**Pethi Reddi Vs. Venkata Reddy and ors.**

**LegalCrystal Citation** : legalcrystal.com/810578

**Court** : Chennai

**Decided On :** Dec-01-1955

**Reported in** : AIR1956Mad413; (1956)1MLJ576

**Appellant** : Pethi Reddi

**Respondent** : Venkata Reddy and ors.

**Judgement** :

Govinda Menon, J.

1. The third defendant is the appellant in this Second Appeal which arises out of an application by the plaintiffs for the passing of a final decree in O.S. No. 64 of 1943 on the file of the District Munsif's Court, Sankaridrug, at Salem. The facts which have given rise to this litigation are as follows. In the insolvency of the first defendant, the Official Receiver sold the rights in the disputed properties belonging to the joint family consisting of the first defendant and the plaintiffs to the second defendant in 1936 and 1939. By these purchases, in May, 1939, the second defendant became the owner of the entire rights of the joint family of the plaintiffs and the first defendant. The second defendant later on assigned his rights to the third defendant.

2. While matters were in this state, there was a Full Bench decision of this Court reported in Ramasastrulu v. Balakrishna Rao : AIR1942Mad682 , dated 28th July, 1942, by which it was held that the right of a manager of a joint Hindu family to sell the family assets to discharge the debts which were payable by the father-manager is not property within the meaning of Section 2(d) of the Provincial Insolvency Act and therefore, the Official Receiver could not sell the son's share in the insolvency of the father as the right of the father to sell the son's share for debts which are neither illegal nor immoral do not vest in the Official Receiver. If that decision laid down the correct law, then the purchase by the second defendant of the entire rights of the family in the property would not be held valid; but what the second defendant obtained would only be a one third share of the first defendant.

3. On account of this the plaintiffs who were the minor sons of the first defendant filed O.S. No. 64 of 1943 for partition and recovery of their two-third share in the property. The first defendant was the father. The second defendant was the purchaser from the Official Receiver and the third defendant was the assignee from the second defendant. The trial Court following the decision in Ramasastrulu v. Balakrishna Rao : AIR1942Mad682 passed a preliminary decree for partition of the two-third share in favour of the plaintiffs on 20th August, 1943. An appeal was taken against that decree by the third defendant which was dismissed on 19th January, 1945. Thereafter this Court was moved in S.A. No. 1880 of 1945 where also the third defendant shared the same fate by the dismissal of the Second Appeal on 18th November, 1946. In the

meanwhile the plaintiffs had applied to the trial Court for the passing of the final decree in accordance with the confirmed preliminary decree of the Appellate Court and an ex parte final decree was passed while the Second Appeal was pending here on 1st August, 1946. The third defendant put in an application to set aside this ex parte final decree passed against him and the same was set aside on 17th January, 1950.

4. The situation, therefore, is as if the preliminary decree passed on 2nd February, 1943, stood confirmed by the Second Appeal decree, dated 18th November, 1946. The application out of which this Second Appeal has arisen is the original application for passing of the final decree filed by the plaintiffs. Both the lower Courts have held that the plaintiffs are entitled to have the final decree passed on the footing that they can claim a two-third share in the properties. Hence the Second Appeal.

5. Section 28-A of the Provincial Insolvency Act was introduced by Section 2 of the amending Act XXV of 1948 as a result of suggestion made by this Court in Ramasastrulu v. Balakrishna Rao : AIR1942Mad682 and the Statement of Objects and Reasons of Act XXV of 1948 contains the following:

3. In the course of a Full Bench decision reported in Ramasastrulu v. Balakrishna Rao : AIR1942Mad682 , the Madras High Court suggested that Central legislation should be promoted to bring the Provincial Insolvency Act into line with the Presidency Towns Insolvency Act in the relevant respect. The Government of India who postponed consideration of the matters pending the termination of the war, have now consulted Provincial Governments and High Courts on this suggestion which have received virtually unanimous support and to which effect is given by this Bill.

6. Section 28-A runs as follows:

The property of the insolvent shall comprise and shall always be deemed to have comprised also the capacity to exercise and to take proceedings for exercising all such powers in or over or in respect of property as might have been exercised by the insolvent for his own benefit at the commencement of the insolvency or before his discharge:

Provided that nothing in this section shall affect any sale, mortgage or other transfer of the property of the insolvent by a Court or receiver or the Collector acting under Section 60 made before the commencement of the Provincial Insolvency (Amendment) Act, 1948, which has been the subject of a final decision by a competent Court:

Provided further that the property of the insolvent shall not be deemed by reason of anything contained in this section to comprise his capacity referred to in this section in respect of any such sale, mortgage or other transfer of property made in the State of Madras after the 28th day of July, 1942 and before the commencement of the Provincial Insolvency (Amendment) Act, 1948.

