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PART -17 (15TH SEPTEMBER 2022)

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SUBJECT - INDEX

A.P. RIGHTS IN LAND AND PATTADAR PASS BOOKS ACT, 1971, Secs.5(3) & 9 **- REGISTRATION ACT, 1908,** Sec.22-A - Tahsildar issued proceedings in favour of petitioners and their vendees for mutation of their names in revenue records - Joint Collector suo moto in revision cancelled orders of Tahsildar - Orders of Joint Collector are violation of principles of natural justice, accordingly writ petition, allowed and set aside the orders of Joint Collector and restored the orders of Tahsildar, including the subject land in the list u/Sec.22-A of Registration Act, is also quashed.

(Telangana) ***11***

CIVIL PROCEDURE CODE,Sec.96 - LIMITATION ACT, 1963, Article 62 - Defendants 5 to 8 and 10, preferred appeal against the judgment and decree in O.S. - Plaintiff, a nationalized bank, represented by Assistant Regional Manager filed the suit against the defendants 1 to 13 for recovery of an amount of basing on mortgage.

HELD: Suit was filed in 2005 for recovery of money basing on mortgage - Article 62 of the Limitation Act prescribes period of limitation in case of equitable mortgage is 12 years - Suit filed by the plaintiff bank is within the limitation - Appellants also stood as guarantors and their liability is coextensive with that of the principal debtors - Suit, is one filed for recovery of loan amount basing on mortgage of properties shown in the plaint schedule offered as security by the guarantors i.e., defendants 5, 7 to 11, some of the Appellants herein - Appellants remained ex parte and did not contest the suit - Trial Court on consideration of both oral and documentary evidence, passed preliminary decree - Going by the oral and documentary evidence and in the absence of any contra evidence elicited from the evidence of P.W.1 regarding the execution of documents, this Court is of the view that preliminary decree passed by the trial Court is based on evidence on record and it does not call for any interference - Appeal stands dismissed with costs. **(A.P.)** ***9***

CIVIL PROCEDURE CODE, 1908 Section 151 - Civil Revision Petition is filed against the Docket Order in O.S. - Petitioner filed a suit for partition, when the matter is at the stage of the cross examination of PW.1, he filed Memo stating that the matter was settled out of the Court before the elders of both parties on certain terms and sought permission of the trial Court to not-press the suit - Trial Court, dismissed the suit as not-pressed - Thereafter, Respondents did not execute the Statement of Understanding entered into between both the parties - Petitioner filed an application to restore the suit on its file, but the trial Court returned the said application - Challenging the same, the present Revision Petition is filed.

HELD: Trial Court committed error in returning the application filed by the Petitioner to recall the Order and to restore the suit on its file - Civil Revision Petition stands allowed - Trial Court is directed to entertain the application filed by the Petitioner to recall the Order and to restore the suit, in the light of the law laid down by the Hon'ble Apex Court in Manohar Law Chopra v. Rai Bahadur Rao Raja Seth Hiralal AIR 1962 SC 527 wherein, it was held that "It is well settled that the provisions of the Code are not exhaustive, for the simple reason that the Legislature is incapable of contemplating all the possible circumstances which may arise in future litigation and consequently for providing the procedure for them." **(A.P.)** ***15***

CIVIL PROCEDURE CODE, Or.6, Rule 17 - AMENDMENT OF PLEADINGS - Mere delay would not be a ground for rejecting the application for amendment. **(S.R.C.) (S.C.) 1**

CIVIL PROCEDURE CODE, Or.18, Rule 17 and r/w Sec.151 - (INDIAN) EVIDENCE ACT, Sec.115 - Estoppel - Application to recall P.W.1 - Allowed subject to the condition

of payment of Rs.3,000 as costs within specified time - In default application stands dismissed - Order in condition precedent - CRP filed challenging said order after acceptance the costs with protest.

HELD: Once the impugned order is condition precedent subject to payment of costs with default clause and the petitioner accepted the costs with protest, he is estopped from changelling the said order and CRP is not maintainable.

