

THE HON'BLE SRI JUSTICE K.C.BHANU
APPLICATION Nos.83 to 88 of 2010, 199 to 209 of 2010,
239 of 2009 and 517 of 2009

COMMON ORDER:

1. Applicants in Application Nos. 83 to 88, 199 to 209 of 2010 filed their respective Applications claiming to be the legal representatives of deceased decree holder no.42, to allot their respective shares as per Mohammedan Law as per the scheme of partition already prepared and submitted to this Court in Application No.110 of 1973.
2. It is stated in the applications that, the applicants are decree holder nos. 194, 195, 196, 199, 201, 202, and the legal representatives of deceased nos.197 and 200, in C.S. No.14 of 1958, which is filed for partition and separate possession of matruka properties among the legal heirs of late Nawab Sir Khursheed Jah Bahadur, who died in 1320 Hizri, and after his death, his estate devolved on his legal heirs. On 24.08.1962, an order was passed by this Court appointing a Receiver-cum-Commissioner whereby the entire estate came under the custody of the Receiver-cum-Commissioner. A preliminary decree was passed on 28.6.1963 partly on compromise and partly on adjudication, in favour of the legal heirs; that the properties comprised various categories of moveable and immovable properties, including buildings and agricultural lands; the division and apportionment of shares of the buildings and lands surrounding them was effected mostly in terms of the

compromise decree and the shares of decree holders as per the scheme of partition in Application NO.110 of 1973, are accepted by this Court; that the deceased Nawab Mohd. Muneeruddin Khan is the decree holder no.42 in C.S. No.14 of 1958, and on his death, names of the applicants were substituted in his place by order dated 01.03.1969 in Application No.22 of 1969 and the applicants and other decree holder nos. 195 to 205 are the decree holders under Section 2(3) of the Code of Civil Procedure, 1908, and are entitled for final decree. Hence, the applications.

3. Whereas the registered assignee of defendant no.206 filed Application No.239 of 2009 to pass a final decree stating that 80% of the shareholders sold away their undivided share in the preliminary decree by way of registered sale deeds in the year 1964 in favour of H.E.H. The Nizam and Nawab Khazim Nawaz Jung, who is none other than the brother-in-law of the H.E.H. Niazam, jointly; that, the assignees of the decree filed application for impleadment in the suit, and there were number of objections for the impleadment, and this Court set aside those objections holding that the sale deeds executed by the share holders are valid and binding on them, and accordingly the defendants 156 and 157 respectively were added by order dated 20.08.1964; that, thereafter, the defendant no.156 sold away his share in favour of the petitioner/defendant no.206 in the year 1967, and therefore, defendants 157 and 206 are jointly entitled to

the share of the sold sharers; that, the Receiver-cum-Commissioner appointed by this Court divided the property between the sharers as per their entitlement in the preliminary decree; that, the defendants 156 and 206 are entitled to the share fallen to the share of sold sharers in two equal halves; that, the Receiver-cum-Commissioner filed Application NO.139 of 1971 allotting shares with regard to the agricultural lands, and as per the Report dated 13.07.1984, the entire land in survey no.78 of Hafeezpet village, Serilingampalli mandal, Ranga Reddy district, which is item no.37 of the Schedule IV annexed to the preliminary decree, was allotted to the defendants 157 and 206 into equal halves; that, out of Ac.215.23 guntas, the defendant no.157 got Ac.107.33 guntas and the defendant no.206 is entitled for the remaining half; that, the applicant claimed to have purchased Ac.10.00 of land by way of registered deed of decreetal rights dated 19.6.2008 from out of Ac.107.33 guntas which was fallen to the share of defendant no.206; that, the defendants 157 and 206 filed Application Nos. 64 and 65 of 1983 respectively in C.S. No.14 of 1958 for deletion of the names of the sold sharers from the array of cause title and for mutation; that the same applications were allowed by order dated 5.8.1983, and the said orders were confirmed by a Division Bench of this Court in O.S.A. No.59 of 2006; that the defendant no.206 and the legal representatives of defendant no.157 are entitled to entire land in survey no.78 of Hafeezpet village, Serilingampalli mandal, Ranga Reddy district, and hence, this application for passing a

final decree in favour of the applicant to an extent of Ac.10.00 guntas in respect of land situated in survey no.78 (part) of Hafeezpet village as per the plan annexed to the Deed of Assignment dated 19.06.2008 and to engross the final on the stamp paper and hand over the same to the applicant.

