A KATTUKANDI EDATHIL KRISHNAN & ANR.

v.

KATTUKANDI EDATHIL VALSAN & ORS.

(Civil Appeal No(s). 6406-6407 of 2010)

JUNE 13, 2022

B **[S. ABDUL NAZEER AND VIKRAM NATH JJ.]**

Evidence Act, 1872 – s.114 – Share in coparcenary property – Partition suit filed by appellants-plaintiffs claiming half share in the coparcenary property – Respondents-defendents challenged the marriage of the first plaintiff's parents i.e. 'D' and 'C' and also C *contended that plaintiff no.1 is not the son born out of the said wedlock – Trial Court upheld the validity of marriage of first plaintiff's parents and held that plaintiff no.1 is son born out of said wedlock and passed preliminary decree for partition of the suit property – Appeal filed by respondent before High Court –* D *High Court held that plaintiff no.1 is son of 'D' but not a legitimate one and thereby denied partition of the property – Before the Supreme Court, appellants contended that as per s. 114 IEA, long course of living together between a male and female will raise a rebuttable presumption of marriage between them and the children born in such relationship are considered to be legitimate children –* E *Held: From the documents on record coupled with the evidence of PW-2, would show that there was long duration of cohabitation between parents of plaintiff no. 1 – Though the presumption of s.114 IEA is rebuttable, heavy burden lies on him who seeks to rebut the presumption – The respondents have failed to rebut the presumption* F *of marriage raised as per s. 114 IEA – Therefore the judgment of the trial Court is upheld – As far as issue of delay in initiating final decree proceedings u/Or. XX, r.18 of the CPC is concerned, the trial Courts directed to list the matter for taking steps u/Or. XX Rule 18 of the CPC soon after passing of the preliminary decree for partition and separate possession of the property,* suo motu *and* G *without requiring initiation of any separate proceedings – Code of Civil Procedure,1908 – Or. XX, r. 18.*

Allowing the appeals, the Court

HELD: 1. It is well settled that if a man and a woman live together for long years as husband and wife, there would be a H **presumption in favour of wedlock. Such a presumption could be**

drawn under Section 114 of the Evidence Act. Although, the presumption is rebuttable, a heavy burden lies on him who seek to deprive the relationship of legal origin to prove that no marriage took place. [Para 15][1126-E]

2. The plaintiffs have produced the birth certificate of the first plaintiff as Ex.A-9. As per this document, the date of birth of the first plaintiff is shown as 12.05.1942. K.E. 'D' and 'C' are described as father and mother. [Para 23][1128-C]

3. There are also enough materials on record to show that 'C' was getting some money from the family of 'D', including in particular the letters at Exs.A22 and A23, which were addressed to the first plaintiff by his mother 'C' long back in the year 1976. [Para 25][1129-C-D]

4. The first plaintiff was born on 12.05.1942 as is evident from Ext.A9. The documents produced by the plaintiffs were in existence long before the controversy arose between the parties. These documents, coupled with the evidence of PW-2, would show the long duration of cohabitation between 'D' and 'C' as husband and wife. The first plaintiff joined military service in the year 1963 and retired in the year 1979. Thereafter he has taken the steps to file a suit for partition of the suit schedule property. [Para 26][1130-B-D]

5. This Court also perused the evidence of the defendants. This Court is of the view that the defendants have failed to rebut the presumption in favour of a marriage between 'D' and 'C' on account of their long co-habitation. [Para 27][1130-D-E]

6. Once a preliminary decree is passed by the Trial Court, the court should proceed with the case for drawing up the final decree *suo motu*. After passing of the preliminary decree, the Trial Court has to list the matter for taking steps under Order XX Rule 18 of the CPC. The courts should not adjourn the matter sine die, as has been done in the instant case. There is also no need to file a separate final decree proceedings. In the same suit, the court should allow the concerned party to file an appropriate application for drawing up the final decree. Needless to state that the suit comes to an end only when a final decree is drawn. [Para 33][1135-A-C]

