



**HIGH COURT OF ANDHRA PRADESH**  
WEDNESDAY ,THE FOURTEENTH DAY OF JUNE  
TWO THOUSAND AND TWENTY THREE

**PRESENT**

**THE HONOURABLE DR JUSTICE K MANMADHA RAO**  
**CIVIL REVISION PETITION NO: 3470 OF 2019**

**Between:**

1. Putta Prasada Rao S/o. Chinna Rao,  
C/o.Gonthuna Trimurthulu, Hindu,  
Aged 52 years, R/o.S,R. Puram Colony, V.Juttada Post,  
Sowbhagyapuram Village, Pendurthi Mandal,  
Visakhapatnam-531 173.

**...PETITIONER(S)**

**AND:**

1. Putta Annapurna W/o. Putta Ramesh, Hindu, aged 54 years, R/o. D.No.6-15-10, East Point Colony, Visakhapatnam-530017.
2. Putta Rakesh , S/o, Putta Ramesh, Hindu, aged 28 years, R/o. D.No.6-15-10, East Point Colony, Visakhapatnam-530017.
3. Putta Nikesh S/o. Putta Ramesh,  
Hindu, aged 27 years, R/o. D.No.6-15-10,  
East. Point Colony, Visakhapatnam-530017

**...RESPONDENTS**

**Counsel for the Petitioner(s): G RAMA GOPAL**

**Counsel for the Respondents: D KRISHNA MURTHY**

**The Court made the following: ORDER**

**HIGH COURT OF ANDHRA PRADESH :: AMARAVATI****+ CIVIL REVISION PETITION No.3470 of 2019**

Between:

# Putta Prasada Rao, S/o Chinna Rao

... Petitioner

And

\$ Putta Annapurna, W/o Putta Ramesh,  
Hindu, aged 54 years, R/o. D.No.6-15-10,  
East Point Colony, Visakhapatnam and 2 others.

.... Respondents

JUDGMENT PRONOUNCED ON **14.06.2023**

**THE HON'BLE DR.JUSTICE K. MANMADHA RAO**

1. Whether Reporters of Local newspapers  
may be allowed to see the Judgments? - Yes -
2. Whether the copies of judgment may be marked to  
Law Reporters/Journals - Yes -
3. Whether Their Ladyship/Lordship wish to see the  
fair copy of the Judgment? - Yes -

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**DR.JUSTICE K. MANMADHA RAO**



**\* THE HON'BLE DR.JUSTICE K. MANMADHA RAO**

**+ CIVIL REVISION PETITION No.3470 of 2019**

% 14.06.2023

# Putta Prasada Rao, S/o Chinna Rao

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Hindu, aged 54 years, R/o. D.No.6-15-10,  
East Point Colony, Visakhapatnam and 2 others.

.... Respondents

**! Counsel for the Petitioner :** Sri G. Ram Gopal  
Smt. G.M. Jyothi

**^Counsel for Respondents:** Sri T. Sridhar  
Sri D. Krishna Murthy

<Gist :

>Head Note:

? Cases referred:

1. (2023) 1 SCC 634



**THE HON'BLE DR.JUSTICE K. MANMADHA RAO**

**CIVIL REVISION PETITION No.3470 of 2019**

**ORDER:**

This Civil Revision Petition is preferred against Decree and order, dated 16.09.2019 passed in C.M.A.No.27 of 2019 on the file of Special Sessions Judge for Trial of Cases under SC and STs (POA) Act-cum-XI Additional District Judge, Visakhapatnam (for short "the appellate Court") in reversing the order and decree dated 03.05.2019 in I.A No.119 of 2019 in O.S No.123 of 2019 on the file of VII Additioanl Senior Civil Judge, Visakhapatnam.

2. Heard Sri G. Rama Gopal and Smt G.M. Jyothi, learned counsels appearing for the petitioner and Sri T.Sridhar, learned counsel representing Sri D.Krishna Murthy, learned counsel appearing for the respondents.

3. Originally the I.A.No.119 of 2019 in O.S.No.123 of 2019 was filed by the petitioners/plaintiffs, who are respondents herein, before the VII Additional Senior Civil Judge, Visakhapatnam under Order 39 Rules 1 and 2 of CPC for grant of temporary injunction and the same was dismissed on the ground that much hardship would be caused to respondent if any injunction is granted and the balance of convenience is also in favour of the respondent and as such the petitioners are not entitled for temporary injunction



pending disposal of main suit. Aggrieved by the same, the petitioners/plaintiffs preferred CMA No.27 of 2019 under Order XLIII Rule 1 CPC before the appellate Court.