(S.R.C.) (A.P.) 2

CIVIL PROCEDURE CODE, Or.21, Rule 90(3) - Twin conditions of material irregularity or fraud and substantial injury has to be satisfied before an auction sale can be set aside. **(S.R.C.)** ***(S.C.) 1***

CIVIL PROCEDURE CODE, Or.22, Rule 4 - **LIMITATION ACT,** Sec.5 - Lower Court dismissed the Petition filed by Plaintiff/Respondent No.1, to bring LRs of defendant No.5 (Revision petitioners), but Plaintiff has not challenged said order - Revision Petitioners/ Defendant No.5 of legal heirs filed a petition in lower Court to condone 1098 days to bring them as LRs of Defentant No.5 and the same was dismissed by lower Court, hence this Revision by legal heirs of Defendant No.5.

HELD: Respondent No.1/Plaintiff filed suit for partition in lower Court and defendant no.5 living behind the Revision petitioners as his legal heirs - It is specific contention of Revision Petitioners that they have not received any notice from Court below, hence legal heirs of Defendant No.5 who are the present Revision Petitioners themselves approached lower Court to permit them in filing a petition to bring legal heirs of deceased Defendant No.5 on record as they are necessary and proper parties to the suit and that from the date of death of defendant No.5 they were under impression that they may get notice from Court, therefore, they have not filed legal heir petition in time and the delay was caused in filing the said petition - Hence the present civil revision petition is allowed condoning the delay of 1098 days in filing petition to bring legal heirs of deceased defendant No.5. **(Telangana)** ***21***

CIVIL PROCEDURE CODE, Or.22 - Second appeal does not abate on death of one of respondents when the right to sue survives against the surviving respondent.

(S.R.C.) (S.C.) 2

CIVIL PROCEDURE CODE, Or.39, Rule 1 and 2 r/w Sec.151 - Civil Revision Petition has been filed against the decree made in C.M.A. which was filed against the order made in I.A. in O.S. on the file of the Junior Civil Judge - Along with suit, Respondents filed I.A. praying to grant ad-interim injunction - Trial Court, allowed the

I.A, granting ad-interim injunction - Aggrieved thereby, Petitioners herein filed Civil Miscellaneous Appeal which was dismissed – Hence, present Civil Revision Petition.

HELD: Appellate Court also opined that the documents filed by the Respondents are prior to the filing of the suit and on the other hand, some documents filed by the Petitioners are subsequent to the suit and some documents are not corresponding to the suit schedule property - Considering the same, Appellate Court held that the Respondents could establish their possession as on the date of filing of the suit - No irregularity or infirmity in the order passed by the appellate Court - Civil Revision Petition stands dismissed. **(A.P.)** ***1***

CIVIL PROCEDURE CODE - ORDER OF EXTENSION OF STAY.

Suit for Specific Performance - Plaintiff filed the execution petition, Pending the first appeal filed by Defendant, High Court granted Stay of Execution of the Decree - Plaintiff/ Respondent Filed Vacate Stay Petition, which stood dismissed, and stay was made absolute - Execution Court, by docket Order, observed that the judgment debtors have not produced the extended speaking order of stay as ordered by the Supreme court in a reported decision "Agency Private Limited v. Central Bureau of Investigation" and therefore, further proceedings shall continue - Aggrieved thereby, Petitioner, who is judgment debtor No.17, has preferred this revision.

HELD: Contingency of expiry of stay after six months would arise only in cases where there is stay of trial – Revision stands allowed – Impugned Order to the extent of directing further execution proceedings to continue is liable to be set aside and the execution Court is directed to follow the Order of stay so long as it remains in force. **(A.P.)** ***27***

CRIMINAL PROCEDURE CODE - COGNIZANCE OF OFFENCE - Criminal Revision case challenging the Order of trial Court - On investigation, police laid chargesheet arraying the Petitioners herein as accused Nos. 1 to 5 for offences punishable u/Secs.324, 506 part II read with Sec.34 IPC - However, while taking cognizance, the trial Court made an observation that the facts of case also attract Sec.307 IPC and Sec.3(1)(x) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act and added the same.

