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APHC010219172023



IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)

[3333]

SATURDAY, THE TWENTY SECOND DAY OF NOVEMBER
TWO THOUSAND AND TWENTY FIVE

PRESENT

THE HONOURABLE SMT JUSTICE V.SUJATHA

CIVIL REVISION PETITION NO: 1256/2023

Between:

- 1.KANCHUPATI KOTESWARA RAO,, S/O, VEERA NAGAI AH, AGED ABOUT 42YEARS, OCC- BUSINESS, MEDAPI VILLAGE, THIRIPURANTHAKAM MANDAL. PRAKASAM DISTRICT.
- 2.KANCHUPATI VEERA NAGAI AH, (DIED), S/O.SUBBAIAH, AGED ABOUT 72YEARS, OCC- BUSINESS, MEDAPI (V), THIRIPURANTHAKAM (M), PRAKASAMDISTRICT.
- 3.KANCHUPATI NAGESWARA RAO,, S/O. VEERA NAGAI AH, AGED ABOUT 33 YEARS, OCC- BUSINESS, MEDAPI VILLAGE, THIRIPURANTHAKAM MANDAL, PRAKASAM DISTRICT.
- 4.KANCHUPATI ANANTHAMMA,, W/O. VEERA NAGAI AH, AGED ABOUT 65YEARS, OCC- HOUSE WIFE, MEDAPI VILLAGE, THIRIPURANTHAKAM MANDAL, PRAKASAM DISTRICT.
- 5.KANCHUPATI PEDA PITCHAIAH,, S/O. PEDDA VENKAIAH, AGED ABOUT 43 YEARS, OCC- CULTIVATION, MEDAPI VILLAGE, THIRIPURANTHAKAM MANDAL, PRAKASAM DISTRICT.

...PETITIONER(S)

AND

1.KUMARI KANCHUPATI DAATRIKA KRISHNA, represented by her mother Smt. Kanchupati Anuradha, W/o.Kanchupati Koteswara Rao, aged about 33 years, House Wife, Medapi Village, Thripuranthakam Mandal, Prakasam District.

...RESPONDENT

Petition under Article 227 of the Constitution of India,praying that in the circumstances stated in the grounds filed herein,the High Court may be pleased topleased to allow the above CRP by quashing and setting aside the order passed in I.A. No. 127 of 2019 in O.S. No. 13 of 2012on the file of the Senior Civil Judge, Markapur, dated 13th day of February, 2023 and to pass

IA NO: 1 OF 2023

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to suspend the order passed I.A. No. 127 of 2019 in O.S. No. 13 of 2012 on the file of the On the file of the Senior Civil Judge, Markapur and to pass

IA NO: 2 OF 2023

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased Pleased to extend the interim order passed by this Hon'ble Court on 31-07-2023 in C.R.P No. 1256 of 2023 and pass

IA NO: 1 OF 2025

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased may be pleased to extend the interim order passed by this HonIDle Court on 31-07-2025 in C.R.P.No. 1256 of 2023 and pass

Counsel for the Petitioner(S):

1.KHAJA KHUTUBUDDIN SHAIK

Counsel for the Respondent:

