

IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

FRIDAY, THE TWENTY FOURTH DAY OF NOVEMBER
TWO THOUSAND AND TWENTY THREE

PRESENT

THE HONOURABLE SRI JUSTICE R RAGHUNANDAN RAO

CIVIL REVISION PETITION Nos. 2118 AND 2119 OF 2023



CIVIL REVISION PETITION NO: 2118 OF 2023

Petition under Article 227 of the Constitution of India aggrieved by the order dated 10.08.2023 in I.A.No.192 of 2023 in O.S.No.79 of 2006 on the file of the Court of the Principal Senior Judge at Madanapalle, Chittoor District.

Between:

K.Janardhana Reddy, S/o. Venkataramana Reddy, Aged 44 years, R/o. NBT Road, Mulakalacheruvu Village and Mandal, Chittoor, (Annamaiah) District

...Petitioner/Petitioners/Defendant-2

AND

1. Pujari Rama Krishna (Died)
2. Pujari Sahadeva, Sio. Venkatanarayana, aged 29 years, R/o Ragimanipalle, H/o. Mulakalacheruvu Mandal, Chittoor (Annamaiah) District
3. Pujari Anjaneyulu, S/o. Venkatanarayana, aged 27 years, R/o Ragimanipalle, H/o. Mulakalacheruvu Mandal, Chittoor (Annamaiah) District
4. P. Nagulamma, W/o Venkatanarayana, 67 years, R/o Ragimanipalle, H/o. Mulakalacheruvu Mandal, Chittoor (Annamaiah) District
5. P. Radhamma, W/o Late P. Rama Krishna, aged 36 years, R/o Ragimanipalle, H/o. Mulakalacheruvu Mandal, Chittoor (Annamaiah) District
6. P. Dharani, D/o Late P. Ramakrishna, aged 33 years, R/o Ragimanipalle, H/o. Mulakalacheruvu Mandal, Chittoor (Annamaiah) District
7. P. Karthik, S/o Late P. Rama Krishna, aged 30 years, R/o Ragimanipalle, H/o. Mulakalacheruvu Mandal, Chittoor (Annamaiah) District
8. Puppala Kondamma, W/o. P. Sreeramulu, aged 35 years, R/o Ragimanipalle, H/o. Mulakalacheruvu Mandal, Chittoor (Annamaiah) District
9. Puppala Venkatramana, S/o. Kondappa, aged 70 years, R/o MBT Road, Mulakalacheruvu, Chittoor (Annamaiah) Dist.
10. Azeez Saheb, S/o. Khader Saheb, aged 70 years, R/o MBT Road, Mulakalacheruvu, Chittoor (Annamaiah) Dist.
11. A.V. Rathnamaiah, S/o. Chinna Venkatappa, aged 60 years, R/o Mulakalacheruvu Village and (M). Chittoor (Annamaiah) Dist

12. Avula Krishnappa, S/o. Gopal, aged 68 years, Retd. Trallyman, R/o Railway Quarters, Mulakalacheruvu Mandal, Chittoor (Annamaiah) Dist.
13. Dasetty Sreenivasulu, S/o. Venkatramana, aged 70 years, R/o Yedumadakalapalli, Sompalle Post, Mulakalacheruvu Mandal. Chittoor (Annamaiah) District.
14. Maimunnisa, W/o. Late Azeez Saheb, aged 60 years, R/o MBT Road, Near Police Station, Mulakalacheruvu Mandal, Chittoor (Annamaiah) District.
15. T.S. Nazeer, S/o. Late Azeez Saheb, aged 38 years, R/o MBT Road, Near Police Station, Mulakalacheruvu Mandal, Chittoor (Annamaiah) District.
16. S. Sharifunnisha, W/o. Khader Valli, D/o. Late Azeez Saheb, aged 35 years, R/o MBT Road, Near Police Station, Mulakalacheruvu, Chittoor (Annamaiah) District.
17. Yeragoodi Venkatasubbaiah, S/o. Ganganna, aged 55 years, R/o Sompalle Village, Mulakalacheruvu Mandal, Chittoor (Annamaiah) District.
18. Kondreddi Alivelamma, W/o. Venkatramana, aged 48 years, R/o Chinna Angadivaripalle Village, H/o. Sompalle, Mulakalacheruvu Mandal, Chittoor (Annamaiah) District.
19. Poola Chandra Sekhar Reddy, S/o. Subbi Reddy, aged 34 years, R/o Buddalavaripalle H/o. Kalavapalle Post, Mulakalacheruvu Mandal. Chittoor (Annamaiah) District
20. A.V. Vimalamma, W/o Rathnamaiah, aged 70 years, R/o Kadiri Road, Mulakalacheruvu, Chittoor (Annamaiah) Dist.
21. A.V. Sathyanarayana, S/o Rathnamaiah, aged 45 years, R/o Kadiri Road, Mulakalacheruvu, Chittoor (Annamaiah) Dist.
22. A.V. Venugopal, S/o Rathnamaiah, aged 30 years, R/o Kadiri Road, Mulakalacheruvu, Chittoor (Annamaiah) Dist.
23. S. Kalavathi, W/o Venkatachalapathi, aged 50 years, R/o Chinthamani, Karnataka State.
24. S. Indira, W/o Sreenivasulu, aged 42 years, R/o Bazaar Street, Tarigonda, Vayalpad Mandal, Chittoor (Annamaiah) District.
25. V. Srilakshmi, W/o Raghavendra, aged 42 years, R/o Radhakrishna Road, Kuppam, Chittoor District.

