

* THE HON'BLE SMT JUSTICE M.G.PRIYADARSINI

+ CIVIL REVISION PETITION No. 3018 of 2019

% 19.09.2023

1. P Janardhan Rao, S/o. Ramulu Gupta,
Age 62 years, Occ: Business,
R/o. H.No. 10-117, Wyra Town and Mandal,
Khammam District.

... Petitioner/defendant No. 2

Vs.

\$ 1. Pola Mohan Rao, S/o. Late Ramulu Gupta,
Age 64 years, Occ: Pola Mohan Rao Medical Store,
R/o. Wyra Town and Mandal, Khammam District and
others.

... Respondents/Plaintiff/Defendants

! Counsel for the Appellant: Mr. Mummaneni Srinivasa Rao

Counsel for Respondent No.1 : Mr. M.M.M.Srinivasa Rao

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? Cases referred:

(1) AIR 2010 SC 53

THE HONOURABLE SMT. JUSTICE M.G. PRIYADARSINI

CIVIL REVISION PETITION No. 3018 of 2019

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, is directed against the orders of the learned Senior Civil Judge at Sathupally assailing the orders dated 11.11.2019 made in I.A. No. 685 of 2015 in I.A. No. 943 of 2014 in O.S. No. 11 of 1989. By the impugned order, the learned Senior Civil Judge allowed the application filed by the plaintiff, respondent No. 1 herein, under Section 151 C.P.C. read with Section 3 of the partition Act, 1893 for conducting auction of the suit schedule-A property among the parties to the *lis* in the open Court.

2. The chequered events of the case are that the respondent No. 1 herein instituted O.S. No. 11 of 1989 for partition and separate possession of suit schedule properties, wherein, a preliminary decree was passed on 22.07.1991 dividing the suit schedule A, B and part-I of C schedule properties into 1/6th equal shares. Out of the

said items of schedule properties, schedule-A property is immovable property, and seeking its division, by way of final decree, I.A. No. 943 of 2014 came to be filed by the plaintiff. The Advocate-Commissioner, who was appointed to divide the schedule-A property as per the preliminary decree, after serving due notices on the parties, executed the warrant and filed his report on 30.07.2015 stating that *the width of schedule-A property and its open site is less than 9 feet and therefore, it cannot be beneficially partitioned into 6 equal shares and even if it is partitioned, it cannot help anybody and the property loses its value.* As no objections, to the said report, were filed by any of the party, including the revision petitioner, the Advocate-Commission petition was closed on 14.08.2015. In light of the report of the Advocate-Commissioner, the plaintiff, respondent No.1 herein, approached the trial Court with the impugned I.A. for conducting auction of schedule-A property among the parties in the open Court. Initially, the said application was allowed by the trial Court on 20.12.2017, assailing which, the revision petitioner, defendant No. 2 in the suit, carried the matter to this Court

in C.R.P. No. 831 of 2018. This Court disposed of the said revision on 14.02.2018 directing the trial Court to follow the principles laid down by the Apex Court in **Aloka Dudhoria v. Goutam Dudhoria**¹ while appointing the Advocate Commissioner for conducting sale of the property. Thereafter, the trial Court passed orders on 07.06.2018 in I.A. No. 685 of 2015 for conducting auction observing that the matter was considered as per the decision in **Aloka Dudhoria** (supra) by receiving the market certificate from the Sub-Registrar, Wyra, valuation certificate, Encumbrance Certificate and the certified copy of the sale deed of a house in the vicinity. Again, assailing the said orders, the revision petitioner carried the matter in revision before this Court being C.R.P. No. 3741 of 2018 contending that the trial Court had not followed the orders of this Court dated 14.02.2018 in C.R.P. No. 831 of 2018 in ordering auction of the property and that the objections of the revision petitioner to the Report of the Commissioner, dated 30.07.2015 were not considered. The said C.R.P. was allowed on 03.08.2018 directing the trial Court to

¹ AIR 2010 SC 53

consider the principles laid down in **Rani Aloka Dudhoria** (supra) as directed in C.R.P. No. 831 of 2018 and to follow the provisions of the Partition Act, 1893. Subsequently, the trial Court passed order on 24.08.2018, which reads as under:-

“As per orders passed in CRP No. 3741 of 2018 by Hon’ble High Court, Sri K. Nageswar Rao appointed as Advocate Commissioner to partition the property as per preliminary decree and conduct auction among the family members and advocate fee is about 3000/- for report call on 17.09.2018 and followed the apex court Judgment Rani Aloka Dudduriay vs. Goutham Dudduriya and others”.

