



**HIGH COURT OF ANDHRA PRADESH**  
WEDNESDAY ,THE TENTH DAY OF APRIL  
TWO THOUSAND AND NINETEEN

**PRESENT**

**THE HONOURABLE SRI JUSTICE D.V.S.S.SOMAYAJULU**  
**CIVIL REVISION PETITION NO: 4388 OF 2012**

**Between:**

1. Valluru Samba Siva Rao S/o.Gopalakrishnaiah, Hindu, Occ: Properties  
R/o.i.Kanchanganga Apartments,  
Vijayawada, Krishna District.
2. Valluru Venkateswara Rao S/o.Gopalakrishnaiah, Hindu, Occ: Properties  
R/o.Patamatalanka,  
Vijayawada, Krishna District.

**...PETITIONER(S)**

**AND:**

1. Krishna Apartments Association rep by its President V.Mahendrnath  
O/o.Near Nara Chadnrababu Naidu Colony,  
Vijayawada, Vijayawada J.C.J.C.
3. Kanakadurga Association rep by its President K.Purnachandra Rao  
O/o.Near Nara Chadnrababu Naidu Colony,  
Vijayawada, Vijayawada J.C.J.C.
4. Kanchanganga Association rep by its President V.Nageswara Rao  
O/o.Near Nara Chadnrababu Naidu Colony,  
Vijayawada, Vijayawada J.C.J.C.

**...RESPONDENTS**

**Counsel for the Petitioner(s): A RAGHAVIAH**

**Counsel for the Respondents: T S ANAND**

**The Court made the following: ORDER**



2019:APHC:15848

**HIGH COURT OF ANDHRA PRADESH**

WEDNESDAY, THE TENTH DAY OF APRIL  
TWO THOUSAND AND NINETEEN

**PRESENT**

**THE HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU**

**CIVIL REVISION PETITION NO: 4388 OF 2012**



Petition under Article 115 of CPC aggrieved by the order dated: 02/8/12 in E.P. No.114 of 2011 in O.S. No. 1803 of 2003 on the file of the Court of the Principal Junior Civil Judge, Vijayawada.

**Between:**

1. Valluru Samba Siva Rao, S/o.Gopalakrishnaiah,
2. Valluru Venkateswara Rao, S/o.Gopalakrishnaiah,

**...Petitioner/DHR's**

**AND**

1. Krishna Apartments Association, Rep. by its President V.Mahendrnath
2. Kanakadurga Apartments Rep. by its President K.Purnachandra Rao
3. Kanchanganga Apartments, Rep. by its President V.Nageswara Rao,

**...Respondents/J.D.Rs**

**For the Petitioner: SRI. A. SATYANARAYANA, Advocate**

**For the Respondent: Sri T.S. ANAND, Advocate**

**The Court made the following: ORDER**

**HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU****CRP.No. 4388 of 2012****ORDER:**

This revision petition is filed questioning the order dated 02.08.2012 in EP.No.114 of 2011 in OS.No.1803 of 2003 passed by the Principal Junior Civil Judge, Vijayawada.

This case has a long chequered history. The suit OS.No.1803 of 2003 is filed by the decree holders as plaintiffs for an injunction restraining the defendants from constructing a wall in the area shown as 'IJ' in the plaint plan and not to construct any gate. The suit was dismissed. Thereafter, an appeal bearing AS.No.75 of 2008 was filed which was allowed on 06.01.2009. An injunction was granted in favour of the plaintiffs/decreed holders restraining the defendants from making any construction in the area 'IJ' and from closing the gate. A second appeal SA.No.53 of 2009 was filed against the order in AS.No.75 of 2009 but the same was dismissed on 10.06.2001.

In the interim period, after the suit was dismissed in the lower Court and before the appeals were allowed in favour of the decree holders, the defendants constructed a wall and put up a gate. Therefore, EP.No.114 of 2011 was filed for removal of the structures through the Court Officer by way of restitution under Order 21 Rule 35 and Section 151 CPC. An affidavit was also filed in support of the said E.P. The said E.P. came to be dismissed on the ground that as the decree is



only for an injunction, the prayer for removal of the structures cannot be granted as there is no mandatory injunction. Questioning the same, the present civil revision petition is filed.

This Court has heard Sri Ambadipudi Satyanarayana, learned counsel for the revision petitioners and Sri T.S.Anand, learned counsel for the respondents.

Learned counsel for the petitioners argued that the construction was made subsequent to the dismissal of the suit OS.No.1803 of 2003 on 23.04.2008. Thereafter, an appeal was filed and an injunction was granted in favour of the present petitioners/decreed holders/plaintiffs by reversing the trial Court's order. The order in the first appeal was confirmed as the second appeal was dismissed. The contention of the learned counsel for the petitioners is that the judgment of the trial Court has merged into the appellate Court decree and therefore, they are entitled to seek the removal of the constructions made subsequent to the suit. Counsel also points out that in the interim period, when the matter was pending, an interim arrangement was also made for usage of the passage. He submits that if a decree is passed and a hindrance is caused, the power is vested in a Court of law to remove the hindrance. It is his contention that the judgments of the Court should be executed/implemented and that actual relief should be given to the decree holders.



