

AFR

Reserved on 20.05.2025

Delivered on 30.05.2025

Court No. - 9

Case :- MATTERS UNDER ARTICLE 227 No. - 4107 of 2024

Petitioner :- Shiv Narayan Gupta

Respondent :- Garib Chandra

Counsel for Petitioner :- Hemant Kumar

Counsel for Respondent :- Shiv Om Vikram Singh Chauhan

With

Case :- MATTERS UNDER ARTICLE 227 No. - 3458 of 2025

Petitioner :- Shiv Narayan

Respondent :- Garib Chandra

Counsel for Petitioner :- Hemant Kumar

Counsel for Respondent :- Shiv Om Vikram Singh Chauhan

Hon'ble Rohit Ranjan Agarwal,J.

1. These two writ petitions have been filed by the petitioner assailing the orders passed by the Court below after the preliminary decree was prepared on 31.10.1995 in Partition Suit No.62 of 1995 filed by plaintiff-respondent.

2. Matter under Article 227 No.4107 of 2024 assails the order dated 16.02.2024 passed by the trial Court on application 45-A2 filed in Final Decree Case No.2 of 2005 by which the application filed by plaintiff-respondent for modification of preliminary decree was allowed as well as order dated 11.03.2024 passed by District Judge, Banda in Civil Revision No.6 of 2024 by which revision filed by the defendant-petitioner against the aforesaid order was dismissed.

3. Matter under Article 227 No.3458 of 2025 has been filed assailing the order dated 29.10.2024 passed by Civil Judge (Senior Division), Banda on application (Paper No.171C-2) moved by defendant-petitioner as well as order dated 22.01.2025 passed by Additional District Judge-I, Banda in Civil Revision No.33 of 2024

dismissing the revision filed by petitioner and confirming the order of the trial Court.

4. Facts, leading to filing of present writ petitions, are that one Mahadi alias Mahadev had two daughters one Smt. Sundi and another Smt. Ramiya. Smt. Sundi became widow at an early age and had no issue. Ramiya, the real sister of Smt. Sundi, had two sons Ram Narayan and Maiyyadeen. Maiyyadeen died issueless while Ram Narayan had two sons Shiv Narayan and Garib Chandra, the present plaintiff and defendant to the suit. After the death of Ram Narayan, Garib Chandra and Shiv Narayan inherited equal share in the properties given in Schedule 'A', 'B', 'C' and 'D' of the plaint.

5. Garib Chandra, the respondent filed Original Suit No.62 of 1995 against Shiv Narayan, defendant-petitioner for partition of half share in the suit property. A preliminary decree was prepared on 31.10.1995 declaring that plaintiff and defendant each had half share in the suit property. Plaintiff-respondent, after preparation of preliminary decree, moved an application on 19.04.2005 for preparation of final decree, which was registered as Final Decree Case No.2 of 2005.

6. It was on 14.03.2018 that plaintiff-respondent moved an application 45-A2 before the Court concerned for amending the decree under Section 151 C.P.C. to the extent that Smt. Sundi had endowed part of the property, given in schedule 'B' of the plaint, in favour of Bhagwan Mahavir Swami through an endowment deed dated 26.02.1969. The application was allowed on 16.2.2024 and the decree was amended to the extent of the property, which was subject matter of endowment deed dated 26.02.1969. Against the said order, petitioner filed Civil Revision No.6 of 2024, which was dismissed on 11.03.2024.

7. In the meantime, petitioner filed an application, paper No.171C2, before the trial Court that the endowment deed dated 26.02.1969 was a nullity as Smt. Sundi had executed a sale deed in favour of Ram Narayan, Shiv Narayan and Garib Chandra on 26.12.1963 and, on the same day, Smt. Ramiya had executed a sale deed for her portion of house in favour of Smt. Sundi. Thus, preliminary decree could not have been amended as Smt. Sundi did not have any right to execute endowment deed dated 26.02.1969. The said application was rejected on 29.10.2024, against which, Civil Revision No.33 of 2024 was preferred by the petitioner, which has been dismissed vide order dated 22.01.2025, hence the present writ petition.

