

THE HON'BLE SRI JUSTICE A. VENKATESHWARA REDDY

CRP Nos.1041 and 1075 of 2019

COMMON ORDER:

1. The petitioner/judgment debtor/1st defendant has filed CRP No.1041 of 2019 aggrieved by the order dated 10.04.2019 in IA No.147 of 2019 in IA No.267 of 2018 in OS No.1686 of 2013 on the file of XVII Additional Senior Civil Judge, City Civil Court, Hyderabad.
2. Whereas, the petitioners/judgment debtors/defendants 1 to 4 have filed CRP No.1075 of 2019 aggrieved by the order dated 10.04.2019 in IA No.267 of 2018 in OS No.1686 of 2013 on the file of XVII Additional Senior Civil Judge, City Civil Court, Hyderabad.
3. The respondent/petitioner/plaintiff has filed the original suit No.1686 of 2013 for partition and separate possession of pliant schedule properties and that suit was decreed by the Court below. Thereafter, the plaintiff has filed IA No.267 of 2018 under Order-XX, Rule 18 of CPC to put auction of the suit schedule property and the property of other shareholders, as the same could not be divided and to pay the amount or the value of 1/6th share of the plaintiff as per the market value. That IA No.267 of 2018 was allowed as per the orders dated 23.01.2019 and sale proclamation was ordered for auction of the schedule property on 28.02.2019. In the said order, it is also mentioned that an advocate commissioner was appointed on 20.10.2017 itself pursuant of the judgment and decree passed by the

Court on 30.11.2016 whereunder a preliminary decree for partition and separate possession of 1/6th share of the plaintiff's suit schedule property i.e., house bearing No.16-10-386/3 admeasuring 80 square yards situated at Old Malakpet, Hyderabad. Later on 20.10.2017 an advocate commissioner was appointed to divide the suit schedule property in terms of preliminary decree, who filed a report on 20.03.2018 stating that it is not feasible for division of suit schedule property either vertically or horizontally into six equal shares since the extent of area is very less.

4. Undisputedly, the petitioner herein was also present in the Court at the time of Advocate Commissioner filing such a report, but he did not raise any objection for conducting the auction of suit schedule property. However, it is submitted that he requires some time for purchasing the suit schedule property. As per the order impugned, the Court below has clearly indicated that ample opportunity was given to the petitioner/1st defendant to purchase the suit property. Instead of purchasing the suit property, he has again filed IA No.147 of 2019 u/s.151 CPC permitting him to buy the 1/6th share of the plaintiff in the schedule property by paying 1/6th share value to the plaintiff as per the market value without going for auction and pass any such other order.

5. Accordingly, the Court below has given opportunity one more to the petitioner to purchase the property, but he has not availed such

opportunity till the date of passing of the orders impugned i.e., 10.04.2019. In such circumstances, the Court below has recorded clear finding to the effect that the intention of the party is only to dodge the auction proceedings. Already an opportunity was given to him to purchase the property from 11.09.2018 onwards and he did not avail such opportunity and he has not shown any readiness or willingness to purchase the property except filing the application and accordingly, the petition was rejected.

6. The learned counsel for the petitioner seeks to submit that the respondent No.1 being one of the coparceners is entitled to purchase the property as per Sections 2 and 3 of Partition Act, 1893 relied on the following decisions:

- i) ***K. Raghavendra Rao v. K. Srinivasa Rao and others***¹; and
- ii) ***Malati Ramchandra Raut v. Mahadevo Vasudeo Joshi***².

7. I have carefully perused the principles laid by the Hon'ble Supreme Court of India in the decisions cited above. It is not the case of the petitioner that the petitioner was not given an opportunity to participate in the auction. As per the commissioners report, the entire extent of suit schedule property is 80 square yards and it is not feasible to divide this property into six equal shares either vertically or horizontally. Accordingly, as per the orders in IA No.267 of 2018 considering the intention of all the parties to the suit, it was proposed

¹ AIR 1989 Karnataka 334

² 1991 (1) SCJ 311

to auction the property and to distribute the sale proceeds in terms of preliminary decree. Hence, auction was conducted by issuing sale proclamation. The petitioner was also permitted to buy as per the valuation of the share as on date. But, instead of participating in the auction, he is trying to stall the proceedings under one pretext or the other, which is evident from the observations made by the Court below in the order impugned and the proceedings in IA No.267 of 2018. Therefore, I am of the considered opinion that the Court below has given ample opportunity to the petitioner/1st defendant to participate in the auction in conformity with Sections 2 and 3 of Partition Act, 1893. There is no irregularity or illegality in the order impugned and it does not warrant any interference by this Court.

8. CRP No.1075 of 2019 is filed by the 1st defendant along with defendants 2 to 4 assailing the orders in IA No.267 of 2018 dated 10.04.2019 wherein pursuant to the sale proclamation, auction was held, one Smt. A. Sanjana was the highest bidder and that she has paid 1/4th share of the sale amount of Rs.20,90,000/- i.e., Rs.5,22,500/-, out of which poundage charges of Rs.62,745/- were deducted and the remaining amount of Rs.4,59,755/- was deposited in the Account Section. This order was under challenge. In view of my observations in CRP No.1041 of 2019, ample opportunity was given to the petitioner/1st defendant to participate in the auction and to purchase the share of the plaintiff and the share of others also, but he failed to participate in the auction. Therefore, I do not find any merit in the

contention of the petitioner/1st defendant that he was not given an opportunity to participate in the auction in terms of Sections 2 and 3 of Partition Act, 1893. As such, CRP No.1041 of 2019 is liable to be dismissed, consequently, CRP No.1075 of 2019 is also liable to be dismissed.

9. In the result, CRP Nos.1041 and 1075 of 2019 are dismissed and the order impugned dated 10.04.2019 in IA No.147 of 2019 and order impugned dated 10.04.2019 in IA No.267 of 2018 are sustainable. In the circumstances of both the cases, there shall be no order as to costs. Miscellaneous applications, if any pending in these revision petitions shall stand closed.

A. VENKATESHWARA REDDY, J.

Date: 20.12.2021
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