



HIGH COURT OF ANDHRA PRADESH
FRIDAY ,THE FIRST DAY OF JULY
TWO THOUSAND AND TWENTY TWO

PRSENT

THE HONOURABLE SRI JUSTICE NINALA JAYASURYA
CIVIL REVISION PETITION NO: 216 OF 2021

Between:

1. SARVEPALLI VENKATA RADHA KRISHNA S/o.Hanumantha Rao,
Aged about 49 years,
R/o.D.No. 8-404(1), M.M. Donka, Ongole, Prakasam District.

...PETITIONER(S)

AND:

1. RUDRAVARAM ANANDA SWAROOP S/o.Lat R.V. Subbaiah,
Aged about 26 years, Occ. Cultivation, R/o.Rudravaram village,
Santhanuthalapadu Mandal,
Prakasam District.Petitioner/Respondent/DHr

...RESPONDENTS

Counsel for the Petitioner(s): SITA RAM CHAPARLA

Counsel for the Respondents: NAGA PRAVEEN VANKAYALAPATI

The Court made the following: ORDER



HIGH COURT OF ANDHRA PRADESH AT AMARAVATHI

CIVIL REVISION PETITION No.216 OF 2021

Between:

Sarvepalli Venkata Radha Krishna,
S/o Hanumantha Rao, Aged about 49 years,
R/o D.No.8-404(1), M.M. Donka, Ongole,
Prakasam District. Petitioner

And

Rudravaram Anand Swaroop, S/o Late R.V. Subbaiah,
Aged about 26 years, Occupation: Cultivation,
R/o Rudravaram Village, Santhanuthalapadu Mandal,
Prakasam District. Respondent

DATE OF ORDER PRONOUNCED: 01-07-2022

THE HON'BLE SRI JUSTICE NINALA JAYASURYA

1. Whether Reporters of Local newspapers may be allowed to see the Judgments? Yes/No
2. Whether the copies of judgment may be Marked to Law Reporters/Journals. Yes/No
3. Whether Their ladyship/Lordship wish to see the fair copy of the Judgment? Yes/No

NAINALA JAYASURYA, J



***THE HON'BLE SRI JUSTICE NINALA JAYASURYA**

+ CIVIL REVISION PETITION No.216 of 2021

%Date : 01.07.2022

Sarvepalli Venkata Radha Krishna **Petitioner**

And

\$ Rudravaram Anand Swaroop **Respondent**

! Counsel for the Petitioner : **Mr.Sita Ram Chaparla**

^ Counsel for Respondents : **Mr.Naga Praveen Vankayalapati**

< GIST : --

> HEAD NOTE : --

? Cases referred : --

**THE HON'BLE SRI JUSTICE NINALA JAYASURYA****CIVIL REVISION PETITION No.216 of 2021****ORDER:**

The present Revision Petition has been preferred against an Order dated 13.10.2020 in E.A.No.2 of 2018 in E.P.No.75 of 2015 in O.S.No.220 of 2006 on the file of the Court of the Additional Senior Civil Judge, Ongole, Prakasam District.

2. Heard Mr.Sita Ram Chaparla, learned counsel for the petitioner and Mr.Naga Praveen Vankayalapati, learned counsel for the respondent.

3. The petitioner herein is the decree holder in O.S.No.220 of 2016. The petitioner/plaintiff filed the said suit seeking a decree for delivery of possession of the suit schedule properties. The said suit was decreed on 12.03.2015 against the respondent and other defendants. The petitioner/plaintiff filed E.P.No.75 of 2015 seeking delivery of items 1 and 2 of the suit schedule properties and the same was allowed. Pursuant to which, items 1 and 2 of the suit schedule properties were delivered to the petitioner/decreed holder on 22.06.2015 and 21.06.2018 respectively. In the meanwhile, the respondent/J.Dr.No.7 filed an application seeking to set aside the *ex parte* decree dated 12.03.2015 and the same was allowed on 09.06.2017. Thereafter, he filed E.A.No.2 of 2018 under Sections 144 and 151 of Code of Civil Procedure (hereinafter referred to as "CPC") seeking to re-deliver possession of items 1 and 2 of the suit schedule properties to him. The said E.A was opposed by the petitioner/decreed holder by filing a counter. The Court below after considering the matter by an Order dated 13.10.2020 allowed the said application with a direction to the petitioner/decreed holder to re-



deliver possession of items 1 and 2 of the suit schedule properties to the petitioner/J.Dr.No.7 within 6 months from the date of the Order, failing which the respondent/J.Dr.No.7 is granted liberty to get delivery the same through process of Law. Aggrieved by the said Order, the present Revision Petition was preferred by the petitioner/deGREE holder on various grounds.

