



HIGH COURT OF ANDHRA PRADESH
WEDNESDAY ,THE NINTH DAY OF FEBRUARY
TWO THOUSAND AND TWENTY TWO

PRSENT

THE HONOURABLE SRI JUSTICE D.V.S.S.SOMAYAJULU

WRIT PETITION NO: 24226 OF 2021

Between:

1. Achutha Adinarayana S/o. Koti Lingaiah, Aged 34 years, Hindu,
R/o. Yerragondapalem Village and Mandal,
Prakasam District.

...PETITIONER(S)

AND:

1. The State of Andhra Pradesh Rep. by its
Principal Secretary to Government,
Registration and Stamps Department,
Secretariat, Velagpudi, Amaravati, Guntur District.
2. The Commissioner and Inspector General of Registration and Stamps
Government of Andhra Pradesh, 5-59, R.K.Spring Valley Apartments,
Edupugallu, Kankipadu Mandal, Vijayawada, Krishna District.
3. The District Registrar, Markapur, Prakasam District.
4. The Sub Registrar ,
Yerragondapalem, Prakasam District.
5. Vanukuri Vara Lakslunamma, W/o. Late Venkata Subbaiah, aged about
62 years, R/o. Yerragondapalem Village and Mandal.
Prakasam District.
6. Vodarevu Alivelumangamma, D/o. Late Vanukuri Venkata Subbaiah,
W/o. Venkata Lakshmi Ravi Kumar,
aged 47 years, R/o. OK Reddy Building, Flat No. 103, Saibabaroad,
Santhinagar, 2' Lane, Guntur City, Guntur District.
7. Vanukuri Venkata Subrahmanyam, S/o. Late Vanukuri Venkata Subbaiah,
aged about 43 years, R/o. Yerragondapalem Village and Mandal.
Prakasam District.
8. Velpuri Siva Kumari, D/o. Late Vanukuri Venkata Subbaiah, W/o. Venkata
Narayana, aged about 40 years, R/o. Prakash Nagar, Narasaraopet,
Guntur District.
9. Chilakam Uma Maheswari, D/o. Late Vanukuri Venkata Subbaiah, W/o.
Venkata Narayana, aged about 38 years, R/o. Is' Ward, Markapur,
Prakasam District.
10. Thontla Venkata Reddy S/o. Koti Reddy,
Aged 45 years, R/o. Kotturu Village, Nayudu Palem Post. Puualacheruvu
Mandal, Prakasam District.
11. Naru Mastan Reddy S/o. Narayana.
Aged 42 years, R/o. Kotturu Village, Nayudu Palem Post, Puualacheruvu
Mandal, Prakasam District.
12. Kanduri Anil Kumar S/o. Late Krishna Murthy, Aged 37 years. R/o.
Yarragondapalem Village and Mandal. Prakasam District

...RESPONDENTS

Counsel for the Petitioner(s): SITA RAM CHAPARLA

**Counsel for the Respondents: GP FOR REGISTRATION AND STAMPS
(AP)**

The Court made the following: ORDER



***HONOURBLE SRI JUSTICE D.V.S.S. SOMAYAJULU**

+ W.P.No.24226 of 2021

% 09.02.2022

#Achutha Adinarayana,
S/o Koti Lingaiah, Age 34 years,
Yerragondapalem Village and Mandal,
Prakasam District.

... Petitioner

Vs.

\$ The State of Andhra Pradesh
Rep., by its Principal Secretary to Government,
Registration and Stamps Department,
Velagapudi, Amaravati, Guntur District and 11 others

... Respondents

! Counsel for the petitioner : Sri Sita Ram Chaparla

! Counsel for the Respondents : Government Pleader for

Registration and Stamps and

! Counsel for the Respondents : Sri E.V.V.S.Ravi Kumar, for

unofficial respondents.