A *Badri Prasad v. Dy. Director of Consolidation and Others* **(1978) 3 SCC 527: [1979] 1 SCR 1;** *S.P.S. Balasubramanyam v. Suruttayan alias Andali Padayachi and Others* **(1994) 1 SCC 460;** *Tulsa and Others v. Durghatiya and Others* **(2008) 4 SCC 520 : [2008] 1 SCR 709;** *Challamma v. Tilaga and Others* **(2009) 9 SCC**
B **299 : [2009] 11 SCR 831;** *Madan Mohan Singh and Others v. Rajni Kant and Another* **(2010) 9 SCC 209 : [2010] 10 SCR 30;** *Indra Sarma v. V.K.V. Sarma* **(2013) 15 SCC 755 : [2013] 14 SCR 101920 – relied on.**

C *Shub Karan Bubna v. Sita Saran Bubna* **(2009) 9 SCC 689 : [2009] 14 SCR 40;** *Bimal Kumar and Another v. Shakuntala Debi and Others* **(2012) 3 SCC 548 : [2012] 2 SCR 195 – referred to.**

Andrahennedige Dinohamy and Anr. v. Wijetunge Liyanapatabendige Balahamy and Ors. **AIR 1927 PC**
D **185;** *Mohabbat Ali Khan v. Mohd. Ibrahim Khan* **AIR 1929 PC 135 – referred to.**

Case Law Reference

[1979] 1 SCR 1	**relied on**	**Para 18**
E **(1994) 1 SCC 460**	**relied on**	**Para 19**
[2008] 1 SCR 709	**relied on**	**Para 20**
[2009] 11 SCR 831	**relied on**	**Para 20**
[2010] 10 SCR 30	**relied on**	**Para 20**
[2013] 14 SCR 1019	**relied on**	**Para 20**
F **[2009] 14 SCR 40**	**referred to**	**Para 31**
[2012] 2 SCR 195	**referred to**	**Para 31**

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos.6406-6407 of 2010.

G From the Judgment and Order dated 05.02.2009 of the High Court of Kerala at Ernakulam in A.S. Nos.102 and 107 of 1996.

V. Chitambaresh, K. Rajeev, Advs. for the Appellants.

R. Basant, V. Giri, Sr. Advs., Raghenth Basant, K. B. Shivarama Krishnan, Ms. Liz Mathew, Amith Krishnan, Akshay Sahay, Ms. Roopali
H Lakhotia, Advs. for the Respondents.

The Judgment of the Court was delivered by:

S. ABDUL NAZEER, J.

1. The instant appeals arise out of the judgment and decree dated 05.02.2009 passed by the High Court of Kerala at Ernakulam in A.S. No.102 of 1996(A) and A.S. No.107 of 1996 whereby the High Court has allowed the appeals and set aside the decree for partition passed by the Trial Court.

2. The appellants were the plaintiffs and Kattukandi Idathil Karunakaran was the defendant who died during the pendency of the suit. Therefore, his legal representatives were brought on record as defendants no.2 to 5. For the sake of convenience, the parties are referred by their respective ranking before the Trial Court.

3. In the suit, the plaintiffs contended that the suit property belonged to one Kattukandi Edathil Kanaran Vaidyar who had four sons viz. Damodaran, Achuthan, Sekharan and Narayanan. The first plaintiff is the son of Damodaran, born in the wedlock with one Chiruthakutty, and the second plaintiff is the son of the first plaintiff. Achuthan had one son by name Karunakaran, the predecessor in-interest of the defendants. Sekharan was a bachelor and died without any issue. Narayanan married one Lakshmi and they had a daughter by the name of Janaki, who also died as a spinster. The plaintiffs claimed half share in the suit schedule property.

