

HIGH COURT OF ANDHRA PRADESH
WEDNESDAY ,THE TWENTY SIXTH DAY OF APRIL
TWO THOUSAND AND TWENTY THREE

PRESENT

THE HONOURABLE SRI JUSTICE B V L N CHAKRAVARTHI
CIVIL REVISION PETITION NO: 4831 OF 2016

Between:

1. KAGITA VENKATA SANYASI RAJU Died S/o Venkata Reddy, aged 55 years,
R/o D.No. 4-112/1, Mamidikuduru,
Razole, East Godavari District.
3. Kagita Sessa Ratnam W/o. K. Venkata Sanyasi Raju, Aged 56 years,
R/o.D.No.4-120/1, Mamidikuduru Village, Razole Mandal, Dr.B.R.
Ambedkar Konaseema District.
4. K.Barghava Lakshmi W/o. Y. Naga Siva Krishna, D/o.K.Venkata Sanyasi
Raju, Aged 29 years, R/o.D.No.4-120/1, Mamidikuduru Village, Razole
Mandal, Dr.B.R. Ambedkar Konaseema District.
5. K.Brahmini D/o K.Venkata Sanyasi Raju, Aged 56 years, R/o. D.No.4-
120/1, Mamidikuduru Village, Razole Mandal, Dr.B.R.Ambedkar
Konaseema District.

...PETITIONER(S)

AND:

1. BOLLA VINASH & ANOTHER S/o Subbarao, Aged about 15 years,
student, Manepalli, Kothapeta, Being minor represented by his mother
And natural guardian, smtBollaSuneetha
2. The Chief Regional Manager (Retail), Regional Office, Petrol Nilayam,
Opposite,
A.U. IN gate, Visakhapatnam.

...RESPONDENTS

Counsel for the Petitioner(s): T V JAGGI REDDY

Counsel for the Respondents: N SIVA REDDY

The Court made the following: ORDER

HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

CIVIL REVISION PETITION NO.4831 OF 2016

Between:

1. Kagita Venkata Sanyasi Raju (Died), S/o.Venkata Reddy, 55 years, R/o. D.No.4-112/1, Mamidikuduru, Razole, East Godavari District. (Defendant No.1/ Judgment-debtor No.1)
2. Kagita Sesha Ratnam, W/o. K.Venkata Sanyasiraju, 56 years, R/o. D.No.4-120/1, Mamidikuduru village, Razole Mandal, Dr. B.R.Ambedkar Konaseema District.
3. K.Barghava Lakshmi, W/o. Y.Naga Siva Krishna, D/o.K.Venkata Sanyasi Raju, 29 years, R/o. D.No.4-120/1, Mamidikuduru village, Razole Mandal, Dr. B.R.Ambedkar Konaseema District.
4. K.Brahmini, D/o. K.Venkata Sanyasi Raju, 56 years, R/o. D.No.4-120/1, Mamidikuduru village, Razole Mandal, Dr. B.R.Ambedkar Konaseema District.

(Petitioner Nos.2 to 4 were brought on record as LRs of the deceased petitioner No.1 as per Order, dated 07.03.2023 *vide* I.A.No.1 of 2022 in CRP No.4831 of 2016)

... Petitioners

Versus

1. Bolla Avinash, S/o. Subbarao, 15 years, Student, Manepalli, Kothapeta, being minor, represented by his mother and natural guardian Smt. Bolla Suneetha.

...Respondent No.1/Decree-Holder/Plaintiff

2. The Chief Regional Manager (Retail), Regional Office, Petrol Nilayam, Opposite A.U. IN Gate, Visakhapatnam.

... Respondent No.2/Defendant No.2

* * * * *

DATE OF ORDER PRONOUNCED : 26.04.2023.

SUBMITTED FOR APPROVAL:

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

- | | |
|---|--------|
| 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

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

+ CIVIL REVISION PETITION NO.4831 OF 2016

% 26.04.2023

Between:

1. Kagita Venkata Sanyasi Raju (Died), S/o.Venkata Reddy, 55 years, R/o. D.No.4-112/1, Mamidikuduru, Razole, East Godavari District. (Defendant No.1/ Judgment-debtor No.1)
2. Kagita Sesa Ratnam, W/o. K.Venkata Sanyasiraju, 56 years, R/o. D.No.4-120/1, Mamidikuduru village, Razole Mandal, Dr. B.R.Ambedkar Konaseema District.
3. K.Barghava Lakshmi, W/o. Y.Naga Siva Krishna, D/o.K.Venkata Sanyasi Raju, 29 years, R/o. D.No.4-120/1, Mamidikuduru village, Razole Mandal, Dr. B.R.Ambedkar Konaseema District.
4. K.Brahmini, D/o. K.Venkata Sanyasi Raju, 56 years, R/o. D.No.4-120/1, Mamidikuduru village, Razole Mandal, Dr. B.R.Ambedkar Konaseema District.

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1. Bolla Avinash, S/o. Subbarao, 15 years, Student, Manepalli, Kothapeta, being minor, represented by his mother and natural guardian Smt. Bolla Suneetha.