(Respondents 8 to 25 are not necessary parties given up)

...Respondents/Respondents/Defendants

Counsel for the Petitioner: Sri N. Pramod, Advocate

Counsel for the Respondents: Smt. S. Ayesha Azma, Advocate

CIVIL REVISION PETITION NO: 2119 OF 2023

Petition under Article 227 of the Constitution of India aggrieved by the order dated 10.08.2023 in I.A.No.193 of 2023 in O.S.No.79 of 2006 on the file of the Court of the Principal Senior Judge at Madanapalle, Chittoor(Annamaiah) District.

Between:

K.Janardhana Reddy, S/o. Venkataramana Reddy, Aged 44 years, R/o. NBT Road, Mulakalacheruvu Village and Mandal, Chittoor, (Annamaiah) District

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(Respondents 8 to 25 are not necessary parties given up)

...Respondents/Respondents/Defendants

IA NO: 1 OF 2023

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to stay of all further proceedings in O.S.No.79/2006, pending on the file of Principal Senior Civil Judge Court at Madanapalle, Chittoor (Annamaiah) District.

Counsel for the Petitioner: Sri N. Pramod, Advocate

Counsel for the Respondents: Smt. S. Ayesha Azma, Advocate

The Court made the following: COMMON ORDER

THE HON'BLE SRI JUSTICE R.RAGHUNANDAN RAO
CIVIL REVISION PETITION Nos.2118 & 2119 of 2023

COMMON ORDER:

Heard Sri N. Pramod, learned counsel for the petitioner and Smt. Ayesha Azma, learned counsel for the respondents.

2. The respondents/plaintiffs had filed O.S.No.79 of 2006 before the Principal Senior Civil Judge, Madanapalle for partition of certain properties, said to be belonging to the family of the plaintiffs, and the defendants therein. The petitioner herein was arrayed as defendant No.2, on the ground that he had purchased certain properties which were the subject matter of the partition suit.

3. The case against the petitioner was that, the petitioner had purchased various pieces of the schedule property from some of the defendants in the suit and the said purchases were far in excess of the share available to the defendants who had sold the property to the petitioner. The written statement was filed by the petitioner, denying

all these allegations and contending that the property purchased by the petitioner from the other defendants was within the limits available to such defendants. At the stage of evidence, it appears that the plaintiffs, in the suit, had reserved the right to adduce evidence in rebuttal of the evidence produced by the petitioner. Subsequently, the petitioner adduced evidence and marked some documents. Thereafter, the plaintiffs examined the 2nd plaintiff as P.W.3 and marked Exs.A.12 to A.18 through the said witness. In the course of the cross examination, the petitioner is said to have confronted P.W.3 with documents showing that P.W.3 and his family members had sold away various properties which would go to show that the properties claimed by the plaintiffs in the suit are not available and in any event the suit would fail on that ground. At that stage, the plaintiffs had filed I.A.No.247 of 2020 for deletion of item Nos.8 and 10 of the suit schedule properties and the same was allowed on 11.03.2020. It is the case of the petitioner that these items were removed as the petitioner had sought to confront the witness of the plaintiffs with documents showing that these items of property had been sold by the plaintiffs themselves. In that view of the matter, the

petitioner was permitted to file an additional written statement in which the petitioner raised the contention that there cannot be a suit for partial partition and as the plaintiffs themselves had removed two items from the plaint schedule property, the suit would have to fail. On this basis, an additional issue was also framed, on 27.11.2022, on the question of maintainability of a suit for partial partition.