4. Application No.517 of 2009 in Application No.239 of 2009 is filed to record compromise in terms of the Memorandum of Compromise and pass a final decree in favour of the petitioner to an extent of Ac.10.00 guntas in survey no.78 of Hafeezpet village, Serilingampally mandal, Ranga Reddy district, more particularly delineated in Schedule-D in the map attached to the Compromise Deed; to pass a final decree in favour of the respondent no.1 to an extent of Ac.37.13 guntas in survey no.78 of Hafeezpet village, Serilingampally mandal, Ranga Reddy district, more particularly delineated in Schedule-C; to pass a joint final decree in favour of the respondents 2 and 3 to an extent of Ac.20.00 guntas in Survey no.78 of Hafeezpet village, Serilingampally mandal, Ranga Reddy district, more particularly delineated in Schedule-B; and to pass a final decree in favour of the respondent no.4 to an extent of Ac.0.20 guntas each in survey no.78 of Hafeezpet village, Serilingampally mandal, Ranga Reddy district, more particularly delineated in Schedule-A in the map attached to the compromise.

5. Counter and objections are filed by defendant no.618 and others with regard to Application No.239 of 2009 filed for passing of final decree stating that the applicant has deliberately suppressed the correct information and indulged in abuse of process of court; that, the petitioner suppressed the facts that the survey no.78 has been divided into two parts i.e. survey nos.78/A and 78/B, and survey no.78/B was allotted with Ac.107.33 guntas by way of order passed by this court in favour of various companies and the said companies executed assignment deeds which were recognized by this Court to an extent of Ac.67.33 guntas and the balance Ac.40.00 guntas was allotted separately to 8 individual members and by way of E.P. No.6 of 1998 and by appointing the Advocate Commissioner, the defendants and others were put in possession, which is clearly stated in panchanama dated 13.07.1997; that, by way of assignment deed dated 29.11.1995, the share falling to the share of M/s. Cyrus Investments Limited and others was transferred to six companies to the extent of Ac.67.33 guntas and 8 individual members were allotted with Ac.5.00 each to the extent of Ac.40.00 in survey no.78 of Hafeezpet village; that, six companies headed by M/s. Golconda Extrusions and others executed Assignment Deed dated 09.11.1998 in favour of Hari Babu and others to the extent of Ac.67.33 guntas in survey no.78 of Hafeezpet and the Assignment Deed is recognized by this Court by order dated 17.11.1998 in Application no.1634 of 1998 in C.S. No.14 of 1958, and as such, the said K.Hari Babu and others are

in possession and enjoyment of the property recognized by this Court; that, out of 8 individual members in the Assignment Deed dated 29.11.1995,

6 members executed an Assignment Deed in favour of V.Yamini and others, on 01.08.2002 to the extent of Ac.30.00 falling in survey no.78/B of Hafeezpet village, which was recognized by this Court by order dated 20.09.2002 in Application Nos. 1090 and 1091, wherein at first instance, Smt. Indrani Prasad and P.Ramesh Babu did not execute Assignment of their share falling to Ac.10.00 guntas, which they did subsequently when they executed a Registered Assignment Deed transferring their right over Ac.10.00 guntas also along with 27 assignors vide registered Assignment Deed No.9722 of 2006 dated 10.04.2006, totally an extent of Ac.32.00 i.e. Ac.22.00 guntas belonging to Assignors 1 to 23 and Assignor Nos. 24 to 25 transferring the share of Ac.10.00 guntas; as such, the respondents herein were having Ac.107.33 guntas in survey no.78/B of Hafeezpet village; that the applicant herein is not entitled for Ac.10.00 guntas in survey no.78; that, the defendants executed the Assignment Deed to an extent of Ac.40.00 guntas out of Ac.107.33 guntas which is falling to the right side of the plan appended by the Petition in favour of Smt.Sunitha Prasad, which was recognized by this Court, but, instead of claiming the property belonging to Smt. Sunitha Prasad's share, which falls on right side of the plan, the petitioner herein is illegally claiming the property belonging to respondents herein, which was recognized by this