HELD: There is a clear narration of the grounds as to why the Investigating Agency felt that the case is made out against the Petitioners/Accused only for the offences punishable u/Secs.324, 506 part II r/w 34 IPC and further as no reasons are accorded in the impugned Order as to why a different view is taken - Petition stands

allowed - Order of the trial Court stands set aside – Trial Court is directed to proceed with the case against the petitioners by according calendar case number and by conducting trial for the offences punishable u/Secs.324, 506 part II r/w 34 IPC.

(Telangana) *27*

CRIMINAL PROCEDURE CODE, Sec.311 - TO RECALL SOME OF THE WITNESSES.

Criminal Petition seeking to quash the Order passed in Criminal Miscellaneous Petition - Petitioners are accused for the offences under Sections 147, 148 r/w 149 and 324 of Indian Penal Code - Petitioners Criminal Miscellaneous Petition seeking to recall some of the witnesses for cross examination was dismissed - Hence, the present quash petition.

HELD: Court is required to exercise its discretion judiciously and not capriciously or arbitrarily and the said power must be invoked to meet the ends of justice - Trial Court instead of allowing the Petitioners to cross examine P.W.13, came to a conclusion that the evidence of P.W.13 is having very limited scope - Trial Court ought to have allowed the petition to recall and to enable the Petitioners/accused to adduce evidence and meet the requirements of a fair trial - As the Petitioners were denied the opportunity of cross examination, the order of the Trial Court cannot be sustained - Criminal Petition stands allowed with a direction to the Trial Court to fix a specific date for appearance of P.W.13(L.W.14)- and afford an opportunity to the Petitioners/Accused to cross examine the said witness. **(A.P.) *22***

CRIMINAL PROCEDURE CODE, Sec.482 - A criminal complaint has to be quashed if no offence is made out by a careful reading of the complaint.

(S.R.C.) (S.C.) 1

CRIMINAL PROCEDURE CODE, Sec.482 - DISPUTE, IS PURELY CIVIL IN NATURE - Criminal Petition seeking to quash the proceedings that are pending against Petitioner/Accused No.1 - Respondent No.2/Defacto complainant filed a private complaint against the Petitioner under Sections 196, 406, 420, 506 r/w 34 IPC.

HELD - Entire dispute revolves around a piece of immovable property - Present dispute, is purely civil in nature - An attempt is made to clothe the complaint with criminal flavor - Basic ingredients to constitute the offences punishable under Sections 196, 406, 420 and 506 IPC are found missing - No prima facie material to show that

the Petitioner and another, in pursuance of their common intention, have committed the offences, as arrayed in the complaint - Criminal Petition stands allowed.
(Telangana) 4

ESSENTIAL COMMODITIES ACT, 1955, Sec.6(A) - Seizure of paddy and rice - Joint Collector rejecting for release of the seized stock on the ground Supreme Court observations issud in SLP that the seized stocks are not to be released to the same person from whom it is seized, as such the request made for release of seized stock same pending finalization of 6-A case is rejected.

HELD: The copy of SLP is not available with Joint Collector, it is not known as to how Joint Collector relied upon the order which is not even there before. The respondents are directed to release a paddy to the petitioner as expeditiously as possible, and the petitioner is directed to mill the same in the presence of the officials of respondent and the resultant rice has to be supplied to Civil Supplies Corporation.**(S.R.C.) (A.P.) *2***

IMMORAL TRAFFIC (PREVENTION) ACT, 1956 - Customer who visits Brothel for sex with a prostitute cannot be prosecuted under Act.**-** **(S.R.C.) (A.P.) 1**

MOTOR VEHICALS ACT - Being not satisfied with the quantum of compensation awarded passed in O.P. before the Motor Accidents Claims Tribunal - Appellant/Claimant preferred the present Appeal seeking enhancement of the compensation.