4. The petitioner then moved I.A.No.192 of 2023 and I.A.No.193 of 2023 for permission to produce about 46 documents and for recall of the witness to mark the documents. These applications were filed in April, 2023. The contention of the petitioner, in these applications, was that P.W.3, in his cross examination, refused to allow the documents produced by the petitioner to be marked in the trial by refusing to acknowledge any of the documents and as such, the petitioner should be given an opportunity to mark these documents by producing the certified copies of the registered deeds and encumbrance certificates obtained from the registration authorities. The delay in filing the documents was explained by stating that the said delay was not intentional and that the petitioner had to seek the leave

of the Court to produce these documents as P.W.3 had not cooperated with the petitioner and had deliberately taken an obstructionist position to stop the documents from being marked.

5. The trial Court dismissed both the applications by an order dated 10.08.2023. Aggrieved by the said orders of dismissal, the petitioner had approached this Court, by way of the present Civil Revision Petitions which are being disposed of by way of this common order.

6. Sri N. Pramod, learned counsel for the petitioner would submit that these documents, which were rejected by the trial Court, are essential for the trial in the matter and to demonstrate that the plaintiffs and their family members had sold away large parts of the suit schedule property and that all the properties which are mentioned in the suit schedule are not available and any decree or judgment would only amount to partial partition of the property which is not permissible under law. He would submit that non marking of these documents would result in grievous injury and miscarriage of justice as the

plaintiffs would get away that their obstructionist position in the course of the trial.

7. Smt. Ayesha Azma, learned counsel for the respondents would submit that the petitioner has now sought to introduce about 46 documents in a case which commenced in the year 2006 and that no explanation of any nature was given as to why these documents were not produced earlier and were now sought to be produced in the trial. She submits that the provisions of Order VIII Rule 1-A of C.P.C require the petitioner to set out the cause as to why the documents could not be produced earlier and as to why such documents should be permitted to be introduced in the suit at a stage after the trial had commenced. She would further submit that there was no pleading in the written statement relating to the alleged sales by the plaintiffs and their family members which are now sought to be proved and the said documents cannot be introduced on the principle that no evidence can be adduced in the absence of pleadings to that effect.

8. Order VIII Rule 1-A of C.P.C which was introduced by way of amendment Act 46 of 1999 reads as follows:

Rule 1-A: Duty of defendant to produce documents

upon which relief is claimed or relied upon by him.

- (1) Where the defendant bases his defence upon a document or relies upon any document in his possession or power, in support of his defence or claim for set-off or counter-claim, he shall enter such document in a list, and shall produce it in Court when the written statement is presented by him and shall, at the same time, deliver the document and a copy thereof, to be filed with the written statement.
- (2) Where any such document is not in the possession or power of the defendant, he shall, wherever possible, state in whose possession or power it is.
- (3) A document which ought to be produced in Court by the defendant under this rule, but, is not so produced shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit.
- (4) Nothing in this rule shall apply to documents —
 - (a) Produced for the cross-examination of the plaintiff's witnesses, or
 - (b) Handed over to a witness merely to refresh his memory.

9. These provisions stipulate that a defendant who seeks to rely upon any document shall enter the details of

such documents in a list and produce the said list along with the written statement filed by him. The defendant would also have to present the document and a copy thereof along with the written statement. In the event of any failure to list out such documents, or any failure to produce the said documents, the defendant is given a further opportunity under Rule 1-A (3) of C.P.C which stipulates that such documents can still be received in evidence with the leave of the Court.

10. This provision has been interpreted by the Courts. A learned single judge of this Court in Civil Revision Petition Nos.1034 and 1116 of 2023 dated 14.06.2023, after a review of the law, had held that unless cogent and clear reasons are given and made out for permitting production of documents, the said application would have to be rejected. The judgment of a learned single judge of this Court in **lakshmi and others vs. Vitta Kristappa and others**¹, which has been extracted by the learned single judge in the judgment mentioned above bears repetition.