4. It is the case of the defendants that all the children except Achuthan died as bachelors and Karunakaran is the only son of Achuthan. They denied the contention of the plaintiffs that Damodaran had married Chiruthakutty and that the first plaintiff was the son born to them in the said wedlock. Their further contention was that Chiruthakutty was not the wife of Damodaran. Thus, it was pleaded that the plaintiffs are not entitled for any share in the suit schedule property.

5. On the basis of the pleadings of the parties, the Trial Court framed relevant issues. The Trial Court on examination of the evidence on record held that Damodaran had a long co-habitation with Chiruthakutty and that due to such co-habitation, it could be concluded that Damodaran had married Chiruthakutty and that the first plaintiff was the son born in the said wedlock. The Trial Court accordingly passed a preliminary decree for partition of the suit property into two shares and one such share was allotted to the plaintiffs.

A 6. Aggrieved by the said judgment and decree, the first defendant filed an appeal, A.S. No.102 of 1996, and the other defendants filed another appeal A.S.No.107 of 1996 before the High Court. While the matter was being argued, yet another contention was put forward by the defendants that if the first plaintiff was born to Damodaran through Chiruthakutty, he could only be an illegitimate child. As long as the
B marriage between Damodaran and Chiruthakutty is not proved, the plaintiffs cannot claim the right over the coparcenary property. This plea of the defendants was without any pleading to that effect and no such contention was put forth by the defendants before the Trial Court.

C 7. The High Court, on appreciation of the evidence on record, held that the first plaintiff was the son of Damodaran. However, the documents produced before the Court would not go to show that Damodaran actually married Chiruthakutty and that no presumption of a pre-existing valid marriage between Damodaran and Chiruthakutty could arise. The High Court opined that the position of the first plaintiff to be
D of an illegitimate child. That being so, the plaintiffs would not be entitled for a share in the coparcenary property since the marriage between Damodaran and Chiruthakutty was not a valid one. On the basis of this conclusion, the High Court remitted the matter back to the Trial Court for fresh consideration. The Trial Court permitted the parties to adduce
E additional evidence and, if necessary, to amend the pleadings so as to consider the factum of marriage.

8. The plaintiffs challenged the above order of remand before this Court and this Court allowed the appeals by setting aside the order of remand with a direction to the High Court to decide the appeals on the
F basis of the evidence on record.

9. The High Court, thereafter, heard the appeals and allowed the same by holding that there is no evidence to establish the long co-habitation between the father and the mother of the first plaintiff and the documents only proved that the first plaintiff is the son of Damodaran, but not a
G legitimate son, thereby denied partition of the property. As noticed above, this judgment of the High Court is under challenge in these appeals.

10. We have heard Mr. V. Chitambaresh, learned senior counsel for the appellants-plaintiffs and Mr. R. Basant & Mr. V. Giri, learned senior counsel for the respondents-defendants.

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11. Mr. V. Chitambaresh submits that the voluminous documents produced by the plaintiffs would show that Damodaran was the father of the first plaintiff and Chiruthakutty was the wife of Damodaran. Since their marriage took place more than 50 years prior to filing of the suit (now 90 years), there is no possibility of having any documentary evidence of their marriage. He has taken us through the various documents produced by the plaintiffs wherein there are references to periodical payments made to Chiruthakutty from the husband's house. He has also taken us through the evidence of plaintiffs and, the witnesses examined on behalf of the plaintiffs in support of his contention. It is further argued that the documents produced by the plaintiffs were in existence long before any controversies between the parties arose. These documents would conclusively show that the first plaintiff was the son of Damodaran and Chiruthakutty and the contention of the defendants that Damodaran died as a bachelor or without any legitimate son, cannot be believed at all. It is further submitted that the law is in favour of declaring legitimacy, as against bastardy. Long course of living together between a male and female will raise a presumption of marriage between them and the children born in such relationship are considered to be legitimate children. It is further argued that while such presumption, made under Section 114 of the Indian Evidence Act, 1872, is a rebuttable one, as rightly held by the Trial Court that the defendants have not produced any worthwhile evidence to rebut this presumption in the present case.