Court, and strangely, the petitioner herein and others are entering into compromise to the extent of Ac.67.33 guntas in respect of which Assignment Deeds were executed, and they filed Application No.517 of 2009; that, when Section 145 Cr.P.C. proceedings were initiated, the Revenue Divisional Officer confirmed the possession to the respondents to the extent of Ac.107.33 guntas, which has become final, and as such, the petitioner herein has no claim over Ac.107.33 guntas for which he filed the Application seeking compromise for Ac.67.33 guntas, which is falling to the share of the respondents and another Ac.10.00 guntas which does not fall to the share of Smt. Sunitha Prasad. Hence, it is prayed to dismiss the Application No.517 of 2009.

6. Similar contentions have been raised in the counter affidavit filed in Application No.517 of 2009 filed to record compromise between the parties therein.

7. Basing on the above pleadings, the points for determination are:

- (1) Whether the applicants in Application Nos. 83 to 88 and 199 to 209 of 2010, who claim to be legal heirs of defendant no.42 in C.S. No.14 of 1958, are entitled for passing of final decree as per the shares claimed by them;
- (2) Whether the compromise in Application No.517 of 2009 can be ordered ?
- (3) Whether a final decree can be passed in favour of the applicant in Application No.239 of 2009 to an extent of Ac.10.00 guntas of land in survey no.78 (part) of Hafeezpet village, Serilingampalli mandal, Ranga Reddy district ?

8. The learned counsel for the petitioners in Application Nos. 239 of 2009 and 517 of 2009 contended that the applicant is entitled to an extent of Ac.10.00 guntas by virtue of Assignment Deed executed by the defendant no.206 in favour of the applicant and the title cannot be passed through unregistered assignment deeds; that the objectors have no semblance of right over the property situated in survey no.78; that, with regard to the claim of some of the respondents through registered Assignment Deed dated 10.04.2006 an extent of Ac. 32.00 guntas, the objectors have not paid the agreed sale consideration and therefore the registered deed was cancelled by way of cancellation of Assignment Deed dated 21.9.2007 and therefore the objectors have no right or title over the property, which is vested to the defendant no.206, and that the original purchaser defendant no.26 executed a registered Assignment Deed in favour of the petitioner in the final decree application. He further contended that applicants in Application Nos. 83 to 88 and 199 to 209 of 2010, who claim to be legal heirs of the deceased defendant no.42 cannot claim right over the land inasmuch as the defendant no.42 had already sold away his share by virtue of registered sale deed and the sale deed was recognized by this Court. Hence, he prays to dismiss the Application Nos. 83 to 88 of 2010 and 199 to 209 of 2010.

9. On the other hand, the learned counsel for the

defendant no.355 contended that these respondents are not aware of decree passed in Application No.1109 of 2007 dated 24.11.2007 rejecting the objections raised by the tenant and the legal representatives of sold sharers as they are not made parties to the same; that the petitioner is indulging in abuse of process of Court by claiming the schedule property belonging to the defendant no.206; that the Receiver-cum-Commissioner divided the land in survey no.78 of Hafeezpet village into two equal parts, and 6 companies, headed by M/s. Golconda Extrusions executed Assignment Deed dated 9.11.1998 in favour of Hari Babu and others to an extent of Ac.67.33 guntas, which was recognized by this Court, and as such, the said Hari Babu and others have been in possession and enjoyment of the property; that the present petition claiming Ac.10.00 guntas, which has fallen to the share of the respondent to the left side of the plan appended, for which the petitioner or his assignees have no right, and this extent of Ac.10.00 guntas does not fall to the share of Smt. Sunitha Prasad; that, the Receiver's report has to be approved after calling for objections. He further contended that during the life time, a muslim person can alienate the property and after such alienation, his legal representatives would not get any right over the property. Hence, he prayed to dismiss the Application Nos. 239 of 2009 and 517 of 2009.

10. POINT No.1:

Whether the applicants in Application Nos. 83 to 88 and 199 to 209 of 2010, who claim to be

legal heirs of defendant no.42 in C.S. No.14 of 1958, are entitled for passing of final decree as per the shares claimed by them ?

