

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION NO.831 OF 2018

ORDER:

This civil revision petition is filed under Article 227 of the Constitution of India, challenging the order in I.A.No.685 of 2015 in I.A.No.943 of 2014 in O.S.No.11 of 1989 dated 20.12.2017 passed by the Senior Civil Judge at Sathupally, to appoint an Advocate Commissioner to decide the suit schedule property into five equal shares, who in-turn filed his report stating that the schedule property is not feasible to be divided into five equal shares. Thereupon, the Court below directed the Advocate Commissioner to put the property to open auction and divide the sale proceeds into five equal shares.

The main contention before this Court is that, the Advocate Commissioner without ascertaining the value of the suit schedule property, cannot sell the property without fixing the upset price and that, prejudice will be caused to this petitioner in case the Advocate Commissioner is allowed to sell the property among the family members. But, this contention is disallowed by the Trial Court, advertent to Section 44 of Transfer of Property Act, holding that the Hindus cannot claim right of pre-emption and the only ground that is available to this petitioner is that, he cannot conduct auction without fixing upset price. But, the Trial Court did not accept this contention.

Aggrieved by the order of the Trial Court, the present revision petition is filed on the ground that the Advocate Commissioner has violated the principles laid down by the

Supreme Court in **Rani Aloka Dudhoria v. Goutam Dudhoria**¹, and raised an additional ground by invoking Order XLI Rule 2 C.P.C and filed an interlocutory application I.A.No.2 of 2018 to file additional grounds in the civil revision petition.

During hearing, learned counsel for the petitioner Sri Mummaneni Srinivasa Rao reiterated the said contention.

As seen from the law declared by the Apex Court in **Rani Aloka Dudhoria** case, certain guidelines are fixed for conducting auction. One of the guideline is that, properties were kept out of lots since they were incapable of partition by metes and bounds, ascertainment of valuation of suit property was directed in terms of Sections 2 & 3 and the said order indisputably had not been varied, altered or modified, therefore, it cannot be said that provisions of Partition Act were not attracted, the Court has no power to direct auction sale dehors provisions of Partition Act. It is also observed in the judgment that issuing notices to all the parties by the Commissioner is imperative. On the aspect of partition, the Apex Court opined that when no Court proceeding had taken place for 13 years and reserved price had not been fixed and moreover, notices had not been given to all the parties, in those circumstances, Commissioner could not have devised his own procedure. Further, Section 6 of the Partition Act mandatorily required fixation of a reserved price of properties in question.

Instead of ordering notice and conducting enquiry, it would be suffice, if the Trial Court is directed to follow the principles laid down by the Apex Court in **Rani Aloka Dudhoria** case. Therefore, the Trial Court is directed to follow the principles laid down by the

¹ AIR 2010 SUPREME COURT 53

Apex Court in **Rani Alok Dudhuria** case before appointing an Advocate commissioner for conducting sale of the property or if appointed already, direct the Commissioner to follow the same principles.

With the above direction, the civil revision petition is disposed of.

Consequently, miscellaneous applications pending if any, shall also stand closed. No costs.

JUSTICE M. SATYANARAYANA MURTHY

Date:14.02.2018

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