

THE HON' BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

CIVIL REVISION PETITION No.3741 of 2018

ORDER:

This petition arises out of the docket orders, dated 07.06.2018, in I.A.No.685 of 2015 in O.S.No.11 of 1989 passed by the Senior Civil Judge at Sathupally.

Respondent No.1 herein is the plaintiff. He has filed the aforesaid suit against the defendants, who are the petitioner and respondent Nos.2 to 5 herein, for partition and separate possession of the suit schedule property. A preliminary decree was passed on 22.07.1991. Thereafter, the plaintiff has filed I.A.No.943 of 2014 for appointment of an Advocate Commissioner for partition of the schedule property and the same was allowed appointing an Advocate Commissioner. Pursuant thereto, the Advocate Commissioner inspected the suit schedule property and filed a report stating that the property sought to be partitioned is indivisible. Thereupon, the plaintiff filed I.A.No.685 of 2015 under Section 151 CPC read with Section 3 of the Partition Act, 1893, to conduct auction among the parties to the petition in open court. The said I.A was allowed by the trial Court vide order dated 20.12.2017 directing the parties to bring basic valuation certificate as well as registration certificate if any of 'A' schedule property in locality where the property is situated, for conducting auction of the suit schedule property in open court among the family members. Aggrieved thereby, defendant No.2 filed CRP.No.831 of 2018 before this Court. On consideration of the matter, this Court disposed of the CRP on 14.02.2018 as under:

“..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 Apex Court in Rani Aloka Dudhoria 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.”

Subsequently, pursuant to the orders passed on 20.12.2017 in I.A.No.685 of 2015, the plaintiff filed a memo with required documents, to which defendant No.2 filed objections. By docket orders under revision, the trial Court ordered for auction. Questioning the same, the present Civil Revision Petition is filed.

Learned counsel for the petitioner submits that despite the specific directions of this Court in CRP.No.81 of 2018 to the trial Court to follow the principles laid down by the Apex Court in Rani Aloka Dudhoria v. Goutam Dudhoria¹ before appointing an Advocate Commissioner for conducting sale of the property, the trial Court has not followed the same. It is further submitted that the order under challenge is not a speaking order stating whether the principles laid down in Rani Aloka Dudhoria are followed or not before appointing the Advocate Commissioner. Learned counsel also submitted that the objections, by way of counter, filed by defendant No.2 against the report, dated 30.07.2015, filed by the Advocate Commissioner, have not been considered by the trial Court. It is further submitted that even the objections raised by defendant No.2 to the memo filed by the plaintiff have not been considered by the trial Court and also the trial

¹ AIR 2010 SUPREME COURT 53

Court has not followed the provisions of the Partition Act. Therefore, the impugned docket order is liable to be set aside.

Learned counsel for respondent No.1 conceded that the order under revision is not on merits and respondent No.1 has no objection for remitting the matter to the trial Court for fresh consideration.

A perusal of the order under challenge clearly reveals that the same is not on merits by considering the objections raised by defendant No.2. Therefore, considering the circumstances of the case and also the submissions of learned counsel on either side, the order under challenge is liable to be set aside.

Accordingly, the order under revision is set aside and the matter is remitted to the trial Court for fresh consideration by following the principles laid down by the Apex Court in Rani Alokia Dudhuria, as directed in CRP.No.81 of 2018, by following the provisions of the Partition Act.

Subject to the above, the Civil Revision Petition is disposed of. No order as to costs.

As a sequel, miscellaneous petitions, if any pending, shall stand closed.

03.08.2018
v v

GUDISEVA SHYAM PRASAD,J