12. On the other hand, Mr. R. Basant and Mr. V. Giri, learned senior counsel for the defendants, would submit that Damodaran had not married Chiruthakutty and that the first plaintiff was not the legitimate son of Damodaran. The suit was deliberately filed at a belated stage when production of conclusive evidence as to this issue was no longer a possibility. No claim for partition whatsoever was made during the lifetime of Chiruthakutty. It is argued that there is no proof whatsoever either of the marriage or of the long co-habitation and that all the documents relied upon by the plaintiffs are documents that came into existence after the death of Damodaran except Exhibit A-3. It is further argued that even Exhibit A-3 does not prove the marriage/long co-habitation between Damodaran and Chiruthakutty. It is also contended that the plaintiffs have not come to the court with clean hands. Therefore, the court should not show any indulgence in their favour. Accordingly, the defendants have prayed dismissal of the appeals.

A 13. We have carefully considered the submissions made at the Bar by learned senior counsel for the parties and perused the materials placed on record.

14. It is not disputed that the suit property belongs to one Kattukandi Edathil family which is a Thiyya family of Calicut governed by the B Mitakshara Law of Inheritance. The said property originally belonged to one Kattukandi Edathil Kanaran Vaidyar who had four sons, namely, Damodaran, Achuthan, Sekharan and Narayanan. It is also admitted that Achuthan married Kalyani and they had a son named Karunakaran (Defendant No.1). Karunakaran married Umadevi (Defendant No.3) and they had three children, namely, Valsan, Kasturi and Saraswati Bai C (Defendant Nos.2, 4 and 5 respectively). Sekharan and Narayanan did not marry. The plaintiffs have contended that Damodaran married one Chiruthakutty and they had a son by the name of Krishnan (Plaintiff No.1). However, the defendants have contended that Damodaran never married Chiruthakutty. The court below has recorded a finding of fact that the first plaintiff was the son of Damodaran and Chiruthakutty, but D not a legitimate son.

15. It is well settled that if a man and a woman live together for long years as husband and wife, there would be a presumption in favour of wedlock. Such a presumption could be drawn under Section 114 of the Evidence Act. Although, the presumption is rebuttable, a heavy burden E lies on him who seek to deprive the relationship of legal origin to prove that no marriage took place.

16. In **Andrahennedige Dinohamy and Anr. v. Wijetunge Liyanapatabendige Balahamy and Ors.**[1]**,** the Privy Council laid down the general proposition as under:

F "…where a man and woman are proved to have lived together as man and wife, the law will presume, unless the contrary be clearly proved, that they were living together in consequence of a valid marriage and not in a state of concubinage."

17. In **Mohabbat Ali Khan v. Mohd. Ibrahim Khan**[2]**,** once G again it was laid down by the Privy Council as under:

"The law presumes in favour of marriage and against concubinage, when a man and a woman have cohabited continuously for a number of years."

[1] AIR 1927 PC 185

H [2] AIR 1929 PC 135

18. In **Badri Prasad v. Dy. Director of Consolidation and Others**[3], it was held by this Court that a strong presumption arises in favour of wedlock where two partners have lived together for long spell as husband and wife. Although the presumption is rebuttable, a heavy burden lies on him who seek to deprive the relationship of legal origin. Law leans in favour of legitimacy and frowns upon the bastardy.

19. In **S.P.S. Balasubramanyam v. Suruttayan alias Andali Padayachi and Others**[4], this Court held as under:

> "4. What has been settled by this Court is that if a man and woman live together for long years as husband and wife then a presumption arises in law of legality of marriage existing between the two. But the presumption is rebuttable. [See: Gokul Chand v. Parvin Kumari – AIR 1952 231 : 1952 SCR 825]"

20. Similar view has been taken by this Court in **Tulsa and Others v. Durghatiya and Others**[5]**; Challamma v. Tilaga and Others**[6]**; Madan Mohan Singh and Others v. Rajni Kant and Another**[7] and **Indra Sarma v. V.K.V. Sarma**[8]

21. According to the plaintiffs, Damodaran had married Chiruthakutty in the year 1940. However, there is no direct evidence of their marriage. The first plaintiff-Krishnan was born in the year 1942. Therefore, the question for consideration in these appeals is whether there is sufficient evidence to prove the long co-habitation to establish the relationship of husband-wife between Damodaran and Chiruthakutty.