In reply to this, learned counsel for the respondents submits that a suit for a permanent injunction only was filed seeking an order restraining the respondents from interfering in the passage etc. Counsel submits that the appeal has become infructuous as the construction is already made and the decree holders did not seek an amendment of the plaint seeking introduction of a prayer for a mandatory injunction. It is submitted that restitution cannot be ordered in a case like this as the situation existing on the date of the suit does not exist today. Counsel also points out that the application made is not correct and restitution can only be ordered if something was done pursuant to an order of the Court and if the said order/judgment is reversed/modified etc., in appeal. Counsel submits that for disobedience of an injunction the remedy is arrest/attachment etc., and nothing else can be claimed.

As far as legal issue is concerned, counsel for the petitioners relied upon the following six judgments. It is his contention that the power to order restitution is inherent in every Court and that the Court has to ensure that its orders are implemented. The judgments are:

**(1) *B.Gangadhar v. B.G.Rajalingam*<sup>1</sup>**

**(2) *Mrs. Kavita Trehan v. Balsara Hygiene Products Ltd.*<sup>2</sup>**

---

<sup>1</sup> AIR 1996 SC 780



**(3) State Government of A.P. v. M/s. Manichchand  
Jeevraj and Co., Bombay<sup>3</sup>**

**(4) Gangadhar v. Raghubar Dayal<sup>4</sup>**

**(5) Kalabharati Advertising v. Hemant vimalnath  
Narichania<sup>5</sup>**

**(6) Kunhayammed v. State of Kerala**

The short and simple question therefore that arises in this case is, whether this Court can order removal of the structures that they have been erected subsequent to the dismissal of the suit and before the appeal was allowed? Incidentally, the question that arises is whether the application filed under Order 21 Rule 35 CPC., is maintainable.

The facts that are not in dispute are that the initial suit for an injunction was dismissed on 24.03.2008. After the dismissal of the suit and during the pendency of the first appeal, the construction was made and a gate was put up. It is also an admitted fact that the plaintiff did not seek amendment. It is also clear that the first appeal was allowed, the judgment of the lower Court was reversed and an injunction was granted in favour of the decree

---

<sup>2</sup> AIR 1995 SC 441

<sup>3</sup> AIR 1973 AP 27

<sup>4</sup> AIR 1975 Allahabad 102

<sup>5</sup> (2010) 9 SCC 437



holders/plaintiffs. The second appeal that is filed was also dismissed.

In a case of this nature, when more than one Court has held that the plaintiffs/decreed holders are entitled to an injunction as prayed for, the question is whether the Court is helpless or whether the Court can do something to restore the *status quo ante* that was existing on the date of the suit. It is also settled law that once a judgment is passed by appellate Court, the judgment of the first Court merges with the same. Therefore, when an attempt is made to thwart and to delay the legal process, the question that arises is should Court be a mute spectator or should the Court do something to grant the relief in execution?

It has been time and again held by the highest Courts of the land that the power and majesty of the Courts would depend upon the quick implementation of the orders. Admittedly, in this case, the construction was made after the suit was dismissed and before the appeal was allowed. The normal procedure for execution for implementation of the order of injunction as per the respondent is provided for under Order XXI Rule 32 CPC. Therefore, it is submitted by the learned counsel for the respondents that the only order that can be passed in a case like this is to order attachment to the property or by the detention in civil prison of the judgment debtors and nothing else. However, an examination



of Order XXI Rule 32 CPC., reveals that Order XXI Rule 32(5) of CPC., is to the following effect.

32. Decree for specific performance for restitution of conjugal rights, or for an injunction

(5) Where a decree for the specific performance of a contract or for an injunction has not been obeyed, the Court may, in lieu of or in addition to all or any of the processes aforesaid, direct that the act required to be done may be done so far as practicable by the decree-holder or some other person appointed by the Court, at the cost of the judgment-debtor, and upon the act being done the expenses incurred may be ascertained in such manner as the Court may direct and may be recovered as if they were included in the decree.

Therefore, there is a power to compel the defendants to act under Order XXI Rule 32 (5) CPC., which is in addition to the other powers which are prescribed under Order XXI Rule 32 (1) (2) (3) and (4).

In addition to all the above, the inherent powers of the Court is also there to render justice between the parties. While it is true that inherent power cannot be used to grant any and every relief, still the fact remains that the inherent power can be used for rendering justice in accordance with law. As held by the Apex Court in the case of ***K.K. Velusamy***





*v. N. Palanisamy*<sup>6</sup>, inherent power extends to enabling the Court to do “what is right” and to undo “what is wrong”. Ultimately, the inherent power is to be used to secure the ends of justice and to prevent the abuse of process of Court. When the CPC., is silent, the inherent power should and must be invoked.

