Non-Reportable

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Civil Appeal Nos. 6657-6658 of 2021
(Arising out of SLP (C) Nos. 30737-30738 of 2018

Pusapati Ashok Gajapathi Raju
& Anr. .... Appellant (s)

Versus

Pusapati Madhuri Gajapathi Raju

& Ors. ….Respondent(s)

W I T H

Civil Appeal Nos.6659-6660 of 2021
(Arising out of SLP (Civil) Nos. 12061-12062 of 2019)

J U D G M E N T

L. NAGESWARA RAO, J.

Leave granted.

1. The Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "the Act") by Respondent No.1 was dismissed by the District Judge, Vizianagaram and the interim award of the Arbitrator dated 26.05.2007 was upheld. The High Court partly allowed the

Appeals filed by the Respondents under Section 37 of the Act, aggrieved by which the Appellants are before this Court.

2. Pusapati Vijayaram Gajapathi Raju succeeded to Vizianagaram estate on 25.10.1937. He was married to Kusum Madgoankar. They had three children namely, P. Ashok Gajapathi Raju, P. Anand Gajapathi Raju and Smt. Vasireddi Sunita Prasad. A public trust known as "MANSAS" was created by P.V.G. Raju for education and charitable purposes. As the *karta* of the family, P.V.G. Raju partitioned the properties of the joint family in terms of the registered document dated 18.06.1960.

3. P.V.G. Raju divorced Kusum Madgoankar and married Madhuri Gajapathi Raju, Respondent No.1 herein, in 1963. P. Alaakanarayana Gajapathi Raju, P. Monish Gajapathi Raju and Sudhani Devi were born to them. The dispute that arose amongst the family members of P.V.G. Raju was referred to Arbitration to Kumaraja of Bobbili who passed an award on 28.06.1971 allotting the properties to eight members of the family. The said award was duly registered and made a decree of court on 21.04.1972 in O.S. No.70 of 1971.

4. Thereafter, the Appellants filed a suit bearing OS No. 29/74 in the sub-court at Vizianagaram seeking division of certain properties by metes and bounds. The suit was partly

decreed by the District Court on 31.10.1979. Against the decree dated 31.10.1979, the Appellants filed an Appeal and the Defendants in this suit filed certain cross-objections. On 24.07.1992, the High Court dismissed the Appeal filed by the Appellants while partly allowing the cross-objections filed by the Defendants in the suit. Not satisfied with the judgment of the Hight Court, the Appellants filed SLP which was converted as Civil Appeal No. 5251 of 1993.

5. During the pendency of the Civil Appeal No. 5251 of 1993 before this Court, Sri. PVG Raju passed away on 14.11.1995. Post his demise, on 08.03.2000, all the parties filed a joint application before this Court to refer the matter for arbitration. The terms of reference in the application are as follows:

"(i) The entire subject matter of the appeal in dispute including the properties that were partitioned in 1960 between late P.V.G. Raju and his two sons Sri P. Anand Gajapathi Raju and Sri P. Ashok Gajapathi Raju, and the lands given to Smt. Sunita Prasad (daughter) and the properties that were divided in the award proceedings in pursuance of the award of Kumararaja of Bobbili of 1971.

(ii) All the shares with companies, certificates, bonds, Government Securities, and all moveable and immoveable properties including impartible properties (except those which

have been alienated by late P.V.G. Raju during his life time before his death on 14.11.1995 subject to proof) will be divided into seven equal shares and allot one such share to each of the parties to the appeal;

(iii) The Arbitrator will also take into account 99 diamonds and one emerald ring given to the applicants in 1971 and claimed to be streedhana property of Smt. Madhuri V. Raju. The Arbitrator will decide whether the aforesaid items are the streedhana properties or not of Smt. Madhuri V. Raju;

(iv) In case the Arbitrator comes to the conclusion that the said diamonds and emerald ring are not streedhana properties of Smt. Madhuri V. Raju, all the parties to the appeal are entitled to 1/7th share equally in the said diamonds and emerald ring; and

(v) The Arbitrator will not take into account the findings recorded by the courts below."

6. Mr. Justice S. Ranganathan, retired Supreme Court Judge was appointed as the Sole Arbitrator by this Court on 28.03.2000 and the dispute with respect to the aforementioned terms of reference were referred for arbitration to him.