It is not in dispute that as per the report of the Receiver-cum-Commissioner dated 13.7.1984, entire land in survey no.78 of Hafeezpet village, Serilingampalli mandal, Ranga Reddy district, which is item no.37 of Schedule IV annexed to preliminary decree was allotted to the defendant nos.157 and 206 in equal halves. Some of the defendants and plaintiffs including the defendant no.42, through whom the legal representatives therein claimed right, sold their undivided share in the preliminary decree by way of registered sale deed in the year 1964 in favour of H.E.H. The Nizam and Nawab Khazim Nawaz Jung. The defendant no.42 executed registered sale deed dated 22.11.1964 selling his undivided share to the defendants 156 and 157. The defendant no.156 in turn sold his share in favour of defendant no.206 in the year 1967. Now, the question is whether the sale transaction entered by the defendant no.42 is permissible under the Mohammedan Law or void under Section 23 of the Indian Contract Act, 1872, and that whether the sale transaction violates the injunction issued during the pendency of suit.

On this aspect, the learned counsel Mr. N.M.Krishnaiah appearing for the applicant in Application Nos. 239 and 517 of 2009 relied on a decision in *Khan Bahadur v. Kazim Ali Pasha & others*^[1]. This case also relates to C.S. NO.14 of 1958 whereunder several applications were filed under Order I Rule 10 CPC and

Order XXII Rule 10 CPC for adding the applicants therein as parties on the ground that they purchased right, title and interest in some of the suit schedule properties from a particular defendant mentioned in the respective applications. Those applications were allowed holding as follows:

“It follows that the sales in favour of the petitioners cannot be held to be void so as disentitle them to be recognized as assignees the interests of their vendors for the purpose of Order XXII Rule 10 CPC”.

It is also held the above decision thus:

“Under the Mohammedan Law, the heirs succeed in the estate as tenants in common in specific shares and any heir may even before the distribution of the estate transfer his own share. (Mulla Mohhammadan Law, Fourteenth Edition (1955). SS.41-42 at pages 32 and 33 *Khatoon Bibi v. Abdul Wahab*, AIR 1939 Mad. 306.).”

From the above decision, it is clear that sale deeds executed in between 27.04.1964 and 01.08.1964 cannot be said to be void. Therefore, for the similar reason, the sale deed executed by the defendant no.42 cannot be said to be void.

11. On the other hand, Sri C.Pandu Ranga Rao, the learned counsel for the applicants in Application Nos. 83 of 2009 and others relied on the following decisions:

(a) In *Venkata Reddy & others v. Pethi Reddy*^[2], wherein it is held thus:

“A decision is said to be final when, so far as the Court rendering it is concerned, it is unalterable

except by resort to such provisions of the Code of Civil Procedure as permit its reversal, modification or amendment. Similarly, a final decision would mean a decision which would operate as res judicata between the parties if it is not sought to be modified or reversed by preferring an appeal or a revision or a review application as is permitted by the Code. A preliminary decree passed, whether it is in a mortgage suit or a partition suit, is not a tentative decree but must, in so far as the matters dealt with by it are concerned, be regarded as conclusive. No doubt, in suits which contemplate the making of two decrees a preliminary decree and a final decree - the decree which would be executable would be the final decree. But the finality of a decree or a decision does not necessarily depend upon it's being executable."

There is no dispute about the proposition of the law laid down in the aforesaid decision.

(b) In *Hasham Abbas Sayyad v. Usman Abba Sayyad & others*^[3], therein it is held thus:

"7. Preliminary decree declares the rights and liabilities of the parties. However, in a given case a decree may be both preliminary and final.

8. There can be more than one final decrees. A decree may be partly preliminary and partly final. [see Rachakonda Venkat Rao and Others R. Satya Bai (Dead) by L. Rs. and Another (2003) 7 SCC 452]

9. A final decree proceeding may be initiated at any point of time. No limitation is provided therefor. However, what can be executed is a final decree, and not a preliminary decree, unless and until final decree is a part of the preliminary decree."

(c) In *R.Rathinavel Chettiar & another v.*

V.Sivaraman & others^[4], wherein it is held thus:

"Thus a "decree" has to have the following essential elements, namely, (i) There must have been an adjudication in a suit. (ii) The adjudication must have determined the rights of the parties in respect of, or any of the matters in controversy. (iii) Such determination must be a conclusive determination resulting in a formal expression of the adjudication.