< Gist:

> Head Note:

? Cases referred:

¹ 1994 (1) ALT 56

² (2004) 6 SCC 378

³ AIR 1978 A.P 30

**HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU****W.P.No.24226 of 2021****ORDER:**

This writ petition is filed for the following relief:

“to issue a writ order or direction more particularly one in the nature of writ of Mandamus declaring the inaction on the part of respondents 2 to 4 on petitioners requisition dated 26.09.2021 submitted for recording in the list of properties prohibited for Registration in terms of Standing order 219 of Andhra Pradesh Registration Manual under Andhra Pradesh rules under Registration Act 1908 and not to entertain any deed of conveyance for registration being maintained by respondents 1 to 4 and for prevention of alienation to third parties by respondents 5 to 12 connected to the landed properties admeasuring Ac.2.00 cents in Sy.No.89 and 90 of Yerragondapalem Revenue Village and Mandal of Prakasam District in obedience to Temporary Injunction order dated 18.03.2008 in I.A.No.449/2008 in O.S.No.22/2008 passed by the Hon'ble Court of Judge Family Court at Ongole as illegal, irregular, irrational, violative of provisions of the Registration Act, 1908, rules, regulations and standing orders framed there under and offends Article 14 of Constitution of India and consequently direct the respondents 1 to 4 not to entertain registration of any deeds of conveyance connected to aforesaid property and pass...”

This Court has heard Sri Sita Ram Chaparla, learned counsel for the petitioner, Government Pleader for Stamps and Registration, Assignment for the official respondents and Sri E.V.V.S.Ravi Kumar, for the unofficial respondents.

Learned counsel for the petitioner argues in line with what is stated in the writ affidavit. The petitioner before this



Court entered into an agreement of sale with regard to land measuring Ac.2.00 cents in Sy.Nos.89 and 90 of Yerragondapalem Village with one V.V.Subbaiah. A suit O.S.No.22 of 2008 on the file of the 7th Additional District Judge, Ongole, for specific performance was filed for enforcement of the agreement of sale dated 23.10.2006. In the suit, I.A.No.449 of 2008 was filed by him and the Court granted a temporary injunction restraining the defendant in the suit from alienating the suit schedule property. The injunction was extended till further orders. Even though the trial commenced in the suit, as the defendant did not cross-examine the witnesses, an *ex parte* decree was passed in favour of the petitioner on 23.09.2010. On that day the trial Court “closed” the interim application. Thereafter, an application was filed to set aside the *ex parte* decree and also an application to bring on record the legal representatives of the deceased defendant. The *ex parte* decree was set aside and the legal representatives were also brought on record. It transpires that the *ex parte* decree was set aside on 04.03.2021 but nothing was expressly mentioned about the injunction. Later, three sale deeds were executed by the Legal Representatives in July, 2021 in favour of the unofficial respondents in the Writ.

The contention of the learned counsel for the petitioner is that the injunction is restored and is binding on the legal heirs of the deceased original defendant and the sales by the



legal representatives (respondent Nos.5 to 9) in favour of third parties/respondent Nos.10 and 11 are illegal and contrary to the order of the Court. Learned counsel also argues that once a Court of competent jurisdiction grants an interim order and the registration authorities are made aware of the same, they have to stop all further registrations. The counsel for the petitioner argues that the interim order which is granted in favour of the petitioner (plaintiff in the suit) is closed and that therefore, the alienations made are not correct and that the subsequent actions of the unofficial respondents in trying to alienate the property are contrary to law. The writ petition is therefore filed seeking a direction to the official respondents to take note of the interim order passed in the suit and to stop all further registrations proposed by the respondents 10/11.

In reply to this, learned Government Pleader argues that the order has been kept in mind by the registering authorities. He states that the issue is essentially between the petitioner and the unofficial respondents. He points out that if there is a valid order passed by a Court of competent jurisdiction, the registering authorities will consider the same.

Sri E.V.V.S.Ravi Kumar, learned counsel for the unofficial respondents argues that when the *ex parte* decree was passed in the suit, the injunction application was closed. Thereafter, I.A.No.880 of 2012 was filed to set aside the *ex*



parte decree. Learned counsel submits that the same was allowed on 04.03.2021, but the trial Court did not extend the interim order or revive the interim order. Therefore, he contends that in the absence of a specific order, the sales made on 14.07.2021 by respondents Nos.5 to 9 are valid. He also submits that once these sales are valid, the subsequent sales also cannot be interdicted nor can a direction be sought to the official respondents to prevent further alienations. Learned counsel argues that the interim order does not survive and it merges with the decree that has been passed. The *ex parte* decree latter been set aside and therefore Sri Ravi Kumar argues that there is no specific order with regard to the injunction. Learned counsel therefore prays that the interim order granted by this Court restraining further alienation should be vacated.

