

IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

WEDNESDAY, THE TWENTY SEVENTH DAY OF MARCH
TWO THOUSAND AND TWENTY FOUR



PRESENT

THE HONOURABLE MS JUSTICE B S BHANUMATHI

CIVIL REVISION PETITION NO: 207 AND 211 OF 2022

CIVIL REVISION PETITION NO: 207 OF 2022

Petition under Section 115 of C.P.C., Aggrieved by the order in E.A.No.16/2017 in E.P.No.11/2016 in O.S.No.79/2014 dated 23-03-2020 on the file of Junior Civil Judge, Atmakur, Kurnool District

Between:

1. D.Nagaraju, W/o. D.Pandurangaiah, Aged about 41 years, Occ: Tailor.
2. Smt.D.Rajya Lakshmi, W/o. D.Nagaraju, Aged about 36 years, Occ: House Wife.

(Both are R/o.H.No.4-18-11-5, Quarter No.D/278, Sundipenta, Srisailam Mandal, Kurnool District.)

...Petitioners/Petitioners/J.Drs

AND

Neerukattu Dora Swamy, S/o. Venkata Swamy Aged about 45 years, R/o. H.No.87/110-38-2, Ganesh Nagar-II, IV Class, Kurnool Town, Kurnool District.

...Respondent/Respondent/Defendant

IA NO: 1 OF 2022

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to grant stay of all further proceedings in E.P.No.11/2016 in O.S.No.79/2014 on the file of the Junior Civil Judge, Atmakur, Kurnool District

CIVIL REVISION PETITION NO: 211 OF 2022

Petition under Section 115 of C.P.C., Aggrieved by the order in E.P.No.11/2016 in O.S.No.79/2014 dated 10-12-2021 on the file of Junior Civil Judge, Atmakur, Kurnool District

Between:

1. D.Nagaraju, W/o. D.Pandurangaiah Aged about 41 years, Occ: Tailor.
2. Smt.D.Rajya Lakshmi, W/ o .D.Nagaraju Aged about 36 years, Occ: House Wife.

(Both are R/o.H.No.4-18-11-5, Quarter No.D/278, Sundipenta, Srisailam Mandal, Kurnool District.)

...Petitioners/JDRs

AND

Neerukattu Dora Swamy, S/o. Venkata Swamy, Aged about 45 years, R/o. H.No.87/110-38-2, Ganesh Nagar-II, IV Class, Kurnool Town, Kurnool District.

...Respondent/Defendant

IA NO: 1 OF 2022

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be

pleased to grant stay of all further proceedings in E.P.No.11/2016 in O.S.No.79/2014 on the file of the Junior Civil Judge, Atmakur, Kurnool District.

Counsel for the Petitioners: SRI. P NAGENDRA REDDY

Counsel for the Respondent: SRI .J JANAKIRAMI REDDY

The Court made the following COMMON ORDER -:



IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)

[3311]

WEDNESDAY, THE TWENTY SEVENTH DAY OF MARCH
TWO THOUSAND AND TWENTY FOUR

PRESENT

THE HONOURABLE MS JUSTICE B S BHANUMATHI

CIVIL REVISION PETITION NO: 207/2022 & 211/2022

Between:

D.nagaraju and Others

...PETITIONER(S)

AND

Neerukattu Dora Swamy

...RESPONDENT

Counsel for the Petitioner(S):

1.P NAGENDRA REDDY

Counsel for the Respondent:

1.J JANAKIRAMI REDDY

The Court made the following

COMMON ORDER:

CRP No.207 of 2022 is filed under Section 115 CPC against the order dated 23.03.2020 dismissing petition in E.A.No.16 of 2017 in E.P.No.11 of 2016 in O.S.No.79 of 2014 on the file of the Court of Junior Civil Judge, Atmakur, filed by the JDrs under Section 151 CPC

to reopen the execution proceedings and permit them to putforth their defence by filing a counter.

2. CRP No.211 of 2022 is filed under Section 115 CPC against the order dated 10.12.2021 allowing petition in E.P.No.11 of 2016 in O.S.No.79 of 2014 on the file of the Court of Junior Civil Judge, Atmakur filed by the DHr under Order XXI Rule 35 and Section 151 CPC seeking delivery of possession of the petition schedule property.

3. Since both revision petitions have the common grounds and one is connected to the other, this Court is proceeding to pass a common order.

4. The respondent herein is the DHr/plaintiff who filed suit in O.S.No.79 of 2014 for eviction of the petitioners herein from the suit/E.P. schedule property. The suit was decreed *ex parte* on 05.05.2015. The DHr filed EP basing on the said decree. The petitioners filed I.A.No.266 of 2015 to set aside the *ex parte* decree, but they did not file counter in the E.P. Therefore, treating that the petitioners herein had no counter, the execution Court recorded the same on 14.09.2016 and proceeded further. The petitioners stated that non-filing of counter is neither deliberate nor willful and they have good grounds to succeed in the case. As such, they filed the petition in E.A.No.16 of 2017.

