

IN THE HIGH COURT FOR THE STATE OF TELANGANA

CIVIL REVISION PETITION No.2934 of 2022

Between:

K.Sattamma, W/o Late K.Ramaiah
and four others.

... Petitioners

And

K.Lalitha, W/o Late K.Mahesh Kumar,
and two others.

... Respondents

JUDGMENT PRONOUNCED ON 06.03.2024

HON'BLE JUSTICE LAXMI NARAYANA ALISHETTY

1. Whether Reporters of Local newspapers : Yes
may be allowed to see the Judgment?

2. Whether the copies of judgment may be
marked to Law Reporters/Journals? : Yes

3. Whether her Lordship wishes to
see the fair copy of the Judgment? : Yes

HON'BLE JUSTICE LAXMI NARAYANA ALISHETTY

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< Gist:

> Head Note:

! Counsel for the Petitioners: Sri R.Gopi Mohan

^ Counsel for Respondents: Sri Bidakar Gopal

? Cases Referred:

1. 2006 CJ (SC) 353
2. (2005) 7 SCC 791
3. 2019 SCC Online TS 2060

HON'BLE SRI JUSTICE LAXMI NARAYANA ALISHETTY**CIVIL REVISION PETITON No.2934 of 2022****ORDER:**

This Civil Revision Petition is filed against the order dated 10.11.2022, passed by the Court of XVII Additional Senior Civil Judge, City Civil Court, Hyderabad in I.A.No.174 of 2019 in O.S.No.221 of 2014.

2. The petitioners are the defendants and the respondents are the plaintiffs in the suit. For convenience, the parties are referred to as they are arrayed before the trial Court.

3. Succinctly stated, the facts of the case are that the plaintiffs filed suit for partition and separate possession of the suit schedule property. The trial Court after full-fledged trial, and on appreciating the evidence on record, passed the preliminary decree. Subsequently, the plaintiffs filed the aforesaid I.A. praying the Court to pass final decree in pursuance of the preliminary decree by allotting 1/6th share to them in the suit schedule property as per the Advocate Commissioner's report.

4. The trial Court on perusing the material available on record and on hearing the learned counsel for both the parties, passed the

impugned order, dated 10.11.2022, adjourning the case to 05.12.2022 for taking steps under Sections 2 and 3 of the Partition Act and for filing the Market Value Certificate of the suit schedule property. Aggrieved by the same, the defendants approached this Court by way of filing this Civil Revision Petition.

5. Learned counsel for the petitioners/defendants contended that the trial Court erred in ordering sale of the suit schedule property in public auction, instead of partitioning the same into six equal shares and allotting one such share to the respondents/plaintiffs. He further contended that the trial Court ought not to have put the suit schedule property to public auction and on the other hand, the major share holders i.e., the petitioners ought to have been accorded opportunity to purchase the suit schedule property and hence, he seeks to set aside the impugned order of the trial Court.

6. Learned counsel for the petitioners relied upon the decision of the Hon'ble Supreme Court in *Hasham Abbas Sayyad Vs. Usman Abbas Sayyad*¹, and in the said case, the question which arose for consideration is as to whether the property in suit could

¹ 2006 CJ (SC) 353

be put on action sale without initiating a formal final decree proceeding and the Hon'ble Supreme Court on analyzing the entire case vis-a-vis the provisions of Civil Procedure Code and other judgments of the Hon'ble Supreme Court, at paras 23 and 24 observed as under:-

*“23.This aspect of the matter has recently been considered by this Court in **Harshad Chiman Lal Modi Vs. DLF Universal Ltd. And another**² in following terms:*

We are unable to uphold the contention. The jurisdiction of a court may be classified into several categories. The important categories are (i) Territorial or local jurisdiction; (ii) Pecuniary jurisdiction; and (iii) Jurisdiction over the subject matter. So far as territorial and pecuniary jurisdictions are concerned, objection to such jurisdiction has to be taken at the earliest possible opportunity and in any case at or before settlement of issues. The law is well settled on the point that if such objection is not taken at the earliest, it cannot be allowed to be taken at a subsequent stage. Jurisdiction as to subject matter, however, is totally distinct and stands on a different footing. Where a court has no jurisdiction over the subject matter of the suit by reason of any limitation imposed by

² 2005 7 SCC 791

statute, charter or commission, it cannot take up the cause or matter. An order passed by a court having no jurisdiction is nullity.

24. We may, however hasten to add that a distinction must be made between a decree passed by a court which has no territorial or pecuniary jurisdiction in the light of Sec. 21 of the Code of Civil Procedure; and a decree passed by a court having no jurisdiction in regard to the subject matter of the suit. Whereas in the former case, the appellate court may not interfere with the decree unless prejudice is shown, ordinarily the second category of the cases would be interfered with.”