4. The learned counsel for the petitioner *inter alia* strenuously contended that the Order under Revision is not sustainable, as the Court below failed to exercise the jurisdiction vested in it in a proper perspective. He submits that the respondent is guilty of suppression of facts and on that ground the application filed by him is liable to be dismissed. In elaboration, he submits that the respondent/J.Dr.No.7 filed O.S.No.99 of 2017 on the file of the Court of Family-cum-VIII Additional District Judge at Ongole against the petitioner as well as his vendors seeking declaration and consequential possession of the properties and the Court below grievously erred in not considering the detailed counter filed by the petitioner/deGREE holder in E.A, wherein these aspects averred that the property in question was sold to third parties and filing of the suit by the respondent/J.Dr.No.7 for declaration and recovery of possession by the respondent were set out. He submits that the petitioner sold the suit schedule properties through Registered Sale Deeds dated 06.10.2016 and 30.05.2017 and thereafter the application to set aside the *ex parte* decree was allowed on 09.06.2017. He submits that since the petitioner/deGREE holder had already sold the suit schedule property to third parties and is not in possession of the schedule properties, the impugned Order is not sustainable against the



petitioner/decreed holder. He submits that the Court below grossly erred in allowing the application without looking into the crucial aspects and went wrong in allowing the application without considering the matter in a proper perspective. He submits that the petitioner had approached the Honourable Court with unclean hands as such the Court below ought to have rejected the application at the threshold. He further submits that no party shall suffer by the acts of the Court and as the respondent herein obtained the impugned Order by playing fraud on the petitioner as well as on the Honourable Court, the Order in E.A.No.2 of 2018 is not sustainable in Law. He submits that unless the impugned Order is set aside, the petitioner/decreed holder would suffer serious prejudice and irreparable loss. Making the said submissions, the learned counsel for the petitioner seeks to allow the Revision Petition.

5. Per contra, the learned counsel for the respondent/J.Dr.No.7 *inter alia* submits that the Order under Revision is well considered and warrants no interference by this Court. He further submits that in fact the present Civil Revision Petition is not maintainable and against the Order passed under Section 144 of CPC, appeal alone lies and as such the Revision Petition deserves to be dismissed. The learned counsel also submits that the rights of the parties can be decided under Section 144 of CPC, without even filing a separate suit. He submits that at any rate filing of a separate suit for recovery of possession is of no consequence. The learned counsel would further urge that as the *ex parte* decree was set aside and the suit was restored, the possession of the property has to be re-delivered and considering the legal position, the Court below had ordered for the same and in the facts and



circumstances, of the case the Court below is justified in allowing the application filed by the respondent/J.Dr.No.7. In support of his contentions, the learned counsel places reliance on the decisions reported in **AIR 1965 SC 1477** and **AIR 1996 SC 1204**. The learned counsel would further submit that the petitioner/decree holder during the pendency of application to set aside the *ex parte* decree sold the subject matter properties with a *mala fide* intention and therefore he is not entitled to any relief from this Court.

6. In reply to the said contentions the learned counsel for the petitioner submits that the respondent/J.Dr.No.7 has not filed any rejoinder to the counter of the petitioner/decree holder in E.A.No.2 of 2018 and therefore the averments therein are deemed to have been admitted. In so far as maintainability of the Revision Petition is concerned, he submits that the same is not tenable and even otherwise the Revision Petition is maintainable under Article 227 of the Constitution of India, as the Order suffers from non-application of mind. Making the said submissions, the learned counsel for the petitioner seeks to allow the Revision Petition.

7. Though the learned counsel for the petitioner raised several contentions, in view of the contentions advanced by the learned counsel for the respondent with regard to maintainability of the Revision Petition under Article 227 of the Constitution of India, this Court deems it appropriate to deal with the said aspect instead of adjudicating the matter with reference to the various undertaking a detailed examination of all the contentions raised by the learned counsel for both sides.



8. As noticed earlier, the Order impugned in the present Revision Petition was passed in an application filed under Section 144 of CPC, which reads thus:

Section 144. Application for restitution.-

(1) Where and in so far as a decree 1[or an Order] is 2[varied or reversed in any appeal, revision or other proceedings or is set aside or modified in any suit instituted for the purpose the Court which passed the decree or Order] shall, on the application of any party entitled to any benefit by way of restitution or otherwise, cause such restitution to be made as will, so far as may be, place the parties in the position which they would have occupied but for such decree 1[or Order] or 3[such part thereof as has been varied, reversed, set aside or modified], and, for this purpose, the Court may make any Orders, including Orders for the refund of costs and for the payment of interest, damages, compensation and mesne profits, which are properly 4[consequential on such variation, reversal, setting aside or modification of the decree or Order.]