4. Learned counsel for the petitioner submits that the 1<sup>st</sup> respondent is the mother of the 2<sup>nd</sup> and 3<sup>rd</sup> respondents. The petitioner herein is the brother-in-law and paternal uncle of the respondents No. 2 and 3. The husband of the 1<sup>st</sup> respondent by name Putta Ramesh is an Ex-service man. He was given 'D' Form Patta to an extent of Ac 1.00 cents in Sy.No.130/9 in Sowbhagyarapuram village in the year 1980 under Ex.Serviceman quota. But on verification, the said property is in Sy.No.135 but not in Sy No.139 and also varies extent of Ac2.58 cents. He further submits that name of the husband of the 1<sup>st</sup> respondent and the father of the respondents No.2 and 3 mutated in revenue records and also issued pattadar passbook and title deed to an extent of Ac 2.58 cents in Sy No.135.

5. On the other hand, learned counsel for the respondents submits that during lifetime of Putta Ramesh, he sold Ac 1.08 cents out of Ac 2.24 cents under a registered sale deed on 28.10.2009 in favour of Avula Dhana Narasimha Rao @ Phani and Smt Avula Bhanu. The remaining extent is in possession of Putta Ramesh, the petitioner and other brother Srinivasa Rao i.,e Ac 1.16 cents. The said Putta Ramesh died on 19.11.2011 leaving behind



the respondents and his mother Rameswari. The said Putta Ramesh gave Ac 0.26 ½ cents to the petitioner and another brother Srinivasa Rao. The allegation that the respondents are in possession of Ac 1.50 cents after alienation of Ac 1.08 cents by them is not correct. He further contended that the petitioner herein is in possession of Ac 0.1 ½ cents and another brother Srinivasa Rao is in possession of Ac 0.15 cents. The petitioner by suppressing all these facts and filed this petition to drag on the proceedings.

6. On hearing, this Court observed that, admittedly, Putta Ramesh is an ex-serviceman, he was granted patta to an extent of Ac 1.00 cents in Sy No.130/9 of Sowbhagyarapuram Village. Thereafter, it was found that the extent is Ac 2.58 cents in Sy.No.135. Accordingly, the patta was rectified by the MRO, Pendurty. Out of Ac 2.58 cents Ac 1.08 cents of land was sold by the said Putta Ramesh to Avula Dhana Narasimha Rao @ Phani and Smt. Avula Bhanu under registered sale deed dated 28.10.2009.

7. The contention of the petitioner is that his brother Putta Ramesh given Ac 0.11 ½ cents and Ac 0.15 cents to another brother Srinivasa Rao and that they raised house and residing in it. To substantiate his contention, he petitioner stated that his brother gave Ac 0.121 ½ cents to him and AC 0.15 cents to his



another brother in petition schedule property but no document was filed. When the respondents disputed the alleged gift deed, the petitioner has to file the original Gift Deed, but no reason was assigned for non filing of the same. Therefore, the alleged Gift Deed no way helpful to the petitioner to show his prima facie right or possession as it is void document.

8. It is the contention of the respondents that after demise of Putta Ramesh and respondents being the wife and children continued to be in possession of the petition schedule property to an extent of Ac 1.50 cents in Sy No.135 of Sowbhagyarayapuram village with specific boundaries. To substantiate, filed Ex.A1-'D' from patta and Ex.A2 proceedings shows about the issuance of patta initially in respect of Ac 1.00 cents in Sy No.130/9 and subsequently under Ex.A2 the survey number and extent was rectified. Ex.A3 and Ex.A4 copy of Pattadar passbooks and title deed shows that Putta Ramesh was given pattadar passbook and title deed in respect of Ac 2.58 cents covered by Ex.A1. after alienation of Ac 1.00 by said Putta Ramesh remaining extent was corrected in Ex.A3 and Ex.A4 pattadar passbooks and title deeds. After demise of Putta Ramesh, the name of 1<sup>st</sup> respondent was mutated in revenue record, which is also established by Ex.A3 and Ex.A4.