7. On 26.05.2007, the Arbitrator passed an interim award in the following terms :

“ IX. CONCLUSIONS AND INTERIM AWARD

156. Having dealt with the various contentions raised by the parties, the Tribunal proceeds to set out its findings and conclusions:

(I) As the agreement of 08.03.2000 among all the parties (embodied in the Supreme Court's order) envisages the division of all the divisible properties (movable and Impartible) of the family into seven equal shares and allotment of one share to each of the parties here, it is directed that the properties should be so divided and allotted among the parties. However, it will not follow that each sharer will be entitled to a one seventh share in each asset as some items have been divided differently in 1960 and 1971 and these divisions have been accepted by us with slight modification.

(2) The Tribunal has considered the partitions of 1960 and 1971 on their merits and is of opinion that the allotments made at these partitions do not require to be disturbed, except to a small extent specified against the relevant Items and, necessarily, to the extent they

are affected by the death of PVG requiring a division of the items allotted to his share at these partitions.

3) The lands described in Schedule I-A and II-B to II-H have already been partitioned in 1960 and 1971. Though the division is not in equal shares, there is no need to disturb the earlier allotments and inequalities, if any, will be made up in the final adjustments that will require to be made. The division and allotments will be made as per the terms of the 1960 partition deed and the 1971 partition award as modified hereunder. As these items already stand divided much earlier, they do not really form part of this Award. However, the properties listed in Schedule II-A, which had been allotted to PVG in-1971, need to be divided equally under the present sharers.

(4) The Tribunal is of opinion that one-fifth of the extents of land in Schedule I-A and I-B claimed as set apart for maintenance holders cannot on principle, be excluded from partition although the sharers will be responsible to meet the claims, if any, of maintenance holders in equal shares and their liability in this regard will be joint and several. It is, however, seen that even

in the plans and sketches drawn up by R-1 and appended to the award, portions have been shown as earmarked for the maintenance holders. With a view to avoid unnecessary confusion, it is made clear that the parties will be at liberty, in those cases where the sketches have been approved, to adhere to these plans, If they so desire, retain the earmarked portions in favour of the maintenance holders and divide only the balance among themselves in accordance with the plans.

(5) The properties set out in Schedules 1 to IX will be divided in the manner set out in the discussions under the relevant schedules and keeping in mind the findings contained therein. In doing so, help may be taken from the plans appended to the award in respect of some of the items, without, however, treating them as conclusive. They may need modifications, if only for including the areas earmarked for maintenance holders in the land available for division if so opted for by the parties.

(6) A very vital reservation is hereby made in regard to the assets described in Schedules IA and IB. In paras

148 to 154, it has been pointed out that the provisions of Urban Celling Act will override any partition arrangement in respect of lands covered thereby. Thus, while all the sharers may determine their right in respect of these lands among item inter se, the partitions directed hereby can only affect these pieces of lands that. remain with the various members of the family on the final outcome of the proceedings under the land ceiling Act.

(7) The discussions in the award will show that out of the items listed in the various schedules, several are not available for various reasons such as item 3 of Schedule I-A, Items 2 to 6 of Schedule 1-B and items 3 and 4 of Schedule 11-A. The half share of property In Item 7 of Schedule II-A Is stated to have been disposed of by him and it is agreed that this can be left out of this award. This apart, the partition of the Item Schedules IA and II-B to II-H have already been effected by stamped and registered documents and are not really under this document. Hence these items are not effectively the subject matter of partition under this document. So also, Items 2, 6 and 7 of Schedule V which have been found to belong exclusively to RI and

the items set out in Schedule X (also in items 20 and 22 of Schedule V and item 16 of Schedule VI) have been found to be not partible among all the sharers and though the issue of their partibility has been decided here, no partition of these items is being directed under this document.

(8) The more difficult and cumbersome process is that of carrying out the physical division envisaged herein. This Is usually done by Commissioners appointed for the purpose. However the Tribunal wishes to strongly impress on the parties that all the further steps in this regard will consume time, expense and energy which can be avoided if parties sit across the table and select specific items of the properties in each schedule. They should be having a fair idea of the value of the properties and, with mutual goodwill and give and take, this should not be impossible. If this is done the whole matter can be given a quietus and the entire controversy settled finally and once for all. It is hoped that the parties will see the wisdom of this course in preference to the tortuous and prolonged course that may be otherwise have to be pursued. It is a happy circumstance that, in its efforts to evaluate the

properties covered by the award, the Tribunal had occasion to appoint three valuers agreed to by the parties who have given detailed reports setting out their opinions on the values of the several assets. While these opinions may not be binding on the sharers, they will certainly facilitate discussions among the parties and enable them to agree upon the mutual division in specie of the assets inter se, so as to avoid the last resort of selling all or any of them and dividing the proceeds.

