

**HIGH COURT OF ANDHRA PRADESH**  
TUESDAY ,THE TWENTY FIFTH DAY OF APRIL  
TWO THOUSAND AND TWENTY THREE

**PRESENT**

**THE HONOURABLE SRI JUSTICE B V L N CHAKRAVARTHI**  
**CIVIL REVISION PETITION NO: 424 OF 2016**

**Between:**

1. M V S M PRASAD, KRISHNA DIST S/o.Nancharaiah, aged about 52 years,  
R/o.Bantumilli, Bantumilli Mandal, Krishna District.

**...PETITIONER(S)**

**AND:**

1. KOLLA CHANDRA SEKHARA RAO, KRISHNA DIST & 4 OTHERS  
R/o.Bantumilli, Bantumilli Mandal, Krishna District.
2. Maddi Venkata Sri Vatsava Nancharaiah S/o.Venkata Surya Murali Prasad, aged about 27 years, R/o.Bantumilli, Bantumilli Mandal, Krishna District.
3. Maddi Tulasi Vithal Charan S/o.Venkata Surya Murali Prasad, aged about 23 years, R/o.Bantumilli, Bantumilli Mandal, Krishna District.
4. Maddi Sri Rekha Padmini Charan D/o.Venkata Surya Murali Prasad, aged about 19 years, R/o.Bantumilli, Bantumilli Mandal, Krishna District.
5. Maddi Venkata Veeranjaneya Gupta S/o.Nancharaiah, aged about 49 years,  
R/o.Bantumilli, Bantumilli Mandal, Krishna District.

(Respondents 2 to 5 are not necessary parties in the Revision)

**...RESPONDENTS**

**Counsel for the Petitioner(s): SAI GANGADHAR CHAMARTY**

**Counsel for the Respondents: K SARVA BHOUMA RAO**

**The Court made the following: ORDER**

HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

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**C.R.P.No.424 OF 2016**

**Between:**

Maddi Venkata Surya Murali Prasad,  
S/o.Nancharaiah, Aged 52 years, Hindu,  
R/o.Bantumilli Village and Mandal,  
Krishna District.

....Petitioner/Defendant No.1.

**Versus**

1. Kolla Chandrasekhara Rao,  
S/o.Nancharaiah,  
Hindu, Aged 43 years,  
R/o.Bantumilli Village and Mandal,  
Krishna District.
2. Maddi Venkata Sri Vastsava Nancharaiah,  
S/o.Venkata Surya Murali Prasad,  
Hindu, Aged 27 years,  
R/o.Bantumilli Village and Mandal,  
Krishna District.
3. Maddi Tulasi Vithal Charan,  
S/o.Venkata Surya Murali Prasad,  
Hindu, Aged 23 years,  
R/o.Bantumilli Village and Mandal,  
Krishna District.
4. Maddi Sri Rekha Padmini Charan,  
D/o.Venkata Surya Murali Prasad,  
Hindu, Aged 19 years,  
R/o.Bantumilli Village and Mandal,  
Krishna District.

5. Maddi Venkata Veeranjanya Gupta,  
S/o.Nancharaiah,  
Hindu, Aged 49 years,  
R/o.Bantumilli Village and Mandal,  
Krishna District.

....Respondents/Defendants No.2 to 5.

DATE OF ORDER PRONOUNCED : 25.04.2023

SUBMITTED FOR APPROVAL:

**HON'BLE SRI JUSTICE B.V.L.N.CHAKRAVARTHI**

1. Whether Reporters of Local Newspapers  
may be allowed to see the Judgment? Yes/No
2. Whether the copy of Judgment may be  
marked to Law Reporters/Journals? Yes/No
3. Whether His Lordship wish to see the  
fair copy of the Judgment? Yes/No

**B.V.L.N.CHAKRAVARTHI, J**

**HON'BLE SRI JUSTICE B.V.L.N.CHAKRAVARTHI**

**+ C.R.P.No.424 OF 2016**

**% 25.04.2023**

**# Between:**

Maddi Venkata Surya Murali Prasad,  
S/o.Nancharaiah, Aged 52 years, Hindu,  
R/o.Bantumilli Village and Mandal,  
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2. Maddi Venkata Sri Vastsava Nancharaiah,  
S/o.Venkata Surya Murali Prasad,  
Hindu, Aged 27 years,  
R/o.Bantumilli Village and Mandal,  
Krishna District.
3. Maddi Tulasi Vithal Charan,  
S/o.Venkata Surya Murali Prasad,  
Hindu, Aged 23 years,  
R/o.Bantumilli Village and Mandal,  
Krishna District.
4. Maddi Sri Rekha Padmini Charan,  
D/o.Venkata Surya Murali Prasad,  
Hindu, Aged 19 years,  
R/o.Bantumilli Village and Mandal,  
Krishna District.

5. Maddi Venkata Veeranjanya Gupta,  
S/o.Nancharaiah, Hindu, Aged 49 years,  
R/o.Bantumilli Village and Mandal,  
Krishna District.

....Respondents/Defendants No.2 to 5.