(11). Once the matter in controversy has received judicial determination, the suit results in a decree either in favour of the plaintiff or in favour of the defendant.

(d) In *Surjit Singh & Ors. V. Harbans Singh & Ors.*,^[5]

wherein it is held thus:

"As said before, the assignment is by means of a registered deed. The assignment had taken place after the passing of the preliminary decree in which Pritam Singh has been allotted 1/3rd share. His right to property to that extent stood established. A decree relating to immovable property worth more than hundred rupees, if being assigned, was required to be registered. That has instantly been done. It is *per se* property, for it relates to the immovable property involved in the suit. It clearly and squarely fell within the ambit of the restraint order. In sum, it did not make any appreciable difference whether property *per se* had been alienated or a decree pertaining to that property. In defiance of the restraint order, the alienation/assignment was made. If we were to let it go as such, it would defeat the ends of justice and the prevalent public policy. When the Court intends a particular state of affairs to exist while it is in seisin of a lis, that state of affairs is not only required to be maintained, but it is presumed to exist till the Court orders otherwise. The Court, in these circumstances has the duty, as also the right, to treat the alienation/

assignment as having not taken place at all for its purposes..."

Though, in the above case, the assignment has been taken place after passing of the preliminary decree, there was a restraint order restraining all the parties therein from transferring the property involved in the said case. But, in this case, there is no such restraint order placed before this Court restraining the defendants, including the defendant no.42, from alienating the property. Except an order in Application No.101 of 1964 in C.S. No.14 of 1958 dated 12.6.1994, whereunder the defendant no.42 filed an application to permit him to sell the property of Khurshad Jung for Rs.39.00 lakhs as the property value was worth more than a Crore of rupees, there was no occasion for this Court to give the permission and accordingly the application was closed on 12.6.1964 on the ground that it was represented that the suit properties were worth a Crore of rupees and that a joint application on behalf of the sharers was necessary in order to consider the matter. Therefore, the above decision has no application to the facts of the present case.

(e) In *Parsam Venkataramayya v. Parsam Venkataramappa & others*^[6], wherein it is held thus:

".. The final decree proceedings under O.20 Rr.12 and 18 only relate to matters which are provided in the preliminary decree as to partition, as to an account for mesne profits or as to an account for other properties, but do not relate to the decision of any substantial rights of parties as to title of

properties which can only be decided in a regular suit.”

There is no dispute about the law laid down by the Madras High Court.

(f) In *Paramount Co-op. Housing Society, Hyderabad v. Padmini Co-op. Housing Society, Hyderabad & others*^[7] wherein it is held thus:

“All other judgments referred to above also deal with the aspect that in Mohammedan Law, there is no recognition for a sale by a co-sharer of the entire estate and that other co-sharers are not bound by the said sale and the said decisions even went to the extent of saying that even if the said sale was meant for discharging the debts of ancestor, whose property had devolved on the sharers, the said sale without the consent of other co-sharers is invalid and does not confer any right on the purchaser with regard to such co-sharers who do not join the said sale.”

But, the above decision has no application to the facts of the present case because the defendant no.42 has not sold the shares of other co-sharers in the entire estate.

(g) In *Kumar Gonsusab & others v. Mohammed MiyanUrf Baban & others*,^[8] wherein it is held thus:

“In *Radhakishan Laxminarayan Toshniwal v. Shridhar Ramachandra Alshi and Others*, this Court has held that the transfer of property, where the Transfer of Property Act applies, has to be under the provisions of the Act only and Mohammedan Law or any other personal law of transfer of property cannot override the statute.”

12. In another decision in *Tikam Chand v. Rahim Khan*,^[9] AIR 1971 MP 23, a division Bench of Madhya

Pradesh High court held thus:

“Under Mohammedan Law, one co-owner has a right to sell in the undivided share in the estate to which he has succeeded as a heir, an alienee of a specific item stands in the shoes of the co-owner and obtains a personal right, which he is equally entitled to enforce against the shares of his vendors and that the said purchaser for value, therefore, can stand in the shoes of his alienor to the extent of claiming a general partition of all the properties so that the equity may be worked out by allotting to the shares of his vendors the property which has been alienated by him, if such a course does not work injustice to the right of the other co-owners.”