HELD - Victims of accident, who are disabled either permanently or temporarily, adequate compensation should be awarded not only for the physical injury and treatment but also for the loss of earning and inability to lead a normal life and enjoy amenities, which one would have enjoyed had it not been for the disability - Compensation amount awarded by the Tribunal is hereby enhanced from Rs.4,48,800/- to Rs.5,48,800/- - Enhanced amount will carry interest at 7.5% p.a. from the date of passing of award by the Tribunal till the date of realization, payable by Respondents 1 and 2 jointly and severally - However, the Claimant is directed to pay Deficit Court Fee on the enhanced amount. **(Telangana) *1***

MOTOR VEHICLES ACT - Motor accident compensation exceeding the claimed amount can be awarded. **(S.R.C.) (S.C.) *1***

NEGOTIABLE INSTRUMENTS ACT - Drawer of a cheque is liable even if the details in the cheque have been filled up not by the drawer, but by some other person - The presumption which arise on the signing of the cheque cannot be rebutted merely by the report of hand writing expert. **(S.R.C.) (S.C.) *1***

PENSIONARY AND TERMINAL BENEFITS - Writ Petition in the nature of Writ of Mandamus declaring the action of the Respondent nos.1 to 6 in not releasing full pensionary benefits and terminal benefits payable to Petitioner without any just cause, on account of retirement on 31.11.2011 on attaining age of superannuation.

HELD - There is no pecuniary loss to the State Government and no disciplinary/ criminal proceedings are pending against the Petitioner - Alleged crime which was a social crime ended in acquittal - Criminal case pertains to family matter and it cannot be construed as an offence of serious in nature - As rightly contested by the Petitioner, pension is not a gratituous payment depending upon the sweet will or grace of the employer not claimable as a right - Therefore, withholding the pension, without any sufficient reason, amounts to violation of fundamental right guaranteed under Article 21 of the Constitution of India viz., right to life and personal liberty - Respondents are directed to release the pensionary and terminal benefits of the Petitioner within a period of three (3) months from the date of receipt of a copy of the order - Failing which, Petitioner is entitled to interest on the total sum @ 18% per annum. **(A.P.)** ***18***

(INDIAN) STAMP ACT, 1899, Sec.33 - CIVIL PROCEDURE CODE, Sec.151 - Civil Revision Petition impugning the Order passed in I.A. – Respondents/Defendants filed a suit seeking relief of cancellation of a sale deed executed by the 1st defendant in favour of the 2nd defendant - Petitioner/Plaintiff filed an I.A. with a prayer to the trial Court to evaluate the deficit stamp to be paid, as during the course of evidence when the possessory agreement for sale was sought to be exhibited as one of the documents on behalf of the plaintiff, trial Court objected to admit it on the ground that the document was not properly stamped.

HELD: When a document is not duly stamped, but it is tendered for evidence, the first duty of the Court is to act in accordance with Sec.33 of the Indian Stamp Act, 1899, which mandates that the Court shall impound the document - Before trial Court, only prayer made by Petitioner was for the purpose of evaluation of stamp duty so that the same could be paid - What was required on part of the trial Court was to decide that particular submission - A reading of the impugned Order does not indicate any finding on that aspect of the matter - I.A. stands allowed and trial Court shall proceed further with agreement for sale dated for the purpose of collection of stamp duty and penalty - Civil Revision Petition stands allowed. **(A.P.)** ***5***

SUCCESSION ACT, 1925, Sec.15 (1)(d) - Heirs of the father are covered in the heirs, who could succeed, when heir of father of a femable are included as person who can possibly succeeded, it cannot be held that they are strangers and not the members of the family qua the female.

Female Hindu succeeded her share of property, she was absolute owner when she entered into settlement. **(S.R.C.)(S.C.) 2**

TELANGANA MUNICIPALITIES ACT, 2019 - Writ petitions are filed questioning the action of Respondents No.1 and 2 in granting construction permission to Respondent No.3 in violation of Municipal Laws when the matter is subjudice, as illegal and arbitrary.

