

**HIGH COURT OF ANDHRA PRADESH**  
TUESDAY ,THE TWENTY EIGHTH DAY OF MARCH  
TWO THOUSAND AND TWENTY THREE

**PRSENT**

**THE HONOURABLE SRI JUSTICE B V L N CHAKRAVARTHI**  
**CIVIL REVISION PETITION NO: 2387 OF 2015**

**Between:**

1. PILLA VENKATA SUBBA RAO, KRISHNA DIST. & ANOTHER S/o. late Ramachandra Rao, R/o. D.No. 47/48-2, Raju pet, Machilipatnam, Krishna District.
2. Pilla maha Lakshmi W/o. Venkata Subba Rao, R/o. D.No. 47/48-2, Raju pet, Machilipatnam, Krishna District.

**...PETITIONER(S)**

**AND:**

1. ANISETTI NAGA RANI S/o. late Srinivasa Rao, R/o. D.No. 4/874-3, Raju pet, Machilipatnam, Krishna District.

**...RESPONDENTS**

**Counsel for the Petitioner(s): NARASIMHA RAO GUDISEVA**

**Counsel for the Respondents: MUMMANENI SRINIVASA RAO**

**The Court made the following: ORDER**

**HIGH COURT OF ANDHRA PRADESH AT AMARAVATI**

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**CIVIL REVISION PETITION NO.2387 OF 2015**

**Between:**

1. Pilla Venkata Subba Rao, S/o. Late Ramachandra Rao, Hindu, 52 years, Cultivation, R/o. Door No.47/48-2, Raju pet, Machilipatnam, Krishna District.

2. Pilla Maha Lakshmi, W/o. Venkata Subba Rao, Hindu, 49 years, Housewife, R/o. D.No.47/48-2, Raju pet, Machilipatnam, Krishna District.

... Petitioners/Appellants

*Versus*

Aniseti Naga Rani, W/o. Late Srinivasa Rao, Hindu, 36 years, R/o. D.No.4/874-3, Raju pet, Machilipatnam, Krishna District.

... Respondent/Respondent

\* \* \* \* \*

DATE OF ORDER PRONOUNCED : 28.03.2023.

**SUBMITTED FOR APPROVAL:**

**THE HONOURABLE SRI JUSTICE B.V.L.N.CHAKRAVARTHI**

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

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

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

**+ CIVIL REVISION PETITION NO.2387 OF 2015**

**% 28.03.2023**

**# Between:**

1. Pilla Venkata Subba Rao, S/o. Late Ramachandra Rao, Hindu, 52 years, Cultivation, R/o. Door No.47/48-2, Raju pet, Machilipatnam, Krishna District.
2. Pilla Maha Lakshmi, W/o. Venkata Subba Rao, Hindu, 49 years, Housewife, R/o. D.No.47/48-2, Raju pet, Machilipatnam, Krishna District.  
... Petitioners/Appellants

*Versus*

Anisetti Naga Rani, W/o. Late Srinivasa Rao, Hindu, 36 years, R/o. D.No.4/874-3, Raju pet, Machilipatnam, Krishna District.  
... Respondent/Respondent

**! Counsel for the Revision- :: Sri Narasimha Rao  
petitioners/Appellants Gudiseva**

**^ Counsel for the Respondent :: Sri Mummaneni  
Srinivasa Rao**

**< Gist:**

**> Head Note:**

**? Cases referred:**

1. **G.Shashikala (Died) Through L.Rs. vs. G.Kalawati Bai (Died) Through L.R. & Others in Civil Appeal Nos. 3969-3970 of 2019 (Arising out of S.L.P.(C) Nos.30911- 30912 of 2018), dated 16.04.2019.**

This Court made the following:

**THE HONOURABLE SRI JUSTICE B.V.L.N.CHAKRAVARTI**

**CIVIL REVISION PETITION NO.2387 of 2015**

**ORDER:**

Heard Sri Narasimha Rao Gudiseva, learned counsel for revision-petitioners. No representation for respondent for the last two adjournments, though post under the caption 'FOR ORDERS'.