7. The result of the first paragraph of this section is that the power of the father to sell the son's share in the joint family property for debts incurred by him which are neither illegal nor immoral will vest in the Official Receiver when the father is adjudicated insolvent. But the first proviso says that if on account of any decision previously made before the commencement of this Amending Act there has been a

final decision by a competent Court, such matters could not be re-opened as a result of this new provision. The question here is whether the preliminary decree passed on 2nd February, 1943, by which the plaintiff's share has been declared as two-third in the entire property and which preliminary decree has received confirmation by the appellate Court and finally by this Court on 1st August, 1946, is a final decision by a competent Court. The word ' decision ' has not been defined in the statute. In interpreting Section 73 of the Commonwealth of Australia Constitution where the word, ' decision ' occurs, it has been interpreted as, ' judgments, decrees, orders and sentences.' See Commonwealth Bank of New South Wales. A.I.R 1949 925 noted at Stroud's Judicial Dictionary, Vol. I

8. In the circumstances, of the present case, we are of opinion that the word ' decision ' should be interpreted as being synonymous with decree. If that is so, there has been no final decree by a competent Court. The mere declaration of the rights of the plaintiff by the preliminary decree, would, in our opinion, not amount to a final decision for it is well known that even if a preliminary decree is passed either in a mortgage suit or in a partition suit, there are certain contingencies in which such a preliminary decree can be modified or amended and therefore, would not become final. Some help can be got for the interpretation of the word, ' final decision ' from the meaning given to the word, ' final decree or judgment' in Wharton's Law Lexicon, 14th Edition, at page 418, where the learned author says as follows:

Final decree or judgment a conclusive decision of the Court as distinguished from interlocutory.

9. In re A debtor L.R. (1929) 2 146 Lord Hanworth, M.R., in discussing the meaning of the word, ' final' states as follows:

It is clear, therefore, that further proceedings will be necessary to get the money out of Court and I think it is also clear that the order of October 24, in its own terms, did not finally determine the right of the petitioner, or anyone else, in respect of the sum to be paid. In my opinion, therefore, the order is not a ' final order.

10. The learned Master of the Rolls is therefore of the view that where final proceedings are necessary to give relief to the plaintiff to effectuate the declaration given by the preliminary proceeding then the earlier declaration will not become final.

11. Mr. A. Nagarajan for the respondent invited our attention to Section 97 and Order 20, Rule 18, Civil Procedure Code. Section 97 lays down that where a party aggrieved by a preliminary decree does not appeal from such a decree he shall be precluded from disputing its correctness in any appeal which may be preferred from the final decree. This section therefore gives finality to the conclusion, arrived at the preliminary stage. The section itself shows that until there is a final decree passed, there is no quietus or finality given to the proceedings of the Court. Order 20, Rule 18, speaks of the form of the decree in a partition suit. We do not think anything useful can be gathered from the provisions of this rule.

12. Mr. A. Nagarajan then brought to our notice the decision of Krishnaswami Nayudu, J., in S.A. No. 2732 of 1949 reported in Mutyala Ammanna v. Venkataratnam (1954) 2 M.L.J. 21. There the learned Judge held that the words ' subject of a final decision of a competent Court' cannot be read to mean ' subject of a final decree or

order of a competent Court' and the learned Judge also held that to attract the application of the proviso it will be sufficient if the decision in respect of the sale had become final notwithstanding that the suit may or may not have been finally disposed of. An order of remand holding that the Official Receiver had no power to dispose of the son's interest as the assignee of the insolvent's estate, constituted a final decision in so far as the sale was concerned notwithstanding that the suit was remanded for disposal on other matters. We do not think that any assistance can be derived from the general observations contained above. On the facts of that case, when it was held that the Court came to a conclusion that the sale by the insolvent was valid to a certain extent, that order has become a final decision. But on the facts of this case, so long as the plaintiffs have to take some steps, it will not be a final decision so far as the claim which they have made to the properties is concerned. We cannot, therefore, say that there has been a final decision, as we have already held that the word ' decision' should be read as synonymous with the decree in so far as the suit is concerned. In other places it might mean an ' order'. In these circumstances, we feel that there has been no final decision by which the plaintiff's rights have been completely adjudicated. In this view, the second appeal has to be allowed and the application for the passing of the final decree dismissed, but we order no costs throughout.