HELD: When there is a dispute with regard to the boundaries of the property and particularly, when Respondent No.3 has purchased the property, Petitioner ought to have made Respondent No.2-Municipality as a party to the said suit as Defendant and whatever relief he wants to claim, he can claim before the competent Civil Court - Only legal ground that is raised by petitioner is that in view of Section 178(6) of the Act, the Respondents are duty bound to consider his representations - Respondents No.1 and 2 shall consider the Representations of Petitioners after giving notice to the unofficial Respondent No.3 and pass appropriate orders within 15 days from the date of receipt of copy of this order. **(Telangan)** ***8***

TRANSFER OF PROPERTY ACT, Sec.54 - Judgment on cancellation of sale deed for not receiving sale consideration. **(S.R.C.) (S.C.) 2**

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LAW SUMMARY

2022 (3)

Journal Section

RESERVATIONS IN PROMOTIONS AND ITS CONTROLLED CONDITIONS

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Ours is a battle, not for wealth, nor for power,
0ur battle for freedom for reclamation of human personality
_ Dr BR Ambedkar

Reservations in India have generally involved a middle stage in the political arena of Indian culture as area of the world's largest affirmative policy regarding for depressed classes. Keeping to the side resources in government occupations and instructive establishment however went against by subsequent amendments to the Indian constitution specifically the 23rd, 45th 62nd and 79th and 95th amendment.[1]

During the Constituent Assembly Debates on Article 16, then Article 10 of the Draft Constitution, Dr B R Ambedkar[2] made sense of the polarity in two schools of thought of equality jurisprudence. Nonetheless, he kept up with that hypothetically ensuring everyone "equity of opportunity" may not be imaginable without reservations for those who had confronted a verifiable detriment. Objective of giving reservations to the Scheduled Castes (SCs), Scheduled Tribes (STs) and Other Backward Classes (OBCs) in services isn't just to give jobs to certain persons belonging to those communities. It essentially targets at empowering them and guaranteeing their participation in the decision course of the State. Justice B.P. Jeevan Reddy, while delivering the larger part judgment in the issue of **Indra Sawhney and Ors Vs. UOI**[3] and Ors, observed that public employment gives a specific status and power, other than the method for occupation. The Constitution has, along these lines, taken unique consideration to announce equality in the matter of public employment. Keeping the more extensive concept of equality in view, Clauses (4) and (4A) of Article 16[4] of the Constitution declare that "**Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts**

in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the state."Article 16 of the Constitution and furthermore Article 335 which have direct bearing on reservation in services are reproduced. [5]

SCHEME OF RESERVATION AND ITS EVOLUTION

On accomplishment of Independence, directions were issued on 21-9-47 providing for reservation of 12 ½ percent of opportunities for SCs in regard of recruitment made by open competition. In case of recruitment otherwise than by open competition this percentage was fixed at 16, 2/3 percent. Distinction between recruitment by open competition and generally then by open competition has been made explained in Chapter-II. After the Constitution was promulgated, in its 7th Resolution of 13-9-50, provided 5 percent reservation to STs separated from the percentage fixed for SCs already in force. The 1951 Census showed that the level of SCs in the absolute populace was 15.05 percent and that of ST 6.31 percent. The percentages were not amended at the time as a complete bill revising the lists of SCs and STs was under consideration. The other reason for not overhauling the percentage was that reservation had already been provided for SCs in posts filled otherwise than by open competition to the extent of 16.66 percent and instructions had been issued for following a regional and local percentage for Class III and Class IV posts attracting candidates from a locality or an area. The 1961 Census revealed that the SC and ST populace in relation to the Indian populace remained at 14.64 percent and 6.80 percent respectively. As needs be, the percentage of SCs and STs was increased from 12 ½ and 5 percent to 15 percent and 7 ½ percent separately on 25-3-70. The 1971 Census justified no such audit. The real effect of 1981 Census figures on all India percentages couldn't be known because the Census of 1981 couldn't be carried in that the state of Assam. The Government in 1993 introduced reservation for Other Backward Classes in direct recruitment comprehensively at the pace of 27%. After introduction of reservation for OBCs, all out reservation for SCs, STs and OBCs comes to 49.5% in case of direct enlistment on all India basis by open competition and 50% in case of otherwise than by open competition. According to different decisions of the Supreme Court, total reservation for these communities cannot the limit of 50%.