8. Counsel for the petitioner in both the writ petitions submitted that application at the behest of plaintiff-respondent for amending the preliminary decree was not maintainable as the endowment deed of 1969 cannot be given effect to as the said fact was never placed before the trial Court when the preliminary decree was passed. He then contended that it was during the proceedings before this Court that through counter affidavit, for the first time, the fact regarding execution of sale deed by Smt. Sundi and Smt. Ramiya on 26.12.1963 was brought on record. According to him, if Smt. Sundi had executed the sale deed in the year 1963 in respect of her share then she did not have any right to execute the endowment deed in the year 1969. He has relied upon decision rendered by Hon'ble Supreme Court in case of **Phoolchand vs. Gopal Lal, 1967 AIR (SC) 1470; S.Sai Reddy vs. S.Narayana Reddy, 1991 (3) SCC 647; Prema vs. Nanje Gowda and Ors., 2011 Supreme (SC) 510; and Baliram Atmaram Kelapure vs. Indirabai, 1996 (8) SCC 400.**

9. Learned counsel laid emphasis to the fact that pending final decree, the shares are liable to be varied on account of intervening

event such as death of a party or change of law. According to him, the old event, which had taken place prior to passing of preliminary decree or institution of suit, cannot be taken into account.

10. Sri Vishnu Gupta, learned Senior Advocate appearing for the respondent submitted that there is no denial to the fact that Smt. Sundi had executed an endowment deed in favour of Bhagwan Mahavir Swami on 26.02.1969. According to him, she was the absolute owner in possession of the property when the endowment was made in respect of the shop in question. The document was not in possession of the plaintiff-respondent and, for the first time, it came into the knowledge of respondent on 07.09.2017 from one of the old tenant Mohd. Aziz Ansari, and thereafter application, Paper No. 45-A2, was moved. Further, Original Suit No.244 of 2022 has already been filed on behalf of Deity for possession of endowed property against the occupier of the property. According to him, once the endowment was made, the ownership transferred to Deity, which cannot be part of the partition decree. He has placed reliance upon a decision of Apex Court rendered in case of **S.Satnam Singh & Ors. vs. Surender Kaur & Anr. (2009) 2 SCC 562**.

11. I have heard the respective counsel for the parties and perused the material on record.

12. It is an admitted case to both the parties that they have succeeded to the property of late Ram Narayan. Both plaintiff and defendant are entitled to half share in property of Ram Narayan. There is also no dispute as to the fact that Smt. Sundi and Smt. Ramiya were real sisters. Both the plaintiff and defendant are the grandsons of Smt. Ramiya. On 26.12.1963, two sale deeds are alleged to have been executed, one by Sundi in favour of Ram Narayan, Shiv Narayan and Garib Chandra and another by Smt. Ramiya for part of southern portion of the house in which she was residing, in favour of Smt.

Sundi. It is also not in dispute that a registered endowment deed was executed by Smt. Sundi on 26.02.1969 in favour of Bhagwan Mahavir Swami. The deed still holds good and has not been cancelled or annulled by any Court of law.

13. From perusal of endowment deed, brought on record, it transpires that Smt. Sundi, during her lifetime, had got constructed one temple in the city of Banda where idol of Bhagwan Mahavir Swami along with other Deity were installed. She had endowed the shop in question to the Deity so that expenses of the temple are met out from the rent realized from the shop. During her lifetime, she was also the Manager of the temple.

14. Once an endowment is made to a Deity, ownership stands transferred to the Deity and unless and until the endowment is set aside, the Deity remains the owner of endowment so made.

15. In the instant case, the partition suit was filed in the year 1995 and a preliminary decree was prepared on 31.10.1995 holding that plaintiff and defendant had one-half share each. It is only when the deed of 1969 surfaced that an amendment was sought in the preliminary decree, which was allowed by the trial Court and confirmed by the revisional Court.