**! Counsel for the Petitioner** : Sri Sai Gangadhar Chamarty

**^ Counsel for the  
Respondent No.1** : Sri K.Sarvabhuma Rao

**< Gist:**

**> Head Note:**

**? Cases referred:**

**1) 2007(2) ALT 600**

**2) AIR 1982 SC 818**

**3) AIR 2006 SC 145**

This Court made the following:

**HON'BLE SRI JUSTICE B.V.L.N.CHAKRAVARTHI**

**CIVIL REVISION PETITION No.424 OF 2016**

**ORDER:**

Heard Sri Sai Gangadhar Chamorthy, learned counsel for Revision Petitioner and Sri K.Sarvabhuma Rao, learned counsel for 1<sup>st</sup> respondent.

02. This Revision Petition is directed against the order dated 06.11.2015 in I.A.No.408/2015 in O.S.233/2005 on the file of Prl.Senior Civil Judge's Court, Machilipatnam, where under the trial Court permitted the plaintiff to amend the plaint seeking relief of partition apart from the existing relief of specific relief.

03. The learned counsel for Revision Petitioner/1<sup>st</sup> defendant would submit that the plaintiff sought amendment when the suit reached the stage of arguments, and no reason was assigned by the plaintiff why the amendment seeking relief of partition was not taken before settlement of issues, as per Order VI, Rule 17 C.P.C., and therefore, the trial Court committed material irregularity by allowing the application for amendment for relief of partition of the suit schedule property.

04. The learned counsel for 1<sup>st</sup> respondent/plaintiff would submit that U/s.22 of Specific Relief Act, in a suit filed for specific performance, at any stage of the suit, in appropriate cases, the plaintiff can seek the relief of partition also, and the trial Court relying on the judgment of this Court in the case of **T.Aswini Desai Vs. V.Kondinya (Diexd) and others**<sup>1</sup>, where under held that “*in order to avoid multiplicity of proceedings, the plaintiff can not only seek relief of specific performance, but also can seek the relief of partition at any stage of the suit*”, allowed the application, and therefore, no material irregularity was committed by the trial Court.

05. In the light of above rival contentions, the point that would arise for consideration in the Revision Petition is as under:

**“Whether the trial Court committed any material irregularity in allowing the application filed by the plaintiff U/O.VI Rule 17 C.P.C.?”**

06. **POINT:**

Admittedly, the plaintiff filed the suit for the relief of specific performance of agreement of sale dated 09.02.2001 alleged to be executed by the 1<sup>st</sup> defendant in the suit for his half share in the plaint

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<sup>1</sup> 2007(2) ALT 600

schedule property. The defendants No.2 to 4 are the children of the 1<sup>st</sup> defendant. The 1<sup>st</sup> defendant contention is that he did not execute the said sale agreement.

07. The suit reached the stage of arguments. At that stage, the plaintiff filed application to amend the plaint for the relief of partition, apart from relief of specific performance. The Revision Petitioner / 1<sup>st</sup> defendant opposed the application on the ground that at the stage of arguments, the plaintiff cannot seek amendment of the plaint.

08. The Hon'ble Apex Court in the case of **Babu Lal Vs. Hazari Lal Kishori Lal and others**<sup>2</sup>, considered the scope of section 22 of Specific Relief Act, which enacts a rule of pleading, and held that "*in appropriate cases, at any stage of the proceedings*" in a suit for specific performance, the plaintiff can ask for proper relief including that of possession or partition and these reliefs he can claim notwithstanding anything contained in C.P.C. to the contrary. Further, held that the Legislature has given ample power to the Court to allow amendment of the plaint at any stage, including the execution proceedings.

09. In the case on hand, the contention of the plaintiff is that he purchased half share of the 1<sup>st</sup> defendant in the plaint schedule

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<sup>2</sup> AIR 1982 SC 818



property under the suit sale agreement. The remaining half share is with the defendants. Under those circumstances, it is an appropriate case for seeking the relief of partition also, apart from the relief for specific performance.

10. Therefore, in the light of above principles laid down by the Hon'ble Supreme Court, in a case where exclusive possession is with the contracting party, a decree for specific performance of the contract of sale simplicitor without specifically providing for delivery of possession may give complete relief to the plaintiff, but where the contract between the plaintiff and the defendant, the property falls in possession of a third person, mere relief of specific performance of contract of sale may not entitle the plaintiff to obtain possession of partition as against the party in actual possession of the property. As against him, a decree for partition must be specifically claimed for such person is not bound by the contract which to be enforced.

11. The Hon'ble Apex Court in the case of **P.C.Varghese Vs. Devaki Amma Balambika Devi**<sup>3</sup>, held that *“Section 22 enacts a rule of pleading that in order to avoid multiplicity of proceedings, the plaintiff may claim a decree for possession and/ or partition in a suit for specific*

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<sup>3</sup> AIR 2006 SC 145

*performance.*” Ordinarily a proceeding for grant of a final decree for partition should be initiated after the sale deed in terms of the decree for specific performance of contract is executed and registered and not vice versa.

12. In the light of above law laid down by the Hon’ble Supreme Court, the amendment sought by the plaintiff in the instant case seeking relief of partition also, is proper in the circumstances of the case discussed above.

13. In that view of the matter, there are no grounds to interfere with the finding of the trial Court, and the Civil Revision Petition is liable to be dismissed. Accordingly, this point is answered.

14. In the result, the Civil Revision Petition is dismissed. There shall be no order as to costs.

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

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**B.V.L.N.CHAKRAVARTHI, J.**

**25.04.2023**

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**HON'BLE SRI JUSTICE B.V.L.N.CHAKRAVARTHI**

**C.R.P.No.424 OF 2016**

**Note: Mark L.R. Copy**  
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**25<sup>th</sup> April, 2023**

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