13. Section 44 of the Transfer of Property Act, 1882, reads thus:

“Transfer by one co-owner: Where one of two or more co-owners of immovable property legally competent in that behalf transfers his share of such property or any interest therein, the transferee acquires, as to such share or interest, and so far as is necessary to give effect to the transfer, the transferor’s right to joint possession or other common or part enjoyment of the property, and to enforce a partition of the same, but subject to the conditions and liabilities affecting, at the date of the transfer, the share or interest so transferred.

Where the transferee of a share of a dwelling-house belonging to an undivided family is not a member of the family, nothing in this section shall be deemed to entitle him of joint possession or other common or part enjoyment of the house.”

The above provision makes it clear that a co-sharer can sell his undivided share to the third party. The third party will get right and interest only to the extent of share

of the co-sharer and the third party purchaser cannot derive a better title than what his vendor got. Therefore, the alienation made by the defendant no.42 in favour of the defendants 157 and 206 cannot be said to be void.

In view of the fact that the defendant no.42 had already sold his property, his legal heirs cannot claim any right from the deceased person, who had already sold the property during his life time by way of registered sale deed. In view of the sale of property by the defendant no.42, there is no matruka property available so as to claim share by the legal representatives.

14. The defendants 157 and 206 filed Application Nos. 64 of 1983 in Application NO.139 of 1971 in the civil suit to delete names of some of the plaintiffs and some of the defendants including the defendant no.42, which was allowed by this Court holding that those defendants including defendant no.42, have no subsisting interest in the property or in the issue that may be decided in the suit. The said order has been confirmed by a Division Bench of this Court in O.S.A. No.59 of 2006 vide order dated 10.10.2007, wherein it is held that in view of the aforesaid reasons and especially in view of the non-existence of any subsisting right or estate as such of the deceased through whom the appellants claim as legal representatives, no case has been made out by the appellants herein to warrant any interference in the appeal. The applicants are muslims and so the question of claiming any interest during life time of the deceased

does not arise and any claim for succession would only open on the death of the said person, and unless and until there exists any matruka of the deceased as on the date of his death, no legal representative can set forth his claim.

15. Similarly, when the legal representatives of the deceased defendant no.24 wanted to come on record, that petition was dismissed by this Court vide order dated 01.08.2006 in Application No.242 of 2006 on the ground that the defendant no.24 himself was not entitled for any relief. Similarly, another application filed when the legal representatives of the deceased defendant no.52 wanted to come on record, was also dismissed by this Court, and the appeal in O.S.A. No.47 of 2006 was also dismissed for the reason that subsequent to his death, there remains nothing as matruka. Therefore, the order deleting defendant no.42 has been approved by this Court, and when such is the case, the applicants have no *locus standi* to file the present applications. The point is, accordingly, answered, and the Application Nos. 83 to 88 of 2010, 199 to 209 of 2010 are liable to be dismissed.

16. POINT No.2:

Whether the compromise in Application No.517 of 2009 can be ordered ?

With regard to the compromise, the learned counsel for the applicant in Application No.517 of 2009 placed strong reliance on a decision of a Division Bench of this Court in *IDPL Employees Co-operative House Building*

Society Ltd., Hyderabad v. Cyrus Investments Ltd., Mumbai & others^[10] wherein it is held thus: (para 68)

“Similarly, a third party cannot challenge a compromise decree and cannot be added as a party to the proceedings, even if the rights of the third party are being affected by the terms of compromise, the remedy is elsewhere. As the compromise decree will not bind them, they can resist the execution proceedings, if any, initiated in terms of the compromise decree or file a civil suit and seek relief.”

The judgment of the Division Bench of this Court was confirmed by the Hon'ble Apex Court, by the order dated 19.10.2009 in S.L.P. filed by Durga Matha House Buil. Const. Co-op. Sty.

17. It is also a case where IDPL Employees Co-operative House Building Society Ltd., Hyderabad filed an application to pass a final decree in C.S. No.14 of 1958 to an extent of Ac.58.00. It is clear from the aforesaid decision that the parties to the Memorandum of Compromise are bound by the terms of the compromise memo and plan annexed thereto. Therefore, the said compromise deed would not in any manner affect the rights of the third parties.