16. Coming to legality of the order in question, a cursory glance to the provision of Section 97 C.P.C. is necessary, which provides for an appeal against a preliminary decree. The said provision does not bar for any application for amendment of a decree. In the decision cited by petitioner, Hon'ble Supreme Court in **Phoolchand (supra)** has clearly laid down that in a partition suit, a preliminary decree can be amended if an event transpires. There was no bar for drawing a fresh preliminary decree. In the said case, one of the parties had died and

question arose as to the share which was redrawn. The Apex Court held that shares can be varied.

17. Similarly, in **S. Sai Reddy (supra)**, the Apex Court held that the shares are liable to be varied on account of intervening events. The same view was reiterated in **Prema (supra)** where the Apex Court provided that if, in the interregnum, any party to the partition suit dies, then his/her share is required to be allotted to surviving parties.

18. In **Baliram Atmaram Kelapure (supra)**, the Apex Court while noting the fact that though Section 97 C.P.C. provides for an appeal against a preliminary decree, but the Court found that the application for amendment of a decree was not barred.

19. In **S. Satnam Singh (supra)**, the Court also took similar view and held as under :-

“20. Indisputably, section 97 of the Code of Civil Procedure provides for an appeal against preliminary decree but the said provision, in our opinion, would not be a bar to file an application for amendment of a decree.

21. The Court may not have a suo motu power to amend a decree but the same would not mean that the Court cannot rectify a mistake. If a property was subject-matter of pleadings and the Court did not frame an issue which it ought to have done, it can, at a later stage, when pointed out, may amend the decree.

22. The power of amendment, in a case of this nature, as noticed hereinbefore, would not only be dependent upon the power of the Court but also the principle that a Court shall always be ready and willing to rectify the mistake it has committed.”

20. The case law placed by both the parties relate to intervening events, which had taken place after the preliminary decree was prepared and the case for final decree was pending, where the Court had allowed the amendment of preliminary decree on the ground that intervening event had taken place.

21. These judgment does not restrict the power of the Court to amend preliminary decree in case it is found that amendment was necessary to do complete justice between the parties. In the instant case, the registered endowment deed of 1969 surfaced in the year 2017 which was brought to the notice of the Court through an application filed in the year 2018. The objection raised by the petitioner's counsel cannot be sustained to the effect that only the intervening event can be taken note of and not those event, which had taken place prior to filing of partition suit or passing of preliminary decree, which were not within the control and knowledge of the parties. The provision of Section 97 C.P.C. or interpretation of the said provision by Hon'ble Apex Court does not restrict the power of the trial Court to amend the preliminary decree in case it necessitates to do justice between the parties.

22. In all the cases, referred above, only the intervening event had taken place, which was sought to be amended in the preliminary decree, which the Court had allowed and held that such intervening event can be taken note of and preliminary decree may be amended. The Court has never restricted for any event which was beyond the control of parties and also not within its knowledge.

23. In the instant case, the registered endowment deed of 1969 was not in the knowledge or possession of either of the parties. The petitioner has not raised any objection that it was well within the knowledge of plaintiff-respondent and he had deliberately concealed the said fact when partition suit was filed.

24. Once there was no denial to the fact that endowment deed of 1969 stands and was not in possession of plaintiff-respondent, the amendment of preliminary decree cannot be opposed. Had it been a case where the plaintiff-respondent was in possession of the endowment deed and had deliberately withheld the same, then the

defendant-petitioner could have opposed the amendment to the preliminary decree and judgment relied upon by him would have come to his rescue. It is also not denied that a suit for eviction against the occupier of endowed property has been instituted on behalf of Deity in the year 2022. Once such is a position, the defendant-petitioner cannot oppose the amendment of a preliminary decree.

25. Considering the facts and circumstances of the case, I find that no interference is required in the order impugned dated 16.02.2024 passed on application Paper No.45-A2 and order dated 11.03.2024 passed in Civil Revision No.6 of 2024. Writ Petition No.4107 of 2024 fails and is hereby **dismissed**.

26. As the Writ Petition No.4107 of 2024 has been dismissed, the connected Writ Petition No.3458 of 2025 also stands dismissed as the application, Paper No.171C-2, moved by the petitioner has been rejected and also the revision.

Order Date :- 30.5.2025

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