The following extracts from para 12 (a) and 12(b) of the judgment of the Hon’ble Supreme Court in **K.K. Velusamy’s** case (6 supra) are very relevant here.

12 (a) Section 151 is not a substantive provision which creates or confers any power or jurisdiction on courts. It merely recognizes the discretionary power inherent in every court as a necessary corollary for rendering justice in accordance with law, to do what is 'right' and undo what is 'wrong', that is, to do all things necessary to secure the ends of justice and prevent abuse of its process.

12 (b) As the provisions of the Code are not exhaustive, Section 151 recognizes and confirms that if the Code does not expressly or impliedly cover any particular procedural aspect, the inherent power can be used to deal with such situation or aspect, if the ends of justice warrant it. The breadth of such power is co-extensive with the need to exercise such power on the facts and circumstances. (emphasis supplied)

---

<sup>6</sup>2011 (11) SCC 275



If this case is examined against the back drop of this legal position, it is clear that the construction was made after the suit was dismissed. Through out the period of the litigation, the decree holder had access to the site and there was no gate. The judgment debtors cannot take advantage of the dismissal of the suit and now say that the judgments passed by the appellate Court as confirmed by the second appellate Court cannot be executed. Of all the judgments cited by the revision petitioner, this Court is of the opinion that **B.Gangadhar's** case (1 supra) has the closest applicability. The following passage from para 5 is relevant although the facts are a little different:

“....If any obstruction is raised by putting up a construction pendente lite or prevents the passage or right to access to the property pendente lite, the plaintiff has been given right and the decree-holder is empowered to have it removed in execution without tortuous remedy of separate suit seeking mandatory injunction or for possession so as to avoid delay in execution or frustration and thereby defeat the decree. The executing court, therefore, would be justified to order its removal of unlawful or illegal construction made pendente lite so that the decree for possession or eviction, as the case may be, effectually and completely executed and the delivery of possession is given to the decree holder expeditiously. Admittedly, pending suit the petitioner had constructed shops and



inducted tenants in possession without permission of the court. The only course would be to decide the dispute in the execution proceedings and not by a separate suit."

In view of the cases referred to earlier this Court is of the opinion that this is a fit case whether the inherent power of the Court must be used and should be used to undo the wrong that was committed namely, the construction of the wall in the plot 'IJ' and the removal of the gate. This Court is also fortified in this view by a decision of a learned single Judge reported in ***Cheni Chenchiah v. Shaik Ali Saheb***<sup>7</sup>.

In this view of the matter, this Court is of the opinion that the lower Court took a hyper technical view and disallowed the application. In the peculiar facts and circumstances of the case, as the construction was made after the suit was dismissed and as the decree holders have succeeded in the appeal, the inherent power of the Court is being used to undo the wrong.

Hence, the impugned order is set aside. The judgment debtors are directed to remove the wall in the portion of 'IJ' in the plaint schedule property and also the gate constructed within a period of 45 days from the date of receipt of a copy of this order. If they fail to do so, the petitioner is at liberty to get the same removed and recover the costs and expenses

---

<sup>7</sup>AIR 1993 AP 292 = 1993 (2) ALT 517



from the judgment debtors. If any obstruction is made by the judgment debtors at this stage for the removal of the constructions/gate, pursuant to this order, the decree holders are at liberty to approach the concerned jurisdictional police officer who is directed to give aid and assistance to the petitioners/decreed holders in removing the wall.

With these observations, the civil revision petition is allowed. No order as to costs.

As a sequel, miscellaneous petitions, if any, pending in the revision shall stand closed.

**SD/- M. RAMESH BABU  
ASSISTANT REGISTRAR**

**//TRUE COPY//**

**SECTION OFFICER**

**One Fair Copy to the Hon'ble Sri Justice D.V.S.S. SOMAYAJULU  
(For his Lordships Kind Perusal)**

To,

1. The Principal Junior Civil Judge, Vijayawada, Krishna District.
2. One CC to SRI. AMBADIPUDI SATYANARAYANA Advocate [OPUC]
3. One CC to SRI. T.S. ANAND Advocate [OPUC]
4. 9 L.R. Copies.
5. The Under Secretary Union of India, Ministry of Law, Justice and Company Affairs, New Delhi.
6. The Secretary, Advocates Association (AP) Library, High Court Buildings, Amaravathi.
7. Two CD Copies.

Chp



HIGH COURT

2019:APHC:15848

DATED:10/04/2019

OC  
2/5/19

ORDER

CRP.No.4388 of 2012

Rs. 16,500

(11)

Received  
2/5/19

ALLOWING THE CRP WITHOUT COSTS

$\frac{16}{7-2}$  25/4/2019.

HR