers-respondents, High Court directed trial court to work out equity in favour of

A the purchasers by allotting them suit item No. 9 in their favour and to compensate the plaintiffs and other sharers who were not parties to the sale-deed in the final decree proceedings.

B In appeal to this court, the questions for consideration were: (1) whether High Court was justified in impleading the purchasers *pendentelite* as party respondents in the appeal, and (2) whether High Court was justified in issuing direction for allotment of suit item No. 9 in favour of purchasers and for payment of compensation to other sharers.

C

Partly allowing the appeal, the Court

D HELD:1. In view of the fact that respondent-purchasers purchased item No.9 of the suit property from respondent No. 1 and others who are sharers, the order of the High Court impleading them as respondents in the proceedings cannot be disturbed. [Para 8] [495-G-H; 496-A]

E 2. However, direction for payment of compensation to the plaintiff and others and working out equity are set aside. When the purchasers approached the High Court for their impleadment and for directions, final decree proceeding was pending before the trial Court.

F Respondent-purchasers purchased item No.9 from the first respondent *pendente lite*. In fact, the courts are not supposed to encourage *pendente lite* transactions and regularize their conduct by showing equity in their favour. In such circumstances, it is proper to relegate all the issues in the final decree proceedings which is pending before the trial Court. [Paras 8 and 9] [496-C-E]

G

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2138 of 2009.

From the Judgment & Order dated 15.06.2006 and the subsequent order dated 17.6.2006 of the High Court of Karnataka at Bangalore in Regular First Appeal No.207 of 2003.

Naveen R. Nath, Lalit Mohan Bhat, Hetu Arora and A. Dashrath, for the Appellants.

Krishna Mani, B. Vishwanath Bhandarkar, V.N. Raghupathy, M.N. Uma Shankar and B.S. Sharma for the Respondents.

The Judgment of the Court was delivered by

P. SATHASIVAM, J. 1. Leave granted.

2. This appeal is directed against the final judgment and orders dated 15.06.2006 and 17.06.2006 passed by the High Court of Karnataka at Bangalore in Regular First Appeal No. 207 of 2003.

3. Regular First Appeal No. 207 of 2003 was filed under Section 96 of the Civil Procedure Code before the High Court of Karnataka against the judgment and decree dated 25.10.2002 passed in O.S. No. 8252 of 1998 by the XXII Additional City Civil and Sessions Judge, Bangalore granting preliminary decree in a suit for partition and separate possession. In the said appeal, applicants-Suresh Salariya and V. Mohammed Shaffiulla of Bangalore filed I.A. No. 4 of 2005 seeking permission to bring them on record as additional respondents contending that they have purchased suit item No.9 from Smt. B. Sarojamma with the consent of other sharers, appellant Nos. 3, 4, 5 and 8 therein. In the absence of any objection by the appellants, the High Court allowed the said application. It is further seen that the appellants and respondent Nos. 1 to 3 before the High Court filed a compromise petition and the same was signed by all the parties by their respective advocates. On 15.06.2006, all the parties to the compromise

A petition were present and admitted the execution of the same. They were identified by their advocates. According to the compromise, the parties have no objection to divide the suit schedule joint family properties under Section 6 of the Hindu Succession Act. In terms of the compromise, the appeal itself was disposed of. At that stage, counsel appearing for respondent Nos. 4 and 5 before the High Court, purchasers of item No. 9 submitted that since they purchased the suit item No.9 from appellant No.1, namely, B. Sarojamma with the consent of appellant Nos. 3, 4, 5 and 8, prayed that the suit item No. 9 may be allotted to the share of those persons and they may be directed to pay the value of the share of the remaining parties in respect of suit item No.9 is concerned. It was pointed out by the purchasers that considering the total number of shares to be divided among the parties, suit item No. 9 cannot be divided by metes and bounds. However, the contesting parties submitted that the said dispute has to be relegated to the final decree proceedings.