Reservation has been stretched out to various methods of promotions in stages. In 1957, reservation was accommodated SC and ST in departmental serious assessments. Reservation in promotion by selection in Group C and Group D was given in 1963 and around the same year reservation in departmental competitive examination was restricted to just Class III and Class IV. The position was somewhat different in 1968 when reservation in restricted departmental examination to Class II, III and IV and promotion by selection

'to Class III and IV was subjected to a condition that component of direct recruitment shouldn't surpass 50%. Reservation in promotion by seniority subject to fitness came in force in 1972 subject to the condition that the component of direct recruitment doesn't surpass 50%. In 1974, reservation in promotion by selection from Group C to Group B, within Group B and from Group B to the lowest minimal bar of Group A was acquainted subject with the condition that the component of direct recruitment, if any, doesn't surpass 50%.The limitation of the recruitment not surpassing 50% was raised to 66 percent in 1976 and to 75% in 1989.

Reservation till 1.7.1997 was computed based on number of vacancies filled. The Supreme Court on account of **R.K. Sabharwal Vs. Province of Punjab**[6] held that the reservation ought not entirely settled based on number of posts in the cadre and not based on vacancies. Appropriately post based reservation was introduced on 2.7.1997. The fundamental standard of post based reservation is that the quantity of posts filled by reservation by any category in a framework ought to be equivalent to the portion recommended for that classification. Before introduction of post based reservation, there was an arrangement of exchange of reservation among SCs and STs. After implementation of the post based reservation such exchange is not any more passable.

The Constitution provides the National Commission for Scheduled Castes[7] and the National Commission for Scheduled Tribes which have wide going powers and functions concerning matters relating to Scheduled Castes and Scheduled Tribes separately. The Government has additionally set up the National Commission for Other Backward Classes. In addition, there is a Committee of Parliament on the Welfare of Scheduled Castes/ Scheduled Tribes. The Committee between alia examines the position in regards to portrayal of Scheduled Castes/Scheduled Tribes in the services under the different Ministries and other Government associations and makes appropriate suggestions for achieving improvement in that or eliminating bottlenecks distinguished by it over the span of a review.

LEGAL PROVISIONS ON RESERVATION IN SERVICES AND POSTS AND CONSTITUTIONAL EXPLANATION

Objective of providing reservations to the Scheduled Castes (SCs), Scheduled Tribes (STs) and Other Backward Classes (OBCs) in administrations isn't just to give occupations to few persons having a place with these communities, yet in addition targets enabling them and guaranteeing their participation in the dynamic process of the State. The Constitution has, thusly, made provisions for providing equality of opportunity to them in the question of public employment. Reservation till 1.7.1997 was processed in view of number of opportunities filled. Reservation till 1.7.1997 was computed based on number

of vacancies filled. The Supreme Court on account **of R.K. Sabharwal Vs. Province of Punjab** [8] held that the reservation ought not entirely settled based on number of posts in the cadre and not based on vacancies. Appropriately post based reservation was introduced on 2.7.1997. Implementation of Post based Roster in reference of the Supreme Court judgment in the case of R. K. Sabharwal Vs. State of Punjab.

Reservation till 01.07.1997 was computed based on number of vacancies to be filled. The Supreme Court for the situation, named **R. K. Sabharwal Vs. Territory of Punjab**, held that the reservation ought not entirely settled based on number of posts in the cadre and not based on vacancies. Appropriately, post put together reservation was acquainted with respect with 02.07.1997. The fundamental standard of post based reservation is that the number of posts filled by category for any class in a unit ought to be equivalent to the quota endorsed for that classification. Before presentation of post based reservation, there was an arrangement of trade of held posts among SCs and STs. After implementation of the post based reservation such exchange is not any more admissible.