1.G N V PULLA RAO

CIVIL REVISION PETITION NO: 1257/2023**Between:**

- 1.KANCHUPATI KOTESWARA RAO, S/O, VEERA NAGAIAH, AGED ABOUT 42YEARS, OCC. BUSINESS, MEDAPI VILLAGE, THRIPURANTHAKAM MANDAL. PRAKASAM DISTRICT.
- 2.KANCHUPATI VEERA NAGAIAH,, S/O.SUBBAIAH, AGED ABOUT 7 YEARS, OCC. BUSINESS, MEDAPI (V), THRIPURANTHAKAM (M), PRAKASAMDISTRICT.
- 3.KANCHUPATI NAGESWARA RAO,, S/O. VEERA NAGAIAH, AGED ABOUT 33 YEARS, OCC. BUSINESS, MEDAPI VILLAGE, THRIPURANTHAKAM MANDAL, PRAKASAM DISTRICT.
- 4.KANCHUPATIANANTHAMMA,, W/O. VEERA NAGAIAH, AGED ABOUT 65YEARS, OCC. HOUSE WIFE, MEDAPI VILLAGE, THRIPURANTHAKAM MANDAL, PRAKASAM DISTRICT.
- 5.KANCHUPATIPEDAPITCHAIAH,, S/O. PEDDA VENKAIAH, AGED ABOUT 43 YEARS, OCC. CULTIVATION, MEDAPI VILLAGE, THRIPURANTHAKAM MANDAL, PRAKASAM DISTRICT.

...PETITIONER(S)**AND**

- 1.KUMARI KANCHUPATI DAATRIKA KRISHNA, represented by her mother Smt. Kanchupati Anuradha, W/o.Kanchupati Koteswara Rao, aged about 33 years, House Wife, Medapi Village, Thripuranthakam Mandal, Prakasam District.

...RESPONDENT

Petition under Article 227 of the Constitution of India,praying that in the circumstances stated in the grounds filed herein,the High Court may be pleased topleased to suspend the order passed in I.A. No. 127 of 2019 in O.S. No. 13 of 2012on the file of the Senior Civil Judge, Markapur, dated 13th day of February, 2023 and pass

IA NO: 1 OF 2023

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to dispense with filing of the original certified copy of order in I.A. No. 128 of 2019 in O.S. No. 13 of 2012 dt 13-02-2023 on the file of the Senior Civil Judge, Markapur before this Hon'ble Court and pass

IA NO: 2 OF 2023

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to suspend the order passed I.A. No. 12t of 2019 in O.S. No. 13 of 2012 on the file of the On the file of the Senior Civil Judge, Markapur and to pass

IA NO: 3 OF 2023

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased Pleased to extend the interim order passed by this Hon'ble Court on 31-07-2023 in C.R.P No. 1257 of 2023 and pass

Counsel for the Petitioner(S):

1.KHAJA KHUTUBUDDIN SHAIK

Counsel for the Respondent:

1.G N V PULLA RAO

CIVIL REVISION PETITION NO: 1258/2023

Between:

- 1.KANCHUPATI KOTESWARA RAO, S/O, VEERA NAGAI AH, AGED ABOUT 42YEARS, OCC. BUSINESS, MEDAPI VILLAGE, THRIPURANTHAKAM MANDAL. PRAKASAM DISTRICT.
- 2.KANCHUPATI VEERA NAGAI AH, S/O.SUBBAIAH, AGED ABOUT 72YEARS, OCC. BUSINESS, MEDAPI (V), THRIPURANTHAKAM (M), PRAKASAMDISTRICT.
- 3.KANCHUPATI NAGESWARA RAO, S/O. VEERA NAGAI AH, AGED ABOUT 33 YEARS, OCC. BUSINESS, MEDAPI VILLAGE,

THRIPURANTHAKAM MANDAL, PRAKASAM DISTRICT.

4.KANCHUPATIANANTHAMMA, W/O. VEERA NAGAIHAH, AGED ABOUT 65YEARS, OCC. HOUSE WIFE, MEDAPI VILLAGE, THRIPURANTHAKAM MANDAL, PRAKASAM DISTRICT.

5.KANCHUPATIPEDAPITCHAIAH, S/O. PEDDA VENKAIAH, AGED ABOUT 43 YEARS, OCC. CULTIVATION, MEDAPI VILLAGE, THRIPURANTHAKAM MANDAL, PRAKASAM DISTRICT.

...PETITIONER(S)

AND

1.KUMARI KANCHUPATI DAATRIKA KRISHNA, represented by her mother Smt. Kanchupati Anuradha, W/o.Kanchupati Koteswara Rao, aged about 33 years, House Wife, Medapi Village, Thripuranthakam Mandal, Prakasam District.

