

[2023 LiveLaw \(SC\) 778](#)

IN THE SUPREME COURT OF INDIA

M.M. SUNDRESH; J., PRASHANT KUMAR MISHRA; J.

Petition(s) for Special Leave to Appeal (C) No(s). 8080/2019; 11-09-2023

A. KRISHNA SHENOY versus GANGA DEVI G. & ORS.

Partition - In partition suit, every interested party deemed to be a plaintiff - No bar in passing numerous preliminary decrees. (Para 8)

(Arising out of impugned final judgment and order dated 31-07-2018 in RFA No. 13/2017 passed by the High Court of Kerala at Ernakulam)

For Petitioner(s) Mr. Devadutt Kamat, Sr. Adv. Ms. Mary Mitzy, Adv. Mr. Revanta Solanki, Adv. Mr. Anubhav Kumar, Adv. Mr. Alfred Aaron Joseph, Adv. Ms. Shakun Sharma, AOR

For Respondent(s) Mr. E. M. S. Anam, AOR Mr. Deepak Goel, AOR Mr. Jitendra Bharti, Adv. Ms. Alka Goyal, Adv. Ms. Urvashi Sharma, Adv.

ORDER

1. Heard learned counsel for the parties.
2. This special leave petition has been filed by the appellant, aggrieved over the judgment of the High Court confirming the supplementary preliminary decree granted in favour of his sisters, who have been arrayed as respondents No.1 and 2 before us.
3. A suit for partition was filed, on the first occasion, in O.S. No.205/1994 in which the petitioner was arrayed as a defendant. The preliminary decree passed in the said suit has become final as against the petitioner herein. However, two of his sisters were not arrayed as parties. An attempt made by them subsequently during the final hearing of the proceedings, did not yield any fruit. Thereafter, they filed an independent Suit in O.S. No.47/2014 seeking partition. During the pendency of the said suit, they filed an application seeking yet another preliminary decree in the earlier suit against the petitioner before us. Accordingly, a supplementary preliminary decree was passed, which, in turn, is confirmed under the impugned order. Challenging the same, the present special leave petition is filed.
4. Learned senior counsel appearing for the petitioner submitted that the mandate of Order XLI, Rule 31 of the Code of Civil Procedure (for short, 'CPC') has not been complied with. Having filed a separate suit in the year 2014, the separate application is hit by Section 10 of the CPC.
5. Both the Courts, have not taken into consideration the fact that the impleadment application filed by the contesting respondents was dismissed.
6. Both the Courts have wrongly construed the wills relied upon by the petitioners, in disbelieving the evidence of the witnesses, who attested. In support of his contention, learned counsel has made reliance upon the decisions rendered by this Court in **Malluru Mallappa (Dead) Through Legal Representatives v. Kuruvathappa and Others**, (2020) 4 SCC 313 and **Somakka (Dead) by Legal Representatives v. K.P. Basavaraj (Dead) by Legal Representatives**, (2022) 8 SCC 261.
7. Upon perusal of the impugned order and the preliminary decree passed by the Trial Court, we find no error warranting interference. Order XLI, Rule 31 of the CPC has been complied with under the impugned order, inasmuch as adequate reasoning has been rendered. Suffice it is to state that the High Court has considered the contentions on merit and, therefore, dealt with the issues involved.

8. Section 10 of the CPC has got no application in the case on hand. Admittedly, we are dealing with a suit for partition, in which every interested party is deemed to be a plaintiff. Law does not bar passing of numerous preliminary decrees. The fact that the applicants are the sisters of the petitioner is not in dispute.

9. In such view of the matter, they ought to have been arrayed as defendants in the main suit itself. The dismissal of the application during the final hearing proceeding has got no bearing on the application filed seeking yet another preliminary decree. Both the Courts had rightly disbelieved the unregistered wills executed in favour of the petitioner ignoring the two daughters.

10. In such view of the matter, we do not find any error warranting interference. The special leave petition is, accordingly, dismissed.

11. Pending application(s), if any, shall stand disposed of.

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