WORKING OF ROSTER SYSTEM AND KEY CONCEPTS

To aware of and execute the level of reservation for defended classes of citizens, explicitly SCs, STs and BC of residents. The Union Department of Personnel and Training thought of a 100-point roster system. That means in a lot of 100 vacancies occurring from time to time, those falling at serial numbers 7, 15, 20, 27, 35, 41, 47, 54, 61, 68, 74, 81, 87, 94 and 99 will be necessarily filled by SCs, and serial numbers 14, 28, 40, 55, 69, 80 and 95 will be filled with STs. This roster is kept up with in every department of the union and state legislatures, pretty much, as a running record from one year to another. The reason for the running record is to ensure that the SCs, STs and BCs get their percentage of reserved posts. This running account has to operate only till the quota provided under the impugned instructions is reached. When the recommended percentage of posts is filled, the numerical test of ampleness is fulfilled and from that point the roaster does not survive.

Presently, in light of the fact that there are existing backlog vacancies and less percentage of representation, none of the departments of the union and state legislatures has arrived at a level where the program has must be stifled up to this point. Hence, the question of collection of quantifiable data does not arise before implementing the reservation in promotion in favour of the constitutionally protected class of citizens. Thus, the dictum of M. Nagaraj to that extent seeks for an activity to be directed which has no pertinence in reality.

R.K. SABHARWAL LAYS DOWN THE PROPOSITION OF LAW IN MOST EMPHATIC MANNER AS UNDER:

"Therefore, the only way to assure equality of opportunity to the backward classes and the general category is to permit the roster to operate till the time the respective appointees/ promotees occupy the posts meant for them in the roster. The operation of the roster and the "running account" must come to an end thereafter."

R.K. SABHARWAL HAS, SIGNIFICANTLY, STATED THE TEST OF ADEQUACY AS UNDER:

"When all the roster points in a cadre are filled the required percentage of reservation is achieved. Once the total cadre has full representation of the Scheduled Castes/ Tribes and Backward Classes in accordance with the reservation policy then the vacancies arising thereafter in the cadre are to be filled from amongst the category of persons to whom the respective vacancies belong."

The mere fact that today in every department and cadre of the union and state governments, the backlog vacancies exists makes it crystal clear that the reservation based on roster system has not reached its 'adequacy level' – as permitted and approved by the Supreme Court in R.K. Sabaharwal.

RESERVATION IN PROMOTIONS _JUDICIAL PRONOUNCEMENTS

INDRA SAWHNEY V UOI(1992)[9]

A nine-judge Bench held that Article 16(4) does not grant reservation in promotion because it pertains only to reservation in appointments. The judgment put all reservations in promotion granted to SCs/STs in public employment at risk. The Court took this into account. Its judgment allowed reservation in promotion to continue for five years post November 16th, 1992.

ARTICLE 16(4A) - 77TH AMENDMENT [10](1995)

In 1995, the Government nullified the effect of Indra Sawhney by introducing Article 16(4A) through the 77th Amendment of the Constitution. Article 16(4A) allowed the State to provide reservations to a SC/ST in matters of promotion, as long as the State believes that the SC/ST is not adequately represented in government services.

INTRODUCTION OF CATCH UP RULE - AJIT SINGH V STATE OF PUNJAB (1996)[11]

After reservation in promotion was constitutionally recognized, it led to a situation where reserved category candidates, who were promoted over general class counterparts, became their senior due to earlier promotion. This anomaly was addressed by two

judgments **Virpal Singh (1995) and Ajit Singh (1996),** which introduced the concept of a **Catch Up Rule**. The rule held that senior general candidates who were promoted after SC/ST candidates would regain their seniority over general candidates, promoted earlier.

ARTICLE 16(4B) & CARRY FORWARD RULE – 81ST AMENDMENT(2000)[12]

Two amendments were brought in 2000 for seamless facilitation of reservation in promotion for SC/STs. The first was the 81st Amendment. Through 81st Amendment, the government introduced Article 16(4B), which allowed reservation in promotion to breach the 50% ceiling set on regular reservations. The Amendment allowed the State to carry forward unfilled vacancies from previous years. This came to be known as the Carry Forward Rule.

PROVISO TO ARTICLE 335 – 82ND AMENDMENT (2000)[13]

In 2000, the State amended the Constitution a second time. In the 82nd Amendment, the State added a proviso to Article 335. According to Article 335, the claims of SCs/STs to services and posts have to be consistent with overall administrative efficiency. It introduced a proviso which held that nothing in Article 335 would prevent the State from relaxing the qualifying marks or lowering the standard of evaluation for reservation in matters of promotion to members of SC and STs. The proviso to Article 335 undid the Supreme Court's 1996 judgment in Vinod Kumar, which specifically ruled against relaxations in qualifying marks in matters of reservation in promotion.