“Rule 1-A and 1-A(3) of Order VIII CPC were substituted by Act 46 of 1999 with effect from 01.07.2022 with object of curbing the phenomenal delays in the

¹ 2020 (2) ALT..364 (S.B)

procedural aspects leading to procrastination of the proceedings before the civil court. The parliament has thought it fit to stipulate time limit for the parties to file their defence and produce documents along with the defence so that the cases can be disposed of without any delay. This being the objective of the provisions amended, the court before which the defendant intends to produce the documents after filing of the written statement need to assign the reasons for non-production of documents along with the written statement. Unless the reasons assigned by the defendant disclosing sufficient cause for his failure to produce the W.P.No.1038 of 2012, dt.10.04.2012, the documents within the time stipulated in Rule-1A of Order VIII CPC, the court shall not permit him to file the documents at a later stage.

14. In the instant case, no reason whatsoever is assigned by the revision petitions for non-production of the documents which are sought to be produced and that they have not even referred those documents in their written statement. Due to non-disclosure of sufficient cause for their failure to produce the intended documents, the production of documents at a later stage, that too, when the case reached the stage of arguments, cannot be permitted."

11. Sri N. Pramod, learned counsel for the petitioner relies upon the judgment of the Hon'ble Supreme Court in the case of **Sambhaji & Ors vs. Gangabai & Ors.**,² dated 20.11.2008 in Civil Appeal No.6731 of 2008, to contend that Order VIII Rule-1 and Rule 1-A of C.P.C are at best handmade of justice and delay in seeking leave for production of documents should not hamper or affect the rights of the parties to have substantive justice.

² (2008) 17 SCC 117

12. In the present case, the written statement filed by the petitioner does not contain any pleading relating to the sale of properties by the plaintiffs in relation to the documents which are now sought to be produced by the petitioner. The additional written statement while adverting to some transactions states that the sales made by the plaintiffs relate to items 8 and 10 of the plaint schedule property and the deletion of these two items by the plaintiffs is fatal to the suit itself as the suit had now become a suit for partial partition of the property. In the circumstances, it cannot be said that this issue has been raised properly in the pleadings.

13. Further, there is no explanation as to why these documents had not been produced by the petitioner while he was being examined. The only explanation given, in the application, is that P.W.3 was sought to be confronted with the documents and since he was refusing to acknowledge the documents, the petitioner should be given leave to produce the documents before the Court. Rule 1-A of Order VIII, as interpreted by the courts above, would not permit the production of documents in the absence of cogent and clear reasons given for making out a case for granting such leave.

14. This Court is bound by the principles set out by the Hon'ble Supreme Court in the case cited by Sri N. Pramod. However, the said judgment also held that Courts would have to exercise their discretion, depending upon the facts of the each case.

15. In the circumstances, the necessary conditions for grant of leave under Rule 1-A of C.P.C have not been made out by the petitioner and these Civil Revision Petitions are accordingly, dismissed. There shall be no order as to costs.

Miscellaneous petitions, pending if any, shall stand closed.

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SD/- K. TATA RAO
DEPUTY REGISTRAR
cc
SECTION OFFICER

To,

1. The Principal Senior Civil Judge Court at Madanapalle, Chittoor (Annamaiah) District.
2. The Senior Civil Judge Court at Madanapalle, Chittoor (Annamaiah) District
3. One CC to Sri N. Pramod, Advocate [OPUC]
4. One CC to Smt. S. Ayesha Azma, Advocate [OPUC]
5. The Section Officer, V.R Section, High Court of A.P. at Amaravati.
6. Three CD Copies.

ssb

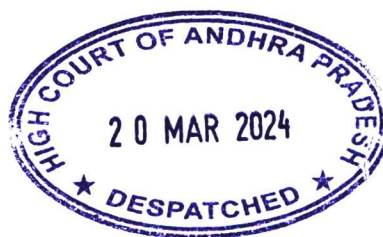
Priyanka

HIGH COURT

DATED:24/11/2023

COMMON ORDER

CRP.Nos.2118 AND 2119 of 2023



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DISMISSING THE CRPs WITHOUT COSTS