In rejoinder, learned counsel for the petitioner relies upon ***K.Era Reddy v. K.Bal Reddy***¹ to argue that once the suit is restored to file, all other interim orders are also restored to file.

Apart from this judgment, this Court also notices that the leading judgment as on date on the subject is ***Vareed Jacob v. Sosamma Geevarghese and Ors.***² This was a case dealing with the restoration of a suit dismissed for default. In

¹ 1994 (1) ALT 56

² (2004) 6 SCC 378



those circumstances, the Hon'ble Supreme Court had to decide whether there is an automatic revival of an interlocutory order with the restoration of the suit. The Hon'ble Supreme Court also took note of a Division Bench judgment of the A.P. High Court in ***Nandipati Rami Reddi v. Nandipati Padma Reddy***³, wherein it was held that once a suit is restored, all interlocutory orders and their operation all are also restored. Ultimately, the Hon'ble Supreme Court came to the conclusion that once the suit is restored, all the interlocutory orders are also restored. The minority judgment took the contrary view.

POINT: The short point therefore arises in this case is whether the interim order in this case has been revived or not and whether the petitioner is entitled to an order from this Court?

A few dates are important in this case –

(1) In O.S.No.22 of 2008, the interim injunction was granted on 18.03 2008. It was extended from time to time and on 07.08.2008, the interim order was extended till further orders.

(2) The suit was decreed on 23.09.2010 by the Family Court, Ongole and an *ex parte* decree was passed in favour of

³ AIR 1978 A.P 30



the present petitioner. The interim application I.A.No.449 of 2008 was directed to be 'closed'.

(3) The application I.A.No.137 of 2015 to bring on record the LRs was filed. Prior to that I.A.No.880 of 2012 was filed to set aside the *ex parte* decree. Both these applications were later allowed and the *ex parte* decree was set aside on 04.03.2021.

(4) Three sales took place in favour of respondent Nos.10 and 11 by respondent Nos.5 to 9 on 14.07.2021.

These factual aspects are not in doubt. In the present case, as the defendants failed to cross-examine the witnesses an *ex parte* decree was passed. The interim application was directed to be closed.

The interim injunction is granted under the provisions of Order XXXIX CPC. Attachments are granted under order XXXVIII CPC. Order XXXVIII, Rule 9 of CPC clearly states that when an order of attachment is made before judgment, the order of attachment should be directed to be withdrawn when the suit is "dismissed". Such a provision is not found under Order XXXIX. The case laws relied on pertain to cases of "restoration" of a suit which was "dismissed". When a suit is dismissed, all interlocutory orders also fall to the ground and an interim order does not have a life beyond the suit (in most cases). Interlocutory orders are passed in aid of the main relief that is to be granted. Therefore, when the main *lis*



is dismissed, as a necessary corollary, the interim relief is also dismissed. But in the case on hand, the suit was not dismissed, but it was decreed. Therefore, in the strict sense of the word, the judgments cited do not really apply. However, the principle/ratio stated in **Vareed Jacob's** case (2 supra) will apply. The majority opinion of the Hon'ble Supreme Court was to the conclusion that when a suit is restored, all interim orders and their operations in the period of interregnum are also revived. The plaintiff must be put in the same position he was situated when the Court initially dismissed the suit for default. A note of caution was also sounded to the Courts, wherein it is said that an order of restoration will restore all the interlocutory orders except where the Court by implication or expressly excludes the operation of the interlocutory orders. In the opinion of this Court, the reason behind this is twofold. (1) The party should be put back in the very same position he would have been, but for the order of dismissal. (2) The delay in the disposal of the matters, interlocutory applications for restoration etc., should not be taken advantage of by the opposite party. The Court will have to ultimately decide the *lis* on the merits and so restoration of the preexisting position or what is called the *status quo ante* is desirable in most cases.