ARTICLE 16(4A) & CONSEQUENTIAL SENIORITY FOR SC/STS – 85TH AMENDMENT (2018)[14]

In 2001, Parliament negated the Catch-Up Rule that the Court had introduced in **Virpal Singh(1995)[15]** and Ajit Singh(1996). In the 85th Amendment, Parliament amended Article 16(4A) and introduced the principle of Consequential Seniority to promoted SC/ST candidates. Subsequently, the text of Article 16 (4A) was amended such that "in matters of promotion to any class" became "in matters of promotion, with consequential seniority to any class."

NAGARAJ V UOI(2006)[16]

In Nagaraj, the petitioners challenged the 77th, 81st, 82nd and 85th Amendments before the Supreme Court. Ultimately, the Court upheld the Amendments as constitutionally valid. The five-judge Bench upheld the constitutional validity of Reservation in Promotion to SCs/STs. It upheld the Consequential Seniority Rule under Article 16(4A), the Carry Forward Rule under Article 16(4B) and the Proviso to Article 335.

AFTER NAGARAJ (2011)

Following Nagaraj, which introduced the three controlling conditions, various High Courts and the Supreme Court struck down Statutes and Rules extending reservation in promotion policies. The various courts ruled that the State had failed to furnish enough data to meet the controlling conditions. In particular, the courts criticized the State for failing to demonstrate backwardness and/or insufficient representation.

CHALLENGE TO NAGARAJ - STATE OF TRIPURA V JAYANTA CHAKRABORTY (2017)[17]

Various States have filed an appeal before the Supreme Court to review its Nagaraj judgment. The three controlling conditions that Nagaraj introduced made it very difficult to advance reservation in promotion policies.

JARNAIL SINGH V LACCHMI NARAIN GUPTA (2018)[18]

A five-judge Bench of the Supreme Court unanimously held that the judgment delivered in Nagaraj in 2006, relating to reservations in promotions for SC/ST persons, does not need reconsideration by a larger seven-judge Bench. The Bench also struck the demonstration of further backwardness criterion from Nagaraj. While the Court struck down the further backwardness criterion, it also introduced the principle of creamy layer exclusion. It held that creamy layer exclusion extends to SC/STs and, hence the State cannot grant reservations in promotion to SC/ST individuals who belong to the creamy layer of their community.

BK PAVITRA V UNION OF INDIA – II (2019)[19]

In 2019, the Supreme Court upheld a reservation in promotion policy. The Supreme Court upheld a 2018 Karnataka Reservation Act on the ground that the State had furnished sufficient data to demonstrate both that SC/STs are inadequately represented and that the policy would not adversely affect efficiency. The 2018 Act introduces consequential seniority for SC/STs in State Government Services.

In its judgment, the Court introduced a new inclusive definition of administrative efficiency under Article 335 of the Constitution. The new definition balances merit with ensuring adequate representation. Also of note, the Court upheld the Act despite the fact that the State had failed to apply the creamy layer test introduced in Jarnail Singh. The Court reasoned that the test can only be applied at the stage of reservation in promotion and not at the stage of consequential seniority.

Recently in 2022 the Supreme Court gave its judgment after discuss on a series of petitions from all over the country that demanded more clarity on the modalities of providing reservation

in case of promotion. The Supreme Court through its verdict denied laying down any "yardstick" to determine the inadequate representation of the members of the community of Scheduled Caste and Scheduled Tribes for reservation in promotion in case of government jobs. Supreme Court in its verdict clarified that for granting promotion, it will hold 'cadre' as the unit for collecting quantifiable data and not class, group or the entire service. It reasoned it saying that if the data pertaining to the entire service would be taken, it would render the whole exercise of giving reservation in promotion meaningless. The Supreme Court clarified that it will not lay down any yardstick