...Respondent No.1/Decree-Holder/Plaintiff

2. The Chief Regional Manager (Retail), Regional Office, Petrol Nilayam, Opposite A.U. IN Gate, Visakhapatnam.

... Respondent No.2/Defendant No.2

- ! Counsel for the Revision
-petitioners** : Sri T.V.Jaggi Reddy
- ^ Counsel for the
Respondent No.1/
Decree-holder/Plaintiff** : Sri N.Siva Reddy
- ^ Counsel for the
Respondent No.2/D.2** : Sri A.P.Venu Gopal

< Gist:

> Head Note:

? Cases referred:

1. 2007 (5) ALT 621.

2. AIR 2005 Mad 31.

This Court made the following:

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

CIVIL REVISION PETITION NO.4831 of 2016

ORDER:

This revision-petition is directed against the Order, dated 01.06.2016 in E.A.No.58 of 2014 in E.P.No.29 of 2014 in O.S.No.4 of 2013 on the file of Senior Civil Judge's Court, Kothapeta.

2. For the sake of convenience, the parties will be referred to as they were arrayed in the original suit.

3. The plaintiff filed O.S.No.176 of 2010 for 'delivery of possession' of plaint schedule property and arrears of rent. The defendants filed their written statements. The suit was 'decreed *ex parte*' on 10.06.2013. The revision-petitioner herein is the defendant No.1 in the suit.

4. The plaintiff filed execution petition for delivery of possession. The revision-petitioner filed an application under Section 47 read with Section 151 of the Code of Civil Procedure, 1908 (for brevity 'CPC') contending that the decree for delivery of possession of the plaint schedule property is not executable on the ground that there is a petrol bunk in the suit site and the plaintiff did not ask for any relief of 'Mandatory Injunction'

directing the revision-petitioner to remove the structures existing in the suit schedule property.

5. The Trial Court, on consideration of the rival contentions and on relying on the Judgment of this Court in **Dongala Venkaiah and another vs. Dongala Raji Reddy**¹, 'Dismissed' the application.

6. The learned counsel for revision-petitioner would submit that the defendant No.2 erected petrol bunk prior to the suit and running the bunk in the plaint schedule property; But, the plaintiff did not seek the relief of mandatory injunction for removal of structures existing in the plaint schedule property while seeking the relief of delivery of possession; Therefore, the decree is non-executable as suit was filed without seeking the relief of 'Mandatory Injunction' for removable of structures existing in the plaint schedule property which are in existence in the suit property, on the date of filing of the suit.

7. The learned counsel for the plaintiff would submit that this Court in **Dongala Venkaiah** case (supra) after considering the Judgment of the High Court of Madras in **Kannu Gounder vs. Natesa Gounder**², held that even if constructions were made and existing prior to the date of the suit, it cannot be said that decree

¹ 2007 (5) ALT 621.

² AIR 2005 Mad 31.

is inexecutable, when once the decree made by the Court is declaring the plaintiff's title and recovery of possession, though the plaintiff did not seek for the relief of Mandatory Injunction.

8. In the light of above rival contentions, the point that would arise in the revision-petition is as under: -

“Whether the Trial Court committed any material irregularity in the Order, dated 01.06.2016 passed in E.A.No.59 of 2014 in E.P.No.29 of 2014 in O.S.No.4 of 2013?”

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

It is an admitted fact that the plaintiff filed the suit for 'delivery of possession of the plaint schedule property' and 'arrears of rent' against the present revision-petitioner and another i.e., the Chief Regional Manager of the company, which is running a petrol bunk in the plaint schedule property. The defendants filed their written statements. It appears none of them took this plea in their written statement. The suit was 'Decreed' *ex parte* on 10.06.2013. Neither of the defendants filed application to set-aside the decree, nor preferred any appeal against the said Decree and Judgment. Therefore, the decree became final.

10. This Court in **Dongala Venkaiah** case (supra) in similar circumstance and on considering Order XXI Rule 35 (3) of CPC

and by following the law laid down by the High Court of Madras in **Kannu Gounder** case (supra) held that *'when plaintiff filed a suit for recovery of possession, simply because he has not sought for the relief of Mandatory Injunction, it cannot be said that the decree is inexecutable.'* It was further held that *'when once a decree declaring the plaintiff's title and recovery of possession is made by the Court, it is immaterial whether any structures were made in the suit schedule land either prior to the institution of the suit or during the pendency of the suit, the plaintiff/decree-holder is entitled to take delivery of possession after removal of any manner of construction or structures in the suit property.'*

11. In the light of above proposition of law laid down by this Court, the civil revision petition fails and the same is liable to be dismissed. However, considering the representations made by Sri T.V.Jaggi Reddy, learned counsel representing for revision-petitioners and Sri N.Siva Reddy, learned counsel for respondent No.1, Three (03) months time is granted to the respondent No.2 to vacate the premises and to deliver vacant possession to the decree-holder, on a condition to pay rents due as on the date of this Order, within a period of Two (02) months from the date of this Order, failing which, the Execution Court can proceed with the execution proceedings, as per law.

12. 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.

B.V.L.N.CHAKRAVARTHI, J

26th April, 2023.

Note:

LR Copy to be marked.

Furnish Copy by tomorrow.

B/o.
DNB