4. Considering the submissions made, the High Court accepted the claim of the purchasers-impleaded Respondents and directed the trial Court to work out equity in favour of the purchasers and compensate the plaintiffs and other sharers who are not parties to the sale deed in the final decree proceedings. With the said observation, the High Court dismissed the appeal on 15.06.2006.

5. On 17.06.2006, at the request of the counsel for the respondent Nos. 1 and 2 therein, the matter was listed for "being spoken to". Thereafter, the High Court, after hearing the learned counsel appearing for the respective parties, clarified the earlier order dated 15.06.2006 and observed that "since the purchasers have stepped into the shoes of the appellants, plaintiffs share has to be ascertained and while working out the equity, the share of the plaintiff in item No.9 shall be compensated in terms of money by considering the market value by the appellants who have sold the property to

respondent Nos. 4 and 5." Though the said course was strongly objected to by the contesting parties, the High Court declined to modify the same and reiterated its earlier order dated 15.06.2006. Aggrieved by these orders, respondents therein filed the above appeal.

6. We heard Mr. Naveen R. Nath, learned counsel for the appellants and Mr. M.N. Krishna Mani, learned senior counsel for the respondents.

7. The questions which arise for consideration in this appeal are:

- (a) Whether the High Court was justified in impleading the purchasers *pendente lite* as party respondents in the appeal?
- (b) Whether High Court was justified in issuing direction for allotment of suit item No.9 in favour of the purchasers and compensation to be paid to the other sharers?

8. Considering the limited issue raised, there is no need to traverse all the factual details. Admittedly, after passing of the preliminary decree, the subject-matter of the suit was pending in the High Court as Regular First Appeal No. 207 of 2003 and the same was closed by recording the compromise petition filed by the parties. An application for passing final decree for actual apportionment among the sharers was filed before the trial Court and the same is pending consideration as on date. In view of the fact that B. Sarojamma and Others sold item No.9 in favour of respondent Nos. 8 and 9 herein, they filed I.A. No. 4 of 2005 in the First Appeal pending in the High Court for impleading them as additional respondents. There is no need to go into the question about their entitlement. In view of the fact that they purchased item No.9 of the suit property from B. Sarojamma and Others who are sharers, we are not inclined to disturb the order of the High Court impleading them

- A as respondents in the proceedings. However, as rightly pointed out by learned counsel for the appellants, we are more concerned about the positive direction of the High Court that in the final decree proceedings, the trial court has to work out the equity in favour of the purchasers and compensate the
- B plaintiffs and other sharers who are not parties to the sale deed. As pointed out by learned counsel for the appellants, it is not in dispute that when the purchasers approached the High Court for their impleadment and for directions, final decree proceeding was pending before the trial Court. In fact, it was
- C pointed out that pursuant to the application filed for passing final decree, a Commissioner was appointed for division of the suit properties by metes and bounds. It is relevant to point out that Respondent Nos. 8 and 9 herein purchased item No.9 from the first respondent herein *pendente lite*. In fact, the courts are not
- D supposed to encourage *pendente lite* transactions and regularize their conduct by showing equity in their favour. In such circumstances, we are of the view that it is but proper to relegate all the issues in the final decree proceedings and in the case on hand, the same is pending before the trial Court.
- E 9. In the light of the above discussion, we confirm the order of the High Court with regard to impleading the *pendente lite* purchasers (Respondent Nos. 8 and 9 herein) as parties to the proceedings, whereas other aspects, namely, direction for
- F payment of compensation to the plaintiff and others and working out equity are set aside. However, all the parties are permitted to put-forth their claim by way of separate application before the trial Court in the final decree proceedings and it is for the trial Court to consider the claim/objection of the parties including equity and pass appropriate orders in accordance with law.
- G 10. To this extent, the impugned order of the High Court is modified and the appeal is allowed in part. No costs.

K.K.T.

Appeal partly allowed

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