22. The first plaintiff was examined as PW-1 who deposed that his father-Damodaran and mother-Chiruthakutty resided in the suit schedule property. PW-1 further deposed that he shifted his residence along with his mother after the demise of his father when he obtained a job. PW-1 has also stated that the defendants gave a share of the income till the death of his mother in the year 1985. PW-2 is a neighbour. In his evidence he has stated that Kattukandi Edathil Damodaran had married Chiruthakutty. They had resided at Kattukandi Edathil House as husband

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[3] (1978) 3 SCC 527
[4] (1994) 1 SCC 460
[5] (2008) 4 SCC 520
[6] (2009) 9 SCC 299
[7] (2010) 9 SCC 209
[8] (2013) 15 SCC 755

A and wife. They have a son by the name of Krishnan. In his cross-examination, he has stated that, as per custom, some persons had participated in their marriage. Even before marriage, Chiruthakutty had been at Kattukandi Edathil House. PW-2 has also stated that Chiruthakutty had rented a room at Chalapurram and after marriage, they had stayed in a rented house and that Damodarana's sister also participated in the marriage. The evidence of PW-2 also shows that the marriage between Damodaran and Chiruthakutty was a love marriage.

23. The plaintiffs have produced the birth certificate of the first plaintiff as Ex.A-9. As per this document, the date of birth of the first plaintiff is shown as 12.05.1942. K.E. Damodaran and Chiruthakutty are described as father and mother. Ex.B-1 is the copy of the similar certificate produced by the defendants. On comparing Ex.A-9 and Ex.B-1, it is seen that some corrections have been made in Ex.A-9 with regard to the place of birth. However, it is to be noted that in both the documents, the name of the father and the mother of the first plaintiff are one and the same i.e. K.E. Damodaran and Chiruthakutty respectively. Ex.A2 is the Insurance Policy which shows name of his house as Kattukandy Edathil. Ex. A2 dated 26.04.1966. Ex.A3 is the Secondary School Leaving Certificate of K.E. Damodaran kept in his possession. According to him he got the same since he is the son of Damodaran. Ex. A4, dated 01.08.1963, is a Trade certificate issued in favour of the first plaintiff which was issued by the Secretary of State Council for training in vocational Trades, since he was a student of the Junior Technical School, Manjeri. In this certificate the name of the first plaintiff is shown as Krishnan K. S/o Sri. K.E. Damodaran. The name of the house is shown as Edathil house, Chalappuram.

24. The plaintiffs have produced Ex.A5, the Malayala Manorama Daily dated 16.02.1985. In this paper it is reported that Chiruthakutty, wife of Kattukandy Edathil Damodaran, aged 75 years had expired. The name of the first plaintiff is shown as the son of Chiruthakutty. Ex.A6 is the true copy of a voters list of the year 1970. In this document, the name of Chiruthakutty is shown as the wife of K.E. Damodaran. Ex.A7 dated 24.03.1980 is the petition filed by the first plaintiff before the village officer, Panniyankara. In this document the first plaintiff is certified as the son of Damodaran by the village officer. The same is dated 24.03.1980. Ex.A8 is also a similar certificate describing the first plaintiff as the son of Damodaran by the village officer. This is dated

