



IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

TUESDAY ,THE SECOND DAY OF MAY

TWO THOUSAND AND TWENTY THREE

:PRESENT:

THE HONOURABLE SRI JUSTICE RAVI NATH TILHARI

CIVIL REVISION PETITION NO: 1064 OF 2023

Between:

1. K.J. Pattabhi, s/o.R.Jayaram Goud, aged about 49 years.
2. K.J.Mahadeva, s/o.R.Jayaram Goud, aged about 47 years.
3. A.Manjula, w/o.A.Rajanee, aged about 31 years.
4. A.Subramani Gowdu, s/o.late Doraswamy, aged 67 years.
5. A.Thavamani, s/o.late Govinda Gowdu, aged about 53 years.
6. M.Pawanu, w/o.M.Ramamoorthy, aged about 43 years.
7. A.Bharathi, w/o.Manigandan, aged 23 years.
8. A.Swaminatham, s/o.Late Krishna Gowdu, aged 73 years.
9. R.Yasodamma, w/o.R.Chinnaswamy Gowdu, aged about 73 years.
10. Pachappamani, s/o.Late P.Doraswamy, aged about 60 years.

(All are Hindus, Cultivations, R/o.Pachappavooru village, 56-Patrapalle Revenue Village, Yadamari mandal, Chittoor District.)

Petitioners/Petitioners/Plaintiffs

AND

1. The Government of Andhra Pradesh, Rep., by its District Collector, Chittoor Town and District.
2. The Mandal Revenue Officer, Yadamari Village, Post and Mandal, Chittoor District.

Respondents/Respondents/Defendants

Petition under Article 227 of the Constitution of India, praying that in the circumstances stated in the grounds filed herein, beg to present this Memorandum of Civil Revision Petition to this Hon'ble Court against the order and decree passed in IA.no.221/2022 in IA.no.311/2020 in OS.no.748/2019 dated 29-12-2022 on the file of the court the II Additional Junior Civil Judge, Chittoor.

IA NO: 1 OF 2023

Petition under Section 151 CPC praying that in the circumstances stated in the memorandum of grounds filed in support of the petition, the High Court may be pleased to grant stay of all further proceedings in IA.no.311/2020 in OS.no.748/2019

on the file of the court the II Additional Junior Civil Judge, Chittoor, pending CRP in this Hon'ble court, Pending disposal of CRP 1064 of 2023, on the file of the High Court.

The petition coming on for hearing, upon perusing the Petition and the memorandum of grounds filed in support thereof and upon hearing the arguments of Sri S LAKSHMINARAYANA REDDY Advocate for the Petitioners and the Court made the following.

ORDER

"1. Heard Sri S. Lakshminarayana Reddy, learned counsel for the petitioners.

2. The plaintiffs-petitioners filed O.S.No.748 of 2019 on the file of II Additional Junior civil Judge, Chittoor against the defendants- respondents for permanent injunction which was decreed exparte on 22.01.2020. For setting aside the exparte decree the defendants-respondents filed I.A.No. nil of 2020 under Order IX Rule 13 read with Section 151 CPC, along with I.A.No.311 of 2020 under Section 5 of the Limitation Act. The plaintiffs-petitioners filed I.A.No.221 of 2022 under Order XIX Rules 1 and 2 CPC, for permission to crossexamine the deponent of the affidavit filed along with I.A.No.311 of 2020. I.A.No.221 of 2022 has been rejected by the learned II Additional Junior Civil Judge, Chittoor by order dated 29.12.2022, against which the present civil revision petition has been filed.