7. The aforesaid decision is not applicable to the present case as no point on territorial or pecuniary jurisdiction of the trial Court is raised by the petitioner.

8. Per contra, learned counsel for the respondents submitted that the trial Court taking into consideration the fact that it is not practically possible to divide the suit schedule property into six equal shares by metes and bounds, rightly ordered for auction of the suit schedule property and hence, the impugned order needs no interference by this Court.

9. As seen from the record, it is evident that the suit schedule property is a house, which is sought to be divided into six equal

shares and to allot 1/6th share to the plaintiffs. The trial Court, on appreciating the evidence on record, passed preliminary decree in favour of the plaintiffs in the suit filed for partition and separate possession of the suit schedule property.

10. Subsequently, an Advocate Commissioner was appointed to note down the physical features of the suit schedule property by metes and bounds to enable and facilitate the Court to pass final decree. The Advocate-Commissioner submitted his report stating that the suit schedule property is a house with Ground floor and First Floor and there are two rooms in each floor and both the rooms in the first floor do not have any doors. He further stated that GHMC Licence Engineer measured the suit schedule property and it was found that the area of the suit house is 44 square yards only, and not 60 square yards as alleged by the plaintiffs in the suit. However, both the parties did not dispute the said report of the Advocate-Commissioner as regards the extent of the suit house.

11. The trial Court observed in the impugned order that in view of the report of the Advocate-Commissioner, it is practically not possible to divide the suit schedule property into six equal shares as

per the preliminary decree and the ingress and egress to all the parties to the suit cannot be given separately.

12. Here, it is pertinent to reproduce Section 2 of the Partition Act, which reads as follows:-

“Power to court to order sale instead of division in partition suits.—Whenever in any suit for partition in which, if instituted prior to the commencement of this Act, a decree for partition might have been made, it appears to the court that, by reason of the nature of the property to which the suit relates, or of the number of the shareholders therein, or of any other special circumstance, a division of the property cannot reasonably or conveniently be made, and that a sale of the property and distribution of the proceeds would be more beneficial for all the shareholders, the court may, if it thinks fit, on the request of any of such shareholders interested individually or collectively to the extent of one moiety or upwards, direct a sale of the property and a distribution of the proceeds.”

13. From a reading of the above provision of the Partition Act, it is clear that if it appears to the Court, by reason of the nature of the suit property, that a division of the suit property cannot be reasonably or conveniently be made, it can direct sale of the property and distribution of the proceeds to all the shareholders.

14. The High Court of Andhra Pradesh in *M.A. Mujeeb v. Habeeb Alladin & Ors*³, at Paras 12 to 14 held as under:-

“...In the case on hand, the court below, basing on Advocate Commissioner’s report that the property is indivisible as per the shares allotted in the preliminary decree, had allowed the application for conducting of auction so as to distribute the sale proceeds as per the respective shares determined in the preliminary decree; and after determination of respective amounts to be paid, by formalizing the distribution of amounts in accordance with the shares, final decree would be passed.

13. It may also be noted that as a matter of fact, the court could have made an order in the first instance itself under Order 20 Rule 18 (ii) CPC, as passing preliminary decree declaring the rights of the parties is not mandatory in each and every case, and it is only in cases where the court comes to the conclusion that if partition or division of the property cannot conveniently be made without further enquiry, a preliminary decree is required to be made.

14. In the facts of the present case, considering the division of shares of respective sharers in the immovable property, as determined in the

³ 2019 SCC Online TS 2060

preliminary decree being cumbersome and not feasible, the preliminary decree itself could not have been made as a final decree. However, it appears that the trial court, in a routine manner, proceeded with passing of preliminary decree declaring the rights of the parties.”

15. In the instant case also, it is evident from the Advocate-Commissioner's report that division of the suit schedule property as per the preliminary decree, by metes and bounds is practically not feasible and it is cumbersome. The trial Court taking into account the said report, ordered for public auction of the suit schedule property and to distribute the sale proceeds equally to all the six share holders.

16. In the light of the above facts, circumstances and legal position, this Court is of the considered opinion that the aforesaid view of the trial Court is in accordance with law and therefore, cannot be faulted with. The parties to the suit can participate in the public auction, if they so wish, and purchase the suit schedule property.

17. Accordingly, this Court does not find any irregularity or infirmity or illegality committed by the trial Court in the impugned

order and hence, the same does not warrant interference by this Court.

18. Accordingly, this Civil Revision Petition is dismissed. There shall be no order as to costs.

19. Pending miscellaneous applications, if any, shall stand closed.

JUSTICE LAXMI NARAYANA ALISHETTY

Date:06.03.2024

Note:

LR copy to be marked.

B/o

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