

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CRP.No.6978 of 2018

ORDER:

This Revision is filed under Article 227 of the Constitution of India challenging the order dt.24.08.2018 in I.A.No.685 of 2015 in I.A.No.943 of 2014 in O.S.No.11 of 1989 of the Senior Civil Judge, Sathupally.

2. The said suit was filed by the 1st respondent against the petitioner and other respondents for partition and separate possession of the suit schedule property.

3. A preliminary decree was passed therein on 22.07.1991.

4. Thereafter, 1st respondent filed I.A.No.943 of 2014 for appointment of Advocate-Commissioner for partition of the suit schedule property.

5. An Advocate Commissioner was appointed and he filed a Report saying that the property is indivisible.

6 Thereafter, 1st respondent 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 application in the open Court.

7. The said I.A., was allowed by the trial Court on 20.12.2017 and the parties were directed to bring basic valuation certificate as well as registration certificate, if any, of the A-schedule property in the locality where the property is situated for conducting auction among the family members.

8. Petitioner challenged the same in CRP.No.831 of 2018.

9. On 14.02.2018, the said CRP was disposed of directing the Court below to consider the principles laid down by the Supreme Court in **Rani Alok Dudhoria v. Goutam Dudhoria**¹.

10. Thereafter, on 07.06.2018 in I.A.No.685 of 2015, the Court below ordered auction.

11. Challenging the same, petitioner filed CRP.No.3741 of 2018 contending that the order dt.14.02.2018 in CRP.No.831 of 2018 passed by this Court as well as the principles laid down in **Rani Alok dudhoria's** case(1 supra) were not followed and no speaking order was passed. It was also contended that objections filed by the petitioner against the Report dt.30.07.2015 were not considered.

¹ AIR 2010 SC 53

12. The said CRP was allowed on 03.08.2018 directing the trial Court to consider the principles laid down in **Rani Aloka dudhoria's** case(1 supra) as directed in CRP.No.831 of 2018 and also to follow the provisions of the Partition Act, 1893.

13. Even thereafter, the impugned order has been passed on 24.08.2018 to the following effect:

“As per orders passed in CRP.NO.3741/2018 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”

14. Challenging the same this Revision is filed.

15. Counsel for the petitioner contends that the impugned order cannot be sustained because no reserve price is fixed as per section 6 of the Partition Act, 1893; that there is no reference to the principles laid down in **Rani Aloka Dudhoria's** case(1 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 dt.30.07.2015 .

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 Alok 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 Alok 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.

20. Consequently, miscellaneous petitions pending if any, shall stand closed.

16th April, 2019.

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M.S. RAMACHANDRA RAO, J