5[Explanation.-For the purposes of sub-section (1) the expression "Court which passed the decree or Order" shall be deemed to include,-

(a) where the decree or Order has been varied or reversed in exercise of appellate or revisional jurisdiction, the Court of first instance;

(b) where the decree or Order has been set aside by a separate suit, the Court of first instance which passed such decree or Order;

(c) where the Court of first instance has ceased to exist or has ceased to have jurisdiction to execute, it, the Court which, if the suit wherein the decree or Order was passed were instituted at the time of making the application for restitution under this section, would have jurisdiction to try such suit.]

(2) No suit shall be instituted for the pr-pose of obtaining any restitution or other relief which could be obtained by application under sub-section (1).

9. Interpreting the above referred Section, a Constitutional Bench of the Supreme Court in **Mahijibhai Mohanbhai Barot vs. Patel Manibhai Gokalbhai and others**¹ referred to supra, inter alia answered the question holding that the application for restitution under Section 144 of CPC is an application for execution of a decree.

¹ AIR 1965 Supreme Court 1477



10. Section 2 (2) of CPC deals with a 'Decree' in the following terms:-

(2) "decree" means the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint and the determination of any question within Section 144, but shall not include

–

- (a) any adjudication from which an appeal lies as an appeal from an order; or
- (b) any order of dismissal for default.

Explanation:- A decree is preliminary when further proceedings have to be taken before the suit can be completely disposed of. It is final where such adjudication completely disposes of the suit. It may be partly preliminary and partly final.

11. In the light of the specific provision of Law and the legal position, the impugned Order pursuant to the application filed under Section 144 of CPC would amount to a decree and therefore as rightly contended by the learned counsel for the respondent, an appeal has to be filed against the same in terms of Section 96 of CPC, which provides that an appeal shall lie from every 'decree' passed by any Court exercising original jurisdiction to the Court authorized to hear appeals from the decisions of such Court.

12. In **Mohammed Abdul Sattar vs. Mrs. Shahzad Tahera and another**² a learned Judge of the erstwhile High Court of Judicature of Andhra Pradesh at Hyderabad had an occasion to consider Section 144 of CPC and maintainability of Civil Revision Petition under Section 115 of CPC filed against an Order dismissing the application for restitution.

13. In an elaborate Judgment after referring to a catena of cases, it was *inter alia* held that an Order passed in an application filed under Section 144 of CPC is an appealable Order and Revision against the same

² 2012 (2) ALT 230 (S.B.)



under Section 115 of CPC does not lie. The learned Judge was also not inclined to accept the alternative contention that a Revision Petition under Article 227 of the Constitution of India can be maintained despite alternative remedy by way of appeal.

14. In the said case, it was urged on behalf of the petitioner/Judgment Debtor that the application was not laid under Section 144 of CPC simpliciter and that it was filed under Section 144 of CPC R/w Section 151 of CPC and therefore assuming that an Order under Section 144 of CPC is appealable, an Order under Section 151 of CPC is not appealable and consequently a Revision would lie.

15. At Para 26 of the said Judgment, the learned Judge categorically held that an Order under Section 144 of CPC is a decree in view of the definition of decree under Section 2, (2) of CPC and that Section 96 of CPC envisages that an appeal would lie from every decree, with certain exceptions. While observing that Section 144 of CPC does not fall within the exceptions under Section 96 of CPC, the learned Judge held that an Order in an application under Section 144 of CPC is an appealable Order.

16. In the light of the above stated legal position, this Court finds merit in the submission made by the learned counsel for the respondent that the present Revision Petition is not maintainable and accordingly the said contention is upheld. Though the learned counsel for the petitioner had addressed several contentions *inter alia* that the Order under Revision is not sustainable as the respondent suppressed the material facts and several contentions raised in the counter were not considered, this Court is not inclined to deal with the same, in view of the conclusion arrived at *supra* that the Revision Petition is not maintainable and an appeal lies



against the Order under Revision. Therefore, this Court deems it appropriate to leave all the contentions for examination on merits by the Appellate Court, in the event an appeal is preferred by the petitioner against the impugned Order.

17. In the aforesaid view of the matter, the Revision Petition is disposed of, leaving it open to the Revision Petitioner to avail the appeal remedy as provided under Law and in the event of the petitioner filing any appeal, the concerned Court shall consider the same on its merits and in accordance with Law, as this Court had not expressed any opinion on the merits of the Order impugned in the present Revision Petition. There shall be no Order as to costs.

As a sequel, miscellaneous applications, if any, pending shall stand closed.

NINALA JAYASURYA, J

Date: 01.07.2022

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THE HON'BLE SRI JUSTICE NINALA JAYASURYA

Civil Revision Petition No.216 of 2021

Date: 01.07.2022

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