(9) The Tribunal has come to the conclusion (vide para 112 et seq) that this Award requires to be stamped in according with Article 12 of Schedule I-A to the Stamp Act (as applicable to Delhi). The detailed evaluation of the properties for purposes of Stamp Duty Is made In Annexure R to the Award to which are appended as Annexure S, T, U, V and W, the reports of the three valuers appointed for the purpose. The parties were apprised of the stamp duty payable and have submitted by pro- rata contribution, nonjudicial stamp papers of appropriate denomination on which this Award is inscribed.

(10) Since this is a partition proceeding with all seven parties entitled to equal shares, the costs of these proceedings (including fee of arbitrators, fee of valuers, stamp duty payable) and any expenses that, may have to be incurred for registration of the award, the consequent mutation in public records and the like, shall be borne equally by all the seven parties.

157. Though the points of controversy between the parties have been decided by this award, it will be only in the nature of an interim award as several further determinations and the task of physical division of the properties are yet to be considered. Appropriate orders recording the final partition will still have to be made thereafter and, in so doing, it will also be necessary to consider the value of the properties allotted to each of the sharers and direct such adjustments as may be necessary monetarily or in specie. One more important aspect to be considered at the time of the final discussion will be that of the mesne profits, if any, payable by the shares in respect of properties allotted to other remaining in their possession. This will need a detailed consideration from several angles, extents, date, quantum etc. and will have to be considered

later. For these purposes, the tribunal will resume its sittings and pass appropriate orders after the parties have had time to study the contents of this award."

8. Aggrieved by interim award dated 26.05.2007, Respondent No.1 filed a Petition under Section 34 of the Act which was dismissed by the District Judge, Vizianagaram on 24.06.2013. The District Judge, Vizianagaram refused to interfere with the award by rejecting the contention of Respondent No.1 that the award suffers from patent illegality and jurisdictional errors. Against the order of the District Judge, Vizianagaram dated 24.06.2013, appeals were filed by Respondent Nos. 1 to 3 under Section 37 of the Act before the High Court.

9. The Appeals filed by the Respondents under Section 37 of the Act were partly allowed by the High Court. The Respondents contended before the High Court that the Arbitrator committed an error in being guided by the 1960 partition and the 1971 award. It was argued by the Respondents that the partition of the properties had to be decided afresh without reference to the earlier 1960 partition and the 1971 award in view of the terms of reference. The High Court rejected the said submission of the Respondents by holding that the Arbitrator was not solely guided by the earlier

partition and the award. The High Court approved the finding of the Arbitrator who referred to the earlier partition and the award wherever he found that such arrangements were just and equitable.

10. One of the terms of reference of the Arbitration relates to 99 diamonds and one emerald ring claimed by Respondent No.1 to be *stridhana* property. The High Court set aside the interim award of the Arbitrator to the extent that it held that the Respondent No.1 had relinquished her rights over the 99 diamonds and one emerald ring and that the Appellants were entitled to deal with the same in the manner in which they wish. It is relevant to note that the Respondents have not preferred any Appeal against this judgment of the High Court. The Appellants have challenged the findings of the High Court in respect of the 99 diamonds and one emerald ring. Therefore, in these Appeals, this Court is concerned only with the correctness of the interim award relating to terms of the reference (iii) and (iv) which pertains to 99 diamonds and one emerald ring.

11. The terms of reference relating to the 99 diamonds and one emerald ring are as under:

> *"(iii) The Arbitrator will also take into account 99 diamonds and one emerald ring given to the applicants*

in 1971 and claimed to be streedhana property of Smt. Madhuri V. Raju. The Arbitrator will decide whether the aforesaid items are the streedhana properties or not of Smt. Madhuri V. Raju;

(iv) In case the Arbitrator comes to the conclusion that the said diamonds and emerald ring are not streedhana properties of Smt. Madhuri V. Raju, all the parties to the appeal are entitled to 1/7th share equally in the said diamonds and emerald ring;"

12. In the interim award, the Arbitrator held that the 99 diamonds and one emerald ring were initially given to Respondent No.1 by P.V.G. Raju as *stridhana* at the time of engagement and marriage. The Arbitrator relied upon the written statement filed by P.V.G. Raju in O.S. No.29 of 1974, the evidence of Respondent No.1 in the said suit as well as the affidavit filed by Respondent No.1 before him to come to a conclusion that 99 diamonds and one emerald ring were initially given to her as *stridhana* property. However, the Arbitrator observed that these 99 diamonds and one emerald ring were given by the Respondent No. 1 to the Claimants (Appellant herein) in the year 1971 pursuant to the 1971 award for partition. The Arbitrator took note of the fact that prior to the year 1971, the *stridhana* property was shown in