9. On perusing the entire material available on record and on hearing the submissions, this Court observed that, the documents filed by the petitioner are Property Tax, Receipts, Electricity Demand Notices, Water Tax bills and passbook does not show that eh same are concerned to the petition schedule property. Even as per the petitioner, he raised some structures and same was dilapidated and he removed the same with an intention to raise construction. The photos and receipt for drilling of bore well, purchase of Submersible Pump, Aadhar card, sick certificate are no way helpful to the case of the petitioner. Unless, he establishes alleged house which was removed is in the petition schedule property. The petitioner also failed to assign the reason for non examination of his brother Srinivas aRao and also not filing his affidavit. It is not the case of the petitioner that his mother is residing with him that too no document was filed to that extent.

10. This Court further observed that the documents filed by the respondents is clearly established that the petition schedule is Ac 1.50 cents, whereas the contention of the petitioner is that the extent remained after sale of Ac 1.16 cents is not correct which against Ex.A1 to Ex.A6 and no document filed by the petitioner to substantiate their contention about the extent of Ac 1.16 cents. Further more, the petitioner contended that his mother who is also mother-in-law of the 1<sup>st</sup> respondent is Class-1 legal heir who is





inherited the right over the plaint schedule property and other properties of late Putta Ramesh. It is also evident from the family members certificate which has been marked as Ex.A8 wherein the mother of late Putta Ramesh was mentioned as one of the family members. If that is the case how the respondents could get right over the entire petition schedule property in the absence of mother of late Putta Ramesh.

11. In a case of **Shyam Sel and Power Limited and another Versus Shyam Steel Industries Limited**<sup>1</sup>, wherein the Hon'ble Supreme Court held that :

Though the Division Bench of the High Court, referring to the judgment of this Court in the case of Wander Ltd. (supra), observes that the appellate court will not substitute its opinion with that of the trial court in an interim application unless there is a perversity in the order, it fails to discuss as to how the view taken by the trial judge was either perverse or impossible. At one place, the Division Bench of the High Court observes that:

“Now, the question is whether the learned single judge exercised his discretion correctly and whether this court should interfere with that exercise of discretion.” and in the same breath observes that:

“Therefore, we have considered the case on the basis of the petition as well as the additional evidence before us. In our opinion, this court is not called upon only to evaluate whether the exercise of discretion by the learned trial court was right or wrong.”

Then immediately thereafter, the Division Bench of the High Court observes that:

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<sup>1</sup> (2023)1 Supreme Court Cases 634



“This court is duty bound to pass a suitable interim order, pending trial of the suit.”

32. We ask a question to ourselves that, in an appeal against the order of a Single Judge, if the Division Bench of the High Court is not required to evaluate the question as to whether the discretion exercised by the trial court was right or wrong, what else is it required to do. We are unable to trace the source of the duty of the appellate court which makes it bound to pass a suitable interim order pending the trial of the suit.”

12. Having regard to the facts and circumstances of the case and the principle laid down by the Hon'ble Supreme Court referred to above, this Court observed that, on a perusal of the order passed by the trial Court, when the respondents sought the relief of injunction in respect of petition schedule property of Ac 1.50 cents, whereas the claim of the petitioner is Ac 0.11 ½ cents, which is also not established. It is also observed that the petition was filed for grant of temporary injunction, that too, no relief sought against her mother-in-law of 1<sup>st</sup> respondent. Even assuming that the mother of Putta Ramesh is Class-12 heir and she has got right for the rest of the extent, the petition can be allowed. Viewed from any angle, the order passed by the trial Court is not sustainable in law and on facts.

13. In view of the foregoing discussion, this Court is of the view that with regard to possession there is a mistake of question and facts are involved in this matter. Further, the appellate Court has rightly concluded and allowed the appeal, for which, warrants



no interference by this Court. Hence, the present revision petition is liable to be dismissed.

14 Accordingly, the Civil Revision Petition is dismissed. Further, since the suit pertains to the year 2019, the trial Court is directed to dispose of the same as expeditiously as possible, preferably, within three (03) months from the date of receipt of a copy of this order. There shall be no order as to costs.

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

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**DR.JUSTICE K. MANMADHA RAO**

Date: 14 . 06.2023.

**Note : L. R Copy to be marked.**  
*(b/o)Gvl*



**THE HON'BLE Dr. JUSTICE K. MANMADHA RAO**

**C.R.P.No.3470 of 2019**

Date: 14 .06.2023.

*Gvl*