3. Assailing the above orders, the revision petitioner again filed C.R.P. No. 6978 of 2018 contending that no reserve price was fixed as per Section 6 of the Partition Act, 1893; that there is no reference to the principles laid down in **Rani Aloka Dudhoria** (supra) or to the provisions of the Partition Act, 1893; and that there is no consideration of the objections raised by the petitioner to the report, dated 30.07.2015. Having found that the trial Court has not complied with the orders dated 03.08.2018 in C.R.P. No. 3741 of 2018, this Court while disposing of C.R.P. No. 6978 of 2018, set aside the orders of the trial Court dated

24.08.2018, remanded the matter to the trial Court with a direction to comply with the orders dated 03.08.2018 in C.R.P. No. 3741 of 2018 as also the orders dated 14.02.2018 in C.R.P. No. 831 of 2018 and also to consider the objections raised by the revision petitioner to the Advocate-Commissioner's Report dated 30.07.2015 and to proceed with the matter strictly in accordance with the provisions of the Partition Act. Thereafter, vide impugned orders dated 11.11.2019, the trial Court allowed I.A. No. 685 of 2015 directing sale of plaint schedule-A property among the family members. Challenging the same, this revision is filed by the defendant No. 2.

4. Learned counsel for the petitioner contends that the impugned order passed by the trial Court is contrary to the directions passed by this Court in C.R.P. No. 6978 of 2018, dated 16.04.2019; that without considering the objections of the revision petitioner, the impugned order is passed proposing to conduct the auction among the family members; and that in the absence of any offer by any of the shareholder to purchase the schedule-A property, the view

taken by the trial Court is wrong and the same is liable to be set aside. The impugned order passed by the trial Court is bereft of reasons and contrary to the provisions of Sections 2 and 3 of the Partition Act.

5. On the other hand, the learned counsel appearing on behalf of contesting respondent No. 1, sought to sustain the impugned order contending that the trial Court has passed the detailed order in compliance with the orders of this Court in C.R.P. No. 6978 of 2018 and therefore, the said order needs no interference by this Court.

6. This Court, taking into consideration the earlier chequered events and the respective contentions of the learned counsel for the contesting parties, disposed of C.R.P. No. 6978 of 2018 on 16.04.2019. For ready reference, the relevant portions of the order dated 16.04.2019 is extracted hereunder:-

*“16. Though counsel for the 1st respondent sought to sustain the said order, the contentions raised by the counsel for the petitioner have substance because the Court below in the impugned order has not considered the objections raised by the petitioner to the Advocate-Commissioner’s Report dt.30.07.2015 nor has it considered the principles laid down in **Rani Aloka Dudhoria’s***

case (1 supra), and thus it has not complied with the order dt.03.08.2018 in CRP.No.3741 of 2018. It has also not fixed the reserved price and according to the parties, the Advocate-Commissioner had fixed the reserve price.

17. In my considered opinion this is impermissible since it is for the Court to fix the reserved price and not for the Advocate-Commissioner. Therefore, the impugned order cannot be sustained.

*18. Accordingly, the impugned order is set aside; the matter is remitted back to the trial Court to strictly comply with the order dt.03.08.2018 in CRP.No.3741 of 2018 as also the order dt.14.02.2018 in CRP.No.831 of 2018, by following the principles laid down in **Rani Aloka dudhoria**'s case (1 supra). It shall also consider the objections raised by the 2nd defendant/petitioner to the Advocate-Commissioner's Report dt.30.07.2015 and proceed with the matter strictly in accordance with the provisions of the Partition Act, 1893. This exercise shall be completed by 31.07.2019 after hearing both sides.*

19. With the above directions, the Civil Revision Petition is disposed of. No order as to costs."

7. Thus, what all this Court has directed the trial Court vide orders dated 16.04.2019 in C.R.P. No. 6978 of 2018 is to adhere to the earlier orders of this Court in C.R.P. Nos. 831 of 2018 and 3741 of 2018 and to follow the principles laid down by the Apex Court in **Rani Aloka Dudhoria** (supra) and the provisions of the Partition Act, 1893.