the wealth tax returns by P.V.G. Raju. There is no reference to the 99 diamonds and one emerald ring in the wealth tax returns of P.V.G. Raju after 1971. The Appellants claimed before the Arbitrator that 99 diamonds and one emerald ring were voluntarily given by Respondent No. 1 to them. Whereas, Respondent No.1 pleaded that she was coerced to part with 99 diamonds and one emerald ring. The request of Respondent No.1 that the said *stridhana* property should be returned to her was not accepted by the Arbitrator on the ground that the arrangement made in 1971 cannot be disturbed. The Arbitrator further recorded the statement of Claimant No.1 that his wife Uma had broken the miniature studded with gems and made jewellery out of it and that he had delivered the diamonds to his estranged wife. The Arbitrator also took note of the submission on behalf of the Claimant No.2 that he has made a chain out of the 99 diamonds and presented it to his wife and Claimant No.3 that he had sold the diamonds which fell to his share. Finally, the Arbitrator held that Respondent No.1 had validly relinquished the *stridhana* property which was divided amongst all the shareholders and she cannot be permitted to seek return of the jewellery.

13. While setting aside the finding of the Arbitrator regarding the *stridhana* property, the High Court was of the opinion that

the Arbitrator committed a jurisdictional error in his conclusion about the right of Respondent No.1 over the 99 diamonds and one emerald ring. According to the High Court, the Arbitrator could not have rejected the plea of Respondent No.1, especially after finding that the 99 diamonds and one emerald ring was *stridhana* property of the Respondent No. 1. The mandate of the Arbitrator was to decide whether the said jewellery is *stridhana* property and only in case the Arbitrator found that the said jewellery is not *stridhana* property, the Arbitrator shall decide the entitlement of the parties for the equal share. The High Court found fault with the interim award on the ground that the Arbitrator traversed beyond the terms of reference. If the said jewellery is held to be the *stridhana* property of Respondent No. 1, the question of deciding on the division of the property due to the change in the nature of the properties subsequently does not arise. The High Court further observed that the award passed in 1971 is not final and binding. If it was binding, the dispute relating to said jewellery being *stridhana* property would not have been referred to the Arbitrator.

14. We are in agreement with the judgment of the High Court that the Arbitrator had committed an error in deciding the issue relating to 99 diamonds and one emerald ring for the

following reasons. As has been rightly held by the High Court, the mandate for the Arbitrator is to decide whether said jewellery is *stridhana* property of the Respondent No. 1. A plain reading of the terms of reference No.(iii) would indicate the fact that the said jewellery being given to the Appellants in 1971 has been taken note of. Mere handing over of the jewellery to the Appellants in 1971, therefore, cannot be the reason for holding that the Appellants are entitled to retain the jewellery. The Arbitrator has concluded that 99 diamonds and one emerald ring, are in fact, *stridhana* property of Respondent No.1. That concludes point No.(iii) of the terms of reference. Point No.(iv) of the terms of reference relates to division of 99 diamonds and one emerald ring among 7 sharers only in case the Arbitrator comes to a conclusion that they are *stridhana* property. In the interim award, the Arbitrator heavily relied upon the award of 1971 and the fact of the 99 diamonds and one emerald ring being handed over to the Claimants, for the purpose of deciding that Respondent No. 1 is not entitled to claim the return of the said jewellery. The Arbitrator has committed a jurisdictional error by travelling beyond the terms of reference. Further, the Arbitrator has committed an error in permitting the Appellants to retain the jewellery. According to item No.(iv) of the terms of reference, the Arbitrator had to

decide the entitlement of all the seven parties to equal shares in the event of finding that the jewellery is not *stridhana* property. Therefore, we approve the conclusion of the High Court by upholding the impugned judgment. The appeals are accordingly, dismissed.

15. We are informed by the learned counsel appearing for the parties that an Arbitrator has to be appointed to pass the final award. It is stated that after the resignation of Justice S. Ranganathan (Retd.), Justice P. Lakshman Reddy (Retd.) was appointed as an Arbitrator by the High Court. However, in September 2019, Justice P. Lakshman Reddy (Retd.) has been appointed as Lokayukta. In light of the above, we appoint Mr. Justice Kurian Joseph to act as a sole Arbitrator and to continue the arbitration proceedings and pass a final award in S.R.A.T. No. 2/2000 pending between the parties. As the dispute has been pending for a number of years, we request the Arbitrator to expedite and complete the proceedings at the earliest.

.....J.
[L. NAGESWARA RAO]

.....J.
[B.R. GAVAI]

New Delhi,
November 09, 2021.