If the said analogy is extended to this case, it is clear that the petitioner in this case did not commit any fault. He filed a suit for specific performance. He also filed an



application for injunction which was granted. Because of the defendant's failure to proceed with the suit, a decree was passed in the plaintiffs favour. The same was also put into execution. Later, as an application was filed to set aside the *ex parte* decree, the same was allowed. Therefore, the writ petitioner in this case, who is the plaintiff in the suit, is not at fault. Yet today he is before this Court.

If the provisions of Order XXXIX CPC and the general practice are examined there are four types of orders that can be passed. An injunction can be confirmed, discharged, varied or set aside. There is no specific provision available in the CPC for "closing" an interim application. In the case on hand, the trial Judge closed the application.

Taking advantage of the lack of a specific order of injunction, after the decree was set aside on 04.03.2021, three (3) sales were affected on 14.07.2021. For no fault of the petitioner, he is made to suffer. While the doctrine of *lis pendens* would definitely apply to the facts of the case, still the fact remains that by the alienation in favour of the respondents and the threatened further alienation, third party interests are created/ may be created in the future also. The principle recognized by the Hon'ble Supreme Court is that when a suit is restored to file, the parties must be put in the same position they would have been prior to the restoration. The Division Bench of the A.P.High Court in



Nandipati Rami Reddi's case (3 supra) is also to the said effect. The ratio would apply to the facts of this case also.

There was an interim injunction which was made extended till further order in favour of the petitioner. When the decree was passed, this order was not varied, modified, set aside or confirmed. It was merely closed. When the said decree was set aside, in the opinion of this Court, the lower Court also had a duty to pronounce a further order in the injunction application. The order of 'closed' was not passed at the defendant's request. It was passed by the Court. A note of caution is therefore sounded to all trial Judges that in such a situation, when a suit is either restored to file or an *ex parte* decree is set aside, the Court should also decide about the existing interim orders. The guiding principle is '*Actus Curiae Neminem Gravabit*' or that the Act of a Court should prejudice no one. In order XXXVIII CPC, when a suit is dismissed, it is clearly mentioned that the attachment will also have to be dismissed. Hence at the time of restoration of the suit (after the dismissal) this will be noticed. Since such a provision is not there under Order XXXIX CPC. Hence, the trial Court or other Courts granting orders should ensure that when a suit is restored to file or when an *ex parte* decree is set aside etc., a specific order should be passed on the interim order if any that was existing earlier. A greater duty is cast on the learned counsels for parties to bring this to the notice of the Court, since the Courts are more often than not



over burdened with work. This is necessary to prevent the multiplicity of proceedings and to prevent unscrupulous litigants from taking advantage of the lapse. The learned counsel for parties have a clear duty to bring this to the Courts attention and the Courts should also bestow attention on this aspect.

In view of the ratio laid down in the Division Bench judgment in **Nandipati Rami Reddi's** case (3 supra) and also the case of **Vareed Jacob** 's case (2 supra), this Court holds that the plaintiff in the suit/writ petitioner is entitled to an order. The decree was set aside and an opportunity was given to the defendants (unofficial respondents) to contest the suit. The plaintiff, however, has been placed at a disadvantage, since the order of injunction is not specifically referred to when the decree was set aside. In the opinion of this Court, the plaintiff in the suit/petitioner who is not at fault strictly is entitled to the protection of this Court.

This Court under Article 226 of the Constitution has the power to render "substantial justice" between the parties. Due to the 'closing' of the application, the plaintiff's rights cannot be defeated. The official respondents were also informed of the pendency of this case. Representations were already given. There was an interim order granted by the trial Court. There is an interim order granted by this Court. Therefore, preserving the '*status quo*' is needed as the suit is



to be adjudicated. This Court is of the opinion that there should be a direction to the unofficial respondents not to enter into any further transactions without the permission of the Court as long as the suit for specific performance is pending. There shall also be a direction to the official respondents also not to register any sale deeds with regard to property covered by the suit till a final decision is taken in OS.No.22 of 2008 in the lower Court.

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

As a sequel, the miscellaneous petitions if any shall stand dismissed.

D.V.S.S.SOMAYAJULU, J

Date : 09.02.2022.

Note: L.R. Copy be marked.

B/o

KLP