...RESPONDENT

Petition under Article 227 of the Constitution of India,praying that in the circumstances stated in the grounds filed herein,the High Court may be pleased topleased to suspend the order passed in I.A. No. 129 of 2019 in O.S. No. 13 of 2012on the file of the Senior Civil Judge, Markapur, dated 13th day of February, 2023 and pass

IA NO: 1 OF 2023

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased pleased to dispense weith filing of the original certified copy of I.A. 129/2019 of O.S. No. 13 of 2012 on the file of the Senior Civil Judge, Markapur before this Hon'ble Court and pass

IA NO: 2 OF 2023

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased pleased to suspend the order passed I.A. No. 12/ of 2019 in O.S. No. 13 of 2012 on the file of the On the file of the Senior Civil Judge, Markapur and to pass

IA NO: 3 OF 2023

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased Pleased to extend the interim order passed by this Hon'ble Court on 31-07-2023 in CRPNo. 1258 of 2023 and pass

Counsel for the Petitioner(S):

1.KHAJA KHUTUBUDDIN SHAIK

Counsel for the Respondent:

1.G N V PULLA RAO

The Court made the following:

COMMON ORDER:

These Civil Revision Petitions have been filed by the petitioners/defendants challenging the common order dated 13.02.2023 passed in I.A.Nos.127, 128 and 129 of 2019 in O.S.No.13 of 2012 on the file of Court of the Senior Civil Judge, Markapur, whereby the trial Court allowed the said interlocutory applications filed by the respondent/plaintiff under Section 151, Order XVIII Rule 17 and Order VI Rule 17 of the Code of Civil Procedure, for reopening the evidence, recalling P.W.1 and for amending the plaint pleadings.

2. For the sake of convenience, the parties to the revision will hereinafter be referred as petitioners and respondent, as arrayed before the Trial Court in I.A.Nos.127, 128 and 129 of 2019.

3. Brief facts of the case are as under:

Petitioner No.2 is the father and petitioner No.4 is the mother of petitioner Nos.1 and 3; petitioner No.5 is a family friend of the other petitioners. Petitioner No.1 married one Anuradha in the year 2008 and they were blessed with a girl child in the year 2009, who is the respondent herein and is being represented by her mother i.e. Smt. Kanchupati Anuradha. Due to some matrimonial disputes between petitioner No.1 and the mother of the plaintiff, she requested the petitioners herein to partition the plaint schedule properties and distribute 1/6th share of the same to her, upon which, the

petitioner Nos.1 to 4, tried to evade such partition of the properties, as such, the respondent filed O.S.No.13 of 2012 on the file of Court of the Senior Civil Judge, Markapur seeking a decree for partition of plaint schedule properties. Pending the said suit, as the respondent found that the properties marked as Ex.A16 to Ex.A18 were not mentioned in the suit schedule, she filed I.A.Nos.127, 128 and 129 of 2019 in O.S.No.13 of 2012 under Section 151, Order XVIII Rule 17 and Order VI Rule 17 of the Code of Civil Procedure respectively, for reopening the evidence, recalling P.W.1 and for amending the plaint pleadings. The said applications filed by the respondent were allowed by way of a common order dated 13.02.2023 which is challenged in these civil revision petitions by the petitioners.

4. When C.R.P.No.1256 of 2023 came up for hearing on 31.07.2023, this Court passed an interim order suspending the operation of the order passed in I.A.No.127 of 2019 in O.S.No.13 of 2012 on the file of Senior Civil Judge, Markapur dated 13.02.2023, which is being extended from time to time.

5. Heard Sri. Chella Ajay Kumar, learned counsel appearing on behalf of Sri. Khaja Khutubuddin Shaik, learned counsel for the petitioners and Sri. G.N.V. Pulla Rao, learned counsel for the respondent. Perused the entire material available on record.

6. Admittedly the respondent/plaintiff instituted the subject suit for partition of the suit schedule properties and to allot her respective share of properties.