04.05.1979. In the death certificate of Chiruthakutty dated 15.12.1985 (Ex.A10) the name of her husband is shown as Damodaran. Ex.A11 is the Electoral card of the first plaintiff in which the first plaintiff is described as the son of Damodaran and Chiruthakutty is described as the wife of Damodaran. Plaintiffs have also produced several other documents such as electoral card (Ex.A12) dated 02.11.1983, Ex.A13, a community certificate dated 07.11.1980, Ex.A14-Marriage certificate dated 29.04.1971, Ex.A15, the receipt issued by the Life Insurance Corporation of India in favour of the plaintiffs etc. Ex.A20 is an important document which is a Discharge Certificate of the first plaintiff from the Military Service wherein he is described as the son of K.E. Damodaran. Ex.A21 is the S.S.L.C. book of the first plaintiff.

25. There is also enough materials on record to show that Chiruthakutty was getting some money from the family of Damodaran, including in particular the letters at Exs.A22 and A23, which were addressed to the first plaintiff by his mother-Chiruthakutty long back in the year 1976. The Trial Court has discussed this aspect of the matter as under:

> "…..There is sufficient evidence to prove that K.E. Damodaran, Kattukandy Edathil had married Chiruthakutty and the 1st plaintiff is the son of Damodaran. It is the pertinent to note that the definite case of the plaintiffs is that the family used to give income from the family property to Chiruthakutty till her death in the year 1985. The plaintiff has produced Exts. A22 and A23 letters, addressed to the 1st defendant. On going through Ext. A22 it is seen that the same has been addressed to the 1st plaintiff by his mother Chiruthakutty long back in the year 1976. Of course the date is not mentioned in the letter but from the seal affixed in the document it is seen that the same has been posted in the year 1976. In this letter it is seen recorded that the mother went to Edathil House and also the 3rd defendant is mentioned as Umadathi. It is also seen from the letter that she is getting some money from the family. In Ext. A23 also it is seen that she is getting money from the family and there is reference to the 3rd defendant and the other defendant i.e., the daughter of the 3rd defendant i.e. DW1 has admitted that she is called as Umadathi. So Exts. A22 and A23 supports the case of the plaintiffs. The letters are seen addressed to the 1st plaintiff while he was in military service. From

A the letters it is seen that the mother has written the same when the 2nd child was born to him and there is also enquiries with regard to the illness of the 1st plaintiff. On going through these letters it can be seen that the documents are genuine. I find it difficult to conclude the same has been created by the plaintiffs to support their case as contended by the defendants."

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26. As noticed above, the contention of the plaintiffs is that the marriage of Damodaran and Chiruthakutty was performed in the year 1940. The first plaintiff was born on 12.05.1942 as is evident from Ext.A9. The documents produced by the plaintiffs were in existence long before the controversy arose between the parties. These documents, coupled with the evidence of PW-2, would show the long duration of cohabitation between Damodaran and Chiruthakutty as husband and wife. The first plaintiff joined military service in the year 1963 and retired in the year 1979. Thereafter he has taken the steps to file a suit for partition of the suit schedule property.

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27. We have also perused the evidence of the defendants. We are of the view that the defendants have failed to rebut the presumption in favour of a marriage between Damodaran and Chiruthakutty on account of their long co-habitation. In the circumstances, the High Court was not justified in setting aside the said judgment of the Trial Court.

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28. Resultantly, the appeals succeed and are accordingly allowed. The judgment of the High Court impugned herein is set aside and the judgment and decree passed by the Trial Court is restored. Parties are directed to bear their respective costs.

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Re.: Delay in initiating final decree proceedings under Order XX Rule 18 of the Code of Civil Procedure, 1908

29. Before parting, we deem it necessary to address a concerning trend of delay in drawing up the final decrees under Rule 18 of Order XX of the Code of Civil Procedure, 1908 (for short, 'CPC'). This provision deals with decrees in suits for partition or separate possession of share therein. It provides as under:

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"18. Decree in suit for partition of property or separate possession of a share therein.- Where the Court passes a decree for the partition of property or for the separate possession of a share therein, then,-

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(1) if and in so far as the decree relates to an estate assessed to the payment of revenue to the Government, the decree shall declare the rights of the several parties interested in the property, but shall direct such partition or separation to be made by the Collector, or any gazetted subordinate of the Collector deputed by him in this behalf, in accordance with such declaration and with the provisions of section 54;

(2) if and in so far as such decree relates to any other immovable property or to movable property, the Court may, if the partition or separation cannot be conveniently made without further inquiry, pass a preliminary decree declaring the right of the several parties, interested in the property and giving such further directions as may be required."

Sub section (2) of Section 2 defines the decree as under:

"(2) "decree" means the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint and the determination of any question within section 144, but shall not include—

(a) any adjudication from which an appeal lies as an appeal from an order, or

(b) any order of dismissal for default.

Explanation.—A decree is preliminary when further proceedings have to be taken before the suit can be completely disposed of. It is final when such adjudication completely disposes of the suit. It may be partly preliminary and partly final;"

30. It is clear from the above that a preliminary decree declares the rights or shares of the parties to the partition. Once the shares have been declared and a further inquiry still remains to be done for actually partitioning the property and placing the parties in separate possession of the divided property, then such inquiry shall be held and pursuant to the result of further inquiry, a final decree shall be passed. Thus, fundamentally, the distinction between preliminary and final decree is that:- a preliminary decree merely declares the rights and shares of the

parties and leaves room for some further inquiry to be held and conducted pursuant to the directions made in preliminary decree and after the inquiry having been conducted and rights of the parties being finally determined, a final decree incorporating such determination needs to be drawn up.

31. Final decree proceedings can be initiated at any point of time. There is no limitation for initiating final decree proceedings. Either of the parties to the suit can move an application for preparation of a final decree and, any of the defendants can also move application for the purpose. By mere passing of a preliminary decree the suit is not disposed of. **[See : Shub Karan Bubna v. Sita Saran Bubna[9]; Bimal Kumar and Another v. Shakuntala Debi and Others[10]]**

32. Since there is no limitation for initiating final decree proceedings, the litigants tend to take their own sweet time for initiating final decree proceedings. In some States, the courts after passing a preliminary decree adjourn the suit *sine die* with liberty to the parties for applying for final decree proceedings like the present case. In some other States, a fresh final decree proceedings have to be initiated under Order XX Rule 18. However, this practice is to be discouraged as there is no point in declaring the rights of the parties in one proceedings and requiring initiation of separate proceedings for quantification and ascertainment of the relief. This will only delay the realization of the fruits of the decree. This Court, in **Shub Karan Bubna (supra)**, hadpointed out the defects in the procedure in this regard and suggested for appropriate amendment to the CPC. The discussion of this Court is in paragraphs 23 to 29 which are as under:

"A suggestion for debate and legislative action

23. The century old civil procedure contemplates judgments, decrees, preliminary decrees and final decrees and execution of decrees. They provide for a "pause" between a decree and execution. A "pause" has also developed by practice between a preliminary decree and a final decree. The "pause" is to enable the defendant to voluntarily comply with the decree or declaration contained in the preliminary decree. The ground reality is that defendants normally do not comply with decrees without the pursuance of an execution. In very few cases the defendants in a

[9] (2009) 9 SCC 689

[10] (2012) 3 SCC 548

partition suit voluntarily divide the property on the passing of a preliminary decree. In very few cases, defendants in money suits pay the decretal amount as per the decrees. Consequently, it is necessary to go to the second stage, that is, levy of execution, or applications for final decree followed by levy of execution in almost all cases.

24. A litigant coming to court seeking relief is not interested in receiving a paper decree when he succeeds in establishing his case. What he wants is relief. If it is a suit for money, he wants the money. If it is a suit for property, he wants the property. He naturally wonders why when he files a suit for recovery of money, he should first engage a lawyer and obtain a decree and then again engage a lawyer and execute the decree. Similarly, when he files a suit for partition, he wonders why he has to first secure a preliminary decree, then file an application and obtain a final decree and then file an execution to get the actual relief. The commonsensical query is: why not a continuous process? The litigant is perplexed as to why when a money decree is passed, the court does not fix the date for payment and if it is not paid, proceed with the execution; when a preliminary decree is passed in a partition suit, why the court does not forthwith fix a date for appointment of a Commissioner for division and make a final decree and deliver actual possession of his separated share. Why is it necessary for him to remind the court and approach the court at different stages?

25. Because of the artificial division of suits into preliminary decree proceedings, final decree proceedings and execution proceedings, many trial Judges tend to believe that adjudication of the right being the judicial function, they should concentrate on that part. Consequently, adequate importance is not given to the final decree proceedings and execution proceedings which are considered to be ministerial functions. The focus is on disposing of cases rather than ensuring that the litigant gets the relief. But the focus should not only be on early *disposal of cases, but also on early and easy securement of relief* for which the party approaches the court. Even among lawyers, importance is given only to securing of a decree, not securing of relief. Many lawyers handle suits only till preliminary decree is made, then hand it over

A to their juniors to conduct the final decree proceedings and then give it to their clerks for conducting the execution proceedings.

26. Many a time, a party exhausts his finances and energy by the time he secures the preliminary decree and has neither the capacity nor the energy to pursue the matter to get the final relief. B As a consequence, we have found cases where a suit is decreed or a preliminary decree is granted within a year or two, the final decree proceeding and execution takes decades for completion. This is an area which contributes to considerable delay and consequential loss of credibility of the civil justice system. Courts and lawyers should give as much importance to final decree C proceedings and executions, as they give to the main suits.

27. In the present system, when preliminary decree for partition is passed, there is no guarantee that the plaintiff will see the fruits of the decree. The proverbial observation by the Privy Council is that the difficulties of a litigant begin when he obtains a D decree. It is necessary to remember that success in a suit means nothing to a party unless he gets the relief. Therefore, to be really meaningful and efficient, the scheme of the Code should enable a party not only to get a decree quickly, but also to get the relief quickly. This requires a conceptual change regarding civil litigation, E so that the emphasis is not only on disposal of suits, but also on securing relief to the litigant.

28. We hope that the Law Commission and Parliament will bestow their attention on this issue and make appropriate recommendations/amendments so that the suit will be a continuous F process from the stage of its initiation to the stage of securing actual relief.

29. The present system involving a proceeding for declaration of the right, a separate proceeding for quantification or ascertainment of relief, and another separate proceeding for G enforcement of the decree to secure the relief, is outmoded and unsuited for present requirements. If there is a practice of assigning separate numbers for final decree proceedings, that should be avoided. Issuing fresh notices to the defendants at each stage should also be avoided. The Code of Civil Procedure should provide for a continuous and seamless process from the stage of filing of H suit to the stage of getting relief."

33. We are of the view that once a preliminary decree is passed by the Trial Court, the court should proceed with the case for drawing up the final decree *suo motu*. After passing of the preliminary decree, the Trial Court has to list the matter for taking steps under Order XX Rule 18 of the CPC. The courts should not adjourn the matter *sine die*, as has been done in the instant case. There is also no need to file a separate final decree proceedings. In the same suit, the court should allow the concerned party to file an appropriate application for drawing up the final decree. Needless to state that the suit comes to an end only when a final decree is drawn. Therefore, we direct the Trial Courts to list the matter for taking steps under Order XX Rule 18 of the CPC soon after passing of the preliminary decree for partition and separate possession of the property, *suo motu* and without requiring initiation of any separate proceedings.

34. We direct the Registry of this Court to forward a copy of this judgment to the Registrar Generals of all the High Courts who in turn are directed to circulate the directions contained in paragraph '33' of this judgment to the concerned Trial Courts in their respective States.

Ankit Gyan
(Assisted by : Aarsh Choudhary, LCRA)

Appeals allowed.