5. The petition was opposed by the respondent/DHr by filing counter denying the averments in the petition and further stating that the petition ought to have been filed within 30 days from the date of the order of the Court, but no such attempt was made nor were any reasons furnished and further that the execution Court passed the above said order on 12.07.2016, but not on 14.09.2016 as alleged. It is further stated that the petition is intended only to drag on the matters for years together and on merits.

6. After hearing both parties, the trial Court dismissed the petition observing that filing of the petition in I.A.No.266 of 2015 is neither a bar nor does it preclude the petitioners from filing the counter in E.P. or filing this petition within the stipulated time and further that filing of I.A.No.266 of 2015 is not a reasonable ground for not filing the counter. It is further observed that the petitioners have put to sufficient and reasonable cause to give them an opportunity to file the counter, but they failed to do so and the present petition is filed after a period of more than seven (7) months from the date of the order sought to be set aside.

7. Having aggrieved by the orders, these revision petitions are field.

8. Learned counsel for the petitioners submitted that the Irrigation Department issued a house site patta in favour of the second petitioner by considering the possession of the property by the



petitioners and thus the second petitioner became owner of the schedule property and therefore at present the decree holder cannot execute the decree and, therefore, it is necessary to allow the petitioners to put forth their defence. The learned counsel further submitted that events that occurred subsequent to passing of the decree have to be considered to see whether the decree still remains to be executed and, therefore, it is necessary to permit the petitioners to file their counter, however the execution Court failed to appreciate the facts properly and merely rejected the petition on the ground of the delay which is already suitably explained as the petition in I.A.No.266 of 2015 was filed.

9. On the other hand, the learned counsel for the respondent submitted that the execution Court has rightly dismissed the petition giving the suitable reasons for dismissing the petition. He further submitted that the execution Court cannot go beyond the decree and, therefore, now the petitioners cannot contend that they are the owners.

10. In reply, the learned counsel for the petitioners further submitted that the schedule house property is a quarter allotted to the respondent as an employee, but the same was under possession of the petitioners and thereby the Government granted patta. It is further submitted that as the decree holder is no more an employee, cannot

seek recovery of the possession of the property and merely basing on an *ex parte* decree and more particularly after issuing of patta to the second petitioner and, therefore, when inexecutable decree is sought to be executed, a fair opportunity should be given to file the counter, rather than disposing of the petition on technical grounds, without appreciating the reasons stated.

11. As can be seen from the contentions put forth by the petitioners, there are very material aspects to be examined in the execution petition before going further in execution of the decree. It is settled law that the facts and circumstances that occur subsequent to passing of the decree also shall be considered under certain circumstances and, therefore, it is not an absolute rule that an execution Court cannot go beyond the decree. Particularly, in the present case, there is need to make an enquiry basing on the contentions raised by the petitioners. As such, the execution Court ought to have given an opportunity to file the counter, however it has failed to appreciate to the reasons stated in proper perspective.

12. As such, the order impugned in the revision requires to be interfered and to be set aside.

13. In the result, both the revision petitions are allowed by setting aside the order dated 23.03.2020 petition in E.A.No.16 of 2017 in E.P.No.11 of 2016 in O.S.No.79 of 2014 on the file of the Court of



Junior Civil Judge, Atmakur and the order dated 10.12.2021 petition in E.P.No.11 of 2016 in O.S.No.79 of 2014 on the file of the Court of Junior Civil Judge, Atmakur and E.A.No.16 of 2017 is allowed. The petitioners herein shall file their counter within two (2) weeks from the date of receipt of copy of this order, if not so far filed before the execution Court. If the petitioners do not file the counter within the stipulated time, the petition in E.A.No.16 of 2016 shall stand dismissed and the execution Court shall proceed with execution.

There shall be no order as to costs.

Miscellaneous Petitions, if any pending, in these Civil Revision petitions, shall stand closed.

SD/- G HELA NAIDU
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. The Civil Judge (Junior Division), Atmakur, Kurnool District. (with records if any)
2. One CC to Sri. P Nagendra Reddy, Advocate [OPUC]
3. One CC to Sri. J Janakirami Reddy, Advocate [OPUC]
4. The Section Officer, V.R. Section, High Court of A.P. at Amaravathi.
5. **Two CD Copies**

HIGH COURT

DATED: 27/03/2024

COMMON ORDER

CRP.No.207 & 211 of 2022



ALLOWING BOTH THE CRPs WITHOUT COSTS