While the suit was posted for arguments, the respondent/plaintiff got to know that some of the properties purchased by the petitioners were not included in the suit schedule properties. Thus, the respondent/plaintiff filed I.A.Nos.127, 128 and 129 of 2019 in O.S.No.13 of 2012 on the file of Court of the Senior Civil Judge, Markapur under Section 151, Order XVIII Rule 17 and Order VI Rule 17 of the Code of Civil Procedure, for reopening the evidence, recalling P.W.1 and for amending the plaint pleadings. For better understanding of the case, Order XVIII Rule 17 and Order VI Rule 17 of the Code of Civil Procedure are extracted hereunder:

“Order XVIII Rule 17 - Court may recall and examine witness.—The Court may at any stage of a suit recall any witness who has been examined and may (subject to the law of evidence for the time being in force) put such questions to him as the Court thinks fit.

Order VI Rule 17 – Amendment of pleadings.—The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties: Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.”

7. In ***Vadiraj Naggappa Vernekar (deceased) by L.Rs) v. Sharad Chand Prabhakar Gogate***¹, the Hon'ble Apex Court held that the provisions of Order XVIII Rule 17 CPC are not intended to be used to fill up omissions in

¹ (2009) 4 SCC 410

the evidence of a witness who has already been examined. It was further held that the main purpose of the said rule is to enable the Court, while trying a suit, to clarify any doubts which it may have with regard to the evidence led by the parties. The Hon'ble Apex Court further held that the power under Order XVIII Rule 17 CPC is to be sparingly exercised and in appropriate case and not as a general rule. The Hon'ble Apex Court further held that if the evidence on re-examination of a witness has a bearing on the ultimate decision of the suit, it is always within the discretion of the trial court to permit recall of such a witness for re-examination in chief with permission to the defendants to cross-examine the witness thereafter. It was held that ultimately it is within the court's discretion, if it deems fit to allow such an application. While dealing with a case under similar circumstances arising out of an order passed by the High Court, the Hon'ble Supreme Court in **K.K. Velusamy v. N. Palanisamy**², inter alia, opined that even at the stage of arguments, the said provision enables the Court to recall and examine any witness to do justice.

8. It can be understood from the above that Order VI Rule 17 consists of two parts viz., the first part is that the Court may at any stage of the proceedings allow either party to amend pleadings and the second part is that such amendment shall be made for the purpose of determining the real controversies raised between the parties. The Hon'ble Apex Court, in **Baldev**

² (2011) 11 SCC 275

Singh Vs. Manohar Singh³, observed that the Court should be extremely liberal in granting the prayer for amendment of pleadings unless serious injustice or irreparable loss is caused to the other side. The Court further observed that Order VI Rule 17 of CPC restricts the Courts from permitting an amendment to be allowed in the pleadings of either of the parties, if at the time of filing such application, the trial has already commenced. However, the Court may allow amendment if it is satisfied that in spite of due diligence, the party could not have raised the matter before the commencement of trial. It further observed that commencement of trial must be understood in the limited sense as meaning the final hearing of suit, examination of witnesses, filing of documents and addressing of arguments. As such, it is not that once the trial has commenced, the amendment cannot be allowed. It can be allowed if it is necessary and if due diligence is shown by the party applying for amendment as to why it could not be made earlier.

9. The Hon'ble Apex Court, in ***Harish Chandra Bajpai Vs. Triloki Singh***⁴, held that the proviso to Order VI Rule 17 CPC only limits the scope of jurisdiction of the Court to permit amendment of pleadings after the commencement of the trial and the proviso does not create an absolute bar or shut out the entertaining of an application for amendment, post commencement of trial, but only permits it to be allowed if the party seeking

³ 2006 (6) SCC 498

⁴ AIR 1957 SC 444

amendment shows that, in spite of due diligence, he could not raise the plea previously.