18. The only provision under the CPC for recording compromise and passing of final decree is Order XXIII Rule 3, which reads thus:

“Compromise of suit:- Where it is proved to the satisfaction of the Court that a suit has been adjusted wholly or in part by any lawful agreement or compromise in writing and signed by the

parties, or where the defendant satisfies the plaintiff in respect of the whole or any part of the subject-matter of the suit, the Court shall order such agreement, compromise or satisfaction to be recorded, and shall pass a decree in accordance therewith so far as it relates to the parties to the suit, whether or not the subject-matter of the agreement, compromise or satisfaction is the same as the subject-matter of the suit.

Provided that where it is alleged by one party and denied by the other that an adjustment or satisfaction has been arrived at, the Court shall decide the question; but no adjournment shall be granted for the purpose of deciding the question, unless the Court, for reasons to be recorded, thinks fit to grant such adjournment."

The above provision consists of two parts. First part deals with lawful agreement entered into between the parties with regard to compromise of whole or part of subject matter of the suit, and the second part deals with passing of final decree in terms of compromise deed. Explanation to the said proviso makes it clear that an agreement or compromise which is void or voidable under the Indian Contracts Act, 1872 shall not be deemed to be lawful within the meaning of this Rule.

19. At the time of recording compromise, the Court has to enquire and decide whether there has been a lawful compromise between the parties. When all the parties to the compromise deed accept fairness and reasonableness of the terms of compromise, in the absence of any other material, interest of justice is best served in case the compromise is recorded. The word

‘compromise’ is more comprehensive than the word ‘agreement’. It means adjusting the claims in dispute by mutual consensus and also mutual promise of two or more parties at difference. The basic requirement of a compromise is that the parties should be in common agreement with respect to the proposed settlement. The Court has to look into the substance of the matter and enquire into the question whether the compromise which is asked to record, is lawful one or not. There cannot be any dispute that a compromise between some parties alone cannot affect the position of other parties to the suit. Therefore, it is well settled that a transaction entered into between certain parties cannot injure those who are not parties to the transaction. It is not the case of any one of the counsel appearing for the opposite side that the terms and conditions incorporated in the compromise deed are unlawful or void or voidable or unenforceable, under the Indian Contracts Act, 1872.

20. As the objections of Applicants in Application Nos. 83 to 88 of 2010, 199 to 209 of 2010 and the objections of defendant no.355 are rejected, the Application No.517 of 2009 can be ordered. Accordingly, the point is answered.

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21. POINT No.3:

Whether a final decree can be passed in favour of the applicant in Application No.239 of 2009 to an extent of Ac.10.00 guntas of land in survey no.78 (part) of Hafeezpet village, Serilingampalli mandal, Ranga Reddy district ?

There is no dispute that the total extent of land covered by survey no.78 is Ac.215.33 guntas. As per the report of the Receiver-cum-Commissioner, entire land was allotted to the defendants 157 and 206 in two equal halves. As per the order in Application No.142 of 1970, the defendants 157 and 206 divided the land in between them and that division is final insofar as the two defendants are concerned. Thereafter, the defendants 206, 157 and also legal heirs of defendant no.157 divided the land into two equal parts, wherein southern part was allotted to the defendant no.206 and northern part was allotted to defendant no.157. As per the orders, both the parties have divided the land and filed memo before the Receiver. By virtue of the Assignment Deed, applicant in Application No.239 of 2009 got right, title and interest in respect of Ac.10.00 guntas of land. As per the order dated 5.11.1970 in Application No.142 of 1970, division has been effected between defendants 157 and 206, whereunder and whereby southern side portion was allotted to the defendant no.206 and northern side portion was allotted to the defendant no.157. The southern portion was divided as survey no.78B and northern portion was divided as survey no.78A. The map was signed by the G.P.A. holder of defendant no.157 and defendant no.206. Similarly, legal representatives of defendant no.157 are parties to the said application. Thereafter, delivery of property was effected in E.P. No.6 of 1998 on the file of the Principal District Judge, Ranga Reddy district.

22. In the order dated 05.11.1970 in Application No.142 of 1970, this Court held thus:

“Defendants 157 and 206, who used to take their shares together now want separation of their shares. In the scheme of partition, they have no shares as defendants 157 and 206. After the partition of the property and allotment of shares to the sharers who have sold their respective shares, division of the shares of defendants 157 and 206 can be effected. So, immediately after the allotment of the shares is effected, defendants 157 and 206 will exercise their choice and the commissions will take steps in this regard. A joint memo shall be filed after effecting such division.”