2. This Civil Revision Petition is directed under Section 115 of the Civil Procedure Code, 1908 (for brevity 'CPC') against the Order, dated 20.04.2015 in I.A.No.139 of 2014 in A.S.No.9 of 2012 on the file of X Additional District Judge's Court, Machilipatnam of Krishna District.

3. It is the contention of revision-petitioners that they preferred appeal *vide* A.S.No.9 of 2012 on the file of X Additional District Court, Krishna at Machilipatnam against the Decree and Judgment passed by the I Additional Junior Civil Judge's Court, Machilipatnam in O.S.No.459 of 2008. During the pendency of appeal proceedings, the revision-petitioners filed petition under Order XLI Rule 27 (1) (aa) and Section 151 of CPC read with Section 45 of the Evidence Act, 1872 to send the disputed suit promissory notes to the Government Handwriting

Expert for his 'Opinion' and the same was 'Dismissed' on 20.04.2015, challenging the said impugned Order, the revision was preferred.

4. The point that arises for consideration is:-

**“Whether the Appellate Court committed any irregularity in the Order, dated 20.04.2015 passed in I.A.No.139 of 2014 in A.S.No.9 of 2012?”**

5. **P O I N T**: -

A perusal of the record, it appears that similar application was filed before the Trial Court and it was 'Allowed' *vide* Order, dated 01.06.2011 and the disputed promissory notes was sent to the Handwriting Expert Government Handwriting Expert for his 'Opinion'. It further appears that the Government Handwriting Expert after examining the promissory notes 'Returned' them with a request to send sample handwritings in Telugu for comparison purpose. Subsequently, the suit was 'decreed' by the Trial Court. The revision-petitioners preferred appeal, questioning the 'Decree' and 'Judgment' of the Trial Court, pending appeal, they filed I.A.No.139 of 2014 under Order XLI Rule 27 (1) (aa) and Section 151 of CPC read with Section 45 of the Evidence Act, 1872 to send the promissory notes to the Expert.

6. The relevant provision of law under which the revision-petitioners filed the petition before the Appellate Court, is extracted as under:

**Order XLI** of CPC prescribes ‘Appeals from Original Decrees’

**Rule 27** of CPC deals with ‘Production of additional evidence in Appellate Court: -

**(1)** The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. But if---

(a) . . . . .

**(aa)** the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligent, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or

(b) . . . . .

7. In my considered opinion, the need to remand the case to the First Appellate Court has occasioned because the said Court committed a legal error while deciding the application filed by

the revision-petitioners/defendants under Order XLI Rule 27 (1) (aa) of CPC, separately.

8. The Honourable Apex Court in **G.Shashikala (Died) Through L.Rs. vs. G.Kalawati Bai (Died) Through L.R. & Others**<sup>1</sup> held at para No.13 as under:

*“The need to remand the case to the High Court has occasioned for the reason that the High Court committed jurisdictional error while deciding the application filed by the respondents under Order 41 Rule 27 of the Code, separately.”*

9. The First Appellate Court ‘Dismissed’ the application pending disposal of the first appeal. Any application filed under Order XLI Rule 27 (1) (aa) of CPC must be disposed of along with the appeal, but the Appellate Court disposed of the application filed by the revision-petitioners separately pending appeal which is against law. Thereby committed material irregularity. Keeping in view of the law laid down by the Honourable Supreme Court, the revision-petition is allowed setting-aside the Order, dated 20.04.2015 in I.A.No.139 of 2014 in A.S.No.9 of 2012 passed by X Additional District Judge, Krishna at Machilipatnam, by remanding the matter to the First

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<sup>1</sup> Civil Appeal Nos.3969-3970 of 2019 (Arising out of S.L.P.(C) Nos.30911-30912 of 2018), dated 16.04.2019.

Appellate Court with a direction to decide the application afresh on merits along with the appeal in accordance with law uninfluenced by any observation made in this Order.

10. In the result, the Civil Revision Petition is 'Allowed'. 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**

28<sup>th</sup> March, 2023.

DNB