10. Coming to the case on hand, the respondent filed the subject suit seeking partition of suit schedule properties and in general, all the joint family properties have to be included and without such inclusion of properties, a suit for partition is incomplete. It is the case of the respondent/plaintiff that she came to know about the properties that are now proposed to be included in the suit schedule properties only after analyzing the admissions of petitioners/defendants. Hence, this Court feels that, the proposed items of properties, could not have been brought on record prior to the commencement of trial, despite due diligence by the respondent/plaintiff. In general, the plaintiff in a partition suit may not be aware of all the properties sought to be partitioned of the common ancestral properties and if during the pendency of the case, acquire such knowledge about some more properties that need to be partitioned or included in the partition suit, the amendment to add those properties cannot be refused on technical plea. This Court, in ***Pitta Samadana Swarooparani and Ors. Vs. Pitta Kumari and Ors.***⁵, held that in a suit for partition, all the properties should be included in the suit schedule to avoid multiplicity of proceedings, as also following the principle of law that partition suit must generally include all the properties of the common ancestor, they should weigh over the second part that the trial has commenced. The

⁵ 2025 (3) ALD 681

procedural aspect, cannot override the substantial part. Hence, this Court is satisfied with the reasoning offered by the trial Court insofar as permitting to amend the plaint schedule is concerned.

11. Admittedly, despite exercising due diligence, the respondent/plaintiff was unable to include aforesaid properties in the suit schedule earlier and as such, the amendment sought is just and necessary. In such a case, when such amendment is allowed, it becomes essential to re-examine any witness. As held by the Apex Court in **Vadiraj Naggappa Vernekar (deceased) by L.Rs) v. Sharad Chand Prabhakar Gogate** (1 Supra), if the evidence on re-examination of a witness has a bearing on the ultimate decision of the suit, it is always within the discretion of the trial court to permit recall of such a witness for re-examination, with permission to the defendants to cross-examine the witness thereafter. This Court is of the opinion that once the plaint schedule is amended, it would be very much essential for the respondent/plaintiff to re-examine any witness and the evidence thus adduced after re-examination would assist the trial Court in deciding the main issue. Hence, the trial Court has rightly concluded that the proposed amendment would resolve the real controversies involved in the matter and that no prejudice would be caused to the petitioners by the proposed amendments to the plaint schedule.

12. Article 227 deals with power of superintendence by the High Court over all Subordinate Court and Tribunals. The power of superintendence conferred upon the High Court by Article 227 is not confined to administrative superintendence only, but includes the power of judicial revision also even where no appeal or revision lies to the High Court under the ordinary law, rather power under this Article is wider than that of Article 226 in the sense that it is not subject to those technicalities of procedure or traditional fetters which are to be found in certiorari jurisdiction and such power can also be exercised suo motu.

13. It is a well settled principle that the High Court can exercise supervisory power over the subordinate Courts under Article 227 of Constitution of India, as held by the Apex Court in “**State (N.C.T. Of Delhi) Vs. Navjot Sandhu@Afsan Guru**.”

14. As per the law laid down by the Apex Court, supervisory jurisdiction under Article 227 of the Constitution is to be exercised for keeping the subordinate courts within the bounds of their jurisdiction. When the subordinate Court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or the jurisdiction though available is being exercised by the Court in a manner not permitted by law and failure of justice or grave injustice has occasioned thereby, the High Court may step in to exercise its supervisory jurisdiction.

15. In view of my foregoing discussion, the impugned common order 13.02.2023 passed in I.A.Nos.127, 128 and 129 of 2019 in O.S.No.13 of 2012 by the learned Senior Civil Judge, Markapur need not be interfered with by invoking the superintendence conferred upon the High Court by Article 227 of the Constitution of India, as the trial Court acted within its jurisdiction.

16. Accordingly, these civil revision petitions are dismissed. There shall be no order as to costs.

Consequently, miscellaneous applications, pending, if any, shall also stand closed.

JUSTICE V. SUJATHA

Date: 22.11.2025

Gss