3. Learned counsel for the petitioners submitted that the defendants/respondents have filed the affidavit in support of I.A.No.311 of 2020 to prove the fact in support of condonation of delay and setting aside the exparte decree. The plaintiff petitioners under order XIX Rules 1 and 2 CPC have the right to cross examine the deponent of the affidavit to elicit the truth, that there was no sufficient cause for condonation of delay nor for their non appearance for setting aside the exparte decree. He has placed reliance in the following cases:

1. Bai Zabu Khima v Amardas Balakdas(AIR 1967 Gujarat 214)

2.Sripathi Rajyalakshmi and another vs. Sripathi Seeta Mahalakshmi(1974(1) ALT 30 (S.B))

3. Veeram Mohan Reddy vs. Rebba Pedda Agaiah(2008(2) ALT 329 (S.B))

4. K.V. Subba Rao vs The State of A.P(AIR 1967 AP 202).

to contend that Order XIX Rule 2 CPC applies to applications and once the affidavit in evidence was filed upon application the petitioners should have been given the opportunity to cross examine the deponent of the affidavit.

4. Distinguishing the judgments (1) Sakalabaktula Vykunta Rao and another vs. Made Appalaswamy(AIR 1978 AP 103) and (2) Jammu and Kashmir v. Bakshi Gulam Mohammad(AIR 1967 Supreme Court 122) upon which the learned II Additional Junior Civil Judge, Chittoor placed reliance, Sri S. Lakshminarayana Reddy submitted that the first case related to Order XXXIX Rule 1 CPC with respect to which CPC specifically provides for disposal of such application on affidavits and the second case did not relate to the applications under Order IX Rule 13 CPC or/and Section 5 of the Limitation Act.

5. Learned counsel for the petitioners next submitted that instead of confining to I.A.No.221 of 2022, in the light of Order 19 Rules 1 and 2 CPC, the learned Junior Civil Judge, also observed that it is necessary to enquire into the matter and to dispose of the case on contest. Further, that, if it is so permitted no prejudice would be caused to the petitioners. In his submission, such observations, would prejudice the disposal of I.A.No.311 of 2020 and I.A.No. nil of 2020 on merits.

6. Matter requires consideration at depth , inter alia on the following points: a) The applicability of Order 19 Rule 1 and 2 CPC upon application under Order 9 Rule 13 CPC with application under Section 5 of Limitation Act. b) Right of the plaintiffs of cross examination of the deponent of the affidavit of the applications under Order 9 Rule 13 CPC in the light of Order 19 Rules 1 and 2 and Order 18 Rule 4 CPC in particular.

7. Admit.

8. Issue notice to the respondents. The petitioners shall serve the respondents by taking out personal notice through Registered Post with acknowledgment due and file proof of service personally, in addition to the regular mode of service.

9. Order XIX Rule 2 CPC provides that upon any application, evidence may be given by affidavit. Section 141 CPC makes applicable the procedural provisions of CPC in regard to suit, to be followed, as far as it can be made applicable, in all proceedings in any court of civil jurisdiction. As per the

explanation "proceedings includes proceedings under Order IX CPC". Order XVIII Rule 4 CPC provides for examination in chief on affidavit. „Evidence" in Section 3 of the Evidence Act though does not include „affidavit" but the provision of CPC permit evidence, examination in chief in suit on affidavit and upon application also on affidavit.

10. Prima facie, being of the view that there is right of cross examination and further that the observations made in the impugned order shall affect the decision on the merits of the applications pending before Junior Civil Judge, the proceedings in I.A.No.311 of 2020 in O.S.No.748 of 2019, on the file of II Additional Junior Civil Judge, Chittoor, shall remain stayed, till the next date of listing.

11. List in 07.07.2023."


Sd/- K.TATA RAO
DEPUTY REGISTRAR

//TRUE COPY//

Fo SECTION OFFICER

To,

1. The II Additional Junior Civil Judge, Chittoor.
2. The District Collector, Chittoor Town and District, Government Of Andhra Pradesh.
3. The Mandal Revenue Officer, Yadamari Village, Post and Mandal, Chittoor District. (Addressess 2 to 3 by RPAD)
4. One CC to SRI. S LAKSHMINARAYANA REDDY Advocate [OPUC]
5. One spare copy.

psk

HIGH COURT

RNTJ

DATED:02/05/2023

LIST ON 07.07.2023

ORDER

CRP.No.1064 of 2023

INTERIM STAY