Application No.779 of 1997, which is filed to issue an order to recognize the assignment of the rights of the petitioners therein in respect of land admeasuring Ac.107.20 guntas in survey no.78/B of Hafeezpet village, Serilingampally mandal, Ranga Reddy district (part of item no.37 of Schedule IV of the preliminary decree dated 28.6.1963), was allowed by this Court by its order dated 23.07.1997.

23. From the above decision, delivery has been effected to the assignor of the applicant in Application No.239 of 2009 in execution proceedings in E.P. No.6 of 1998 on the file of the Principal District Judge, Ranga Reddy district. Therefore, the contention that there was no division of lands in survey no.78 effected in between the defendants 157 and 206, cannot be accepted. Even

the respondents 605 to 619 and 806 to 812 in Application No.239 of 2009 admitted that survey no.78 of Hafeezpet village was divided into two equal parts viz. 78/A and 78/B, but they stated that the respondents were having Ac.107.33 guntas in survey no.78/B. Therefore, the present application is with regard to passing of final decree in respect of Ac.10.00 guntas of land adjacent to railway track in survey no.78 of Hafeezpet village situated in survey no.78/B which is in southern side of the land allotted to the defendant no.206. It is clearly stated by the assignee of the defendant no.206 that Ac.107.33 guntas was taken over by the defendant no.157 and the remaining land an extent of Ac.107.33 guntas which on southern side, was taken over by the defendant no.206. When defendant no.157 and legal representatives of some of the defendants admitted about division of the properties in survey no.78 into equal halves and allotting northern half to the defendant no.157 and southern half to the defendant no.206, they cannot now turn around and contend that no division had taken place between defendants 157 and 206. Therefore, the contention that the respondents in this application were having Ac.107.33 guntas in survey no.78/B is baseless, wholly untenable and devoid of merit. When the present respondents are parties to the division of the properties in between defendants 157 and 206 as per the Receiver-cum-Commissioner's report, which is accepted by this Court, they are estopped from saying that there was no division. The claim of the some of the respondents that they got

right by virtue of Assignment Deed dated 29.11.1995 or 01.08.2002, cannot be valid in view of the fact that the title cannot be passed to the objectors through an unregistered Assignment Deed. With regard to the claim of some of the respondents that they have got right through a Registered Assignment Deed dated 10.04.2006 to an extent of Ac.32.00 is concerned, as the objectors have not paid the sale consideration, the registered assignment deed was cancelled by way of registered cancellation of Assignment Deed dated 21.9.2007, which was approved by this Court as per the judgment reported in 2006(6) ALT 523. In view of the cancellation deed, the objectors' title was cancelled and the objectors have no right or title over the property vested in the defendant no.206. Therefore, since the application has been filed seeking to pass a final decree in terms of the preliminary decree, there cannot be any tenable objection for passing a final decree. Accordingly, the point is answered.

24. In view of the foregoing discussion, Application Nos. 83 to 88 of 2010, 199 to 209 of 2010 are dismissed. Application No.517 of 2009 is ordered accordingly. Application No.239 of 2009 is allowed and final decree is passed in terms of the preliminary decree in the C.S.. The Registry is directed to engross the final decree on deposit of requisite non-judicial stamp papers. Time is granted till 08.04.2010 to the petitioner to deposit the requisite non-judicial stamp papers.

(K.C.Bhanu, J.)

.03.2010

DRK

THE HON'BLE SRI JUSTICE K.C.BHANU

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COMMON ORDER

IN

APPLICATION Nos.83 to 88 of 2010, 199 to 209 of 2010,
239 of 2009 and 517 of 2009

.03.2010

- [1] AIR 1966 Andhrar Pradesh 361
- [2] AIR 1963 Supreme Court 992
- [3] (2007) 2 Supreme Court Cases 355
- [4] (1999) 4 Supreme Court Cases 89
- [5] 1995(5) Scale 70
- [6] AIR 1953 Madras 723
- [7] 2009 (4) ALD 443 (DB)
- [8] 2008 (7) SCJ 296
- [9] AIR 1971 MP 23
- [10] 2009(6) ALD 216 (DB)