8. The trial Court, in order to decide the dispute, framed the following points for determination:-

1. Whether A-schedule property is liable to be sold in auction? and

2. If so, it shall be sold in auction, only among the family members or in public auction including general public?

9. While answering the points, the trial Court mainly relied on the report of the Advocate-Commissioner, dated 30.07.2015 which states that the schedule-A property cannot be beneficially partitioned into six equal shares and even if it is divided, its value would be diminished. Further, the docket order of the trial Court dated 14.08.2015 discloses that upon filing the report by the Commissioner, no objections were filed by any of the parties, more particularly, the revision petitioner. Considering these aspects, the trial Court has rightly proceeded to invoke the provisions of Sections 2,3 and 6 of the Partition Act. As regards the aspect whether the auction of the property should be among the family

members or should be put in public auction, the trial Court, duly keeping in mind the provisions of Sections 2 and 3 of the Partition Act and the principles laid down by the Apex Court in **Rani Aloka Dudhoria** (supra), held that in view of application filed by the plaintiff, respondent No. 1 herein, being one of the share holders, the auction of the property among the family members would be beneficial to the share holders and in view of the offer made by a share holder to purchase the property, the Court has no option except to order for sale among the family members, at valuation so ascertained. Even the claim of revision petitioner that the sisters, respondent Nos. 4 and 5 herein, sold away their undivided shares by way of registered sale deeds in his favour and also in favour of plaintiff, respondent No. 1 herein, and therefore, their shares cannot again be resold, was considered and answered by the trial Court holding that even if the sale deeds are executed by respondent Nos. 4 and 5 in respect of their undivided shares, it would not cause prejudice to the other share holders and such *pendente lite* sale shall be subject to outcome of the final decree and even such undivided

shares alienated in favour of revision petitioner and the plaintiff can be put to auction. Even the other contention of the revision petitioner for putting part of the schedule-A property that is facing main highway road in public auction and putting the other part of the property that is facing gram panchayat road, was rightly rejected by the trial Court as it would diminish the intrinsic value of the entire property.

10. The main contention of the learned counsel for the revision petitioner is that the objections raised by the revision petitioner were not considered by the trial Court. The said contention does not merit consideration for the reason that the trial Court at para No. 26 of the order, dealt with the said aspect in detail, which reads thus:-

“26. So far as the objections of respondent No. 2 is concerned, the Hon’ble High Court Order in CRP No. 6978/2018 dated 16-04-2019, directed this Court to consider the objections of respondent No. 2 to the report of the Advocate commissioner dated 30-07-2015. In this regard, it is relevant to state that, respondent No. 2 in fact did not file any objection to the commissioner report, rather, the respondent No. 2 has filed his objection subsequent to the order passed by this Court on 20-12-2017 and also subsequent to the orders of this Court dated 24-08-2018. It is also relevant to state that, both orders of this Court were set aside by the Hon’ble High

Court. Moreover, the objections raised by respondent No. 2, in the first objection dated 16-04-2018, was to the effect that, already respondents No.4 & 5 have sold away their undivided shares in favour of respondents No.1 and petitioner, therefore, there cannot be any resale of the said shares. This objection was also raised by respondent No. 2 in his 2nd objections filed on 31.12.2018. The above said objection is answered by this Court in the discussion undertaken supra.”

11. Insofar as fixation of reserve/upset price in terms of Section 6 of the Partition Act is concerned, considering the provisions of the Partition Act and the decision of the Apex Court in **Rani Aloka Dudhoria** (supra), the trial Court felt it necessary to call for the valuation of the suit in order to fix the reserve/upset price and only thereafter, Advocate-Commissioner would be appointed. Thus, the trial Court having considered all the objections of the revision petitioner and having followed the earlier orders of this Court in the Civil Revision Petitions and the law laid down by the Apex Court in **Rani Aloka Dudhoria** (supra) has rightly allowed the petition directing sale of plaint schedule-A property among the family members duly directing the parties to submit valuation certificate of the property and sale deeds of neighbouring property in the

vicinity. The impugned order does not suffer from any infirmity warranting interference by this Court under Article 227 of the Constitution of India.

12. In the result, the Civil Revision Petition lacks merit and the same is accordingly dismissed confirming the orders of the learned Senior Civil Judge at Sathupally, in allowing I.A. No. 685 of 2015 in I.A. No. 943 of 2014 in O.S. No. 11 of 1989. No order as to costs.

Pending Miscellaneous Petitions, if any, shall stand closed.

JUSTICE M.G. PRIYADARSINI

19th September, 2023

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Note:- L.R. Copy to be marked.

HONOURABLE JUSTICE M.G. PRIYADARSINI

CIVIL REVISION PETTION No. 3018 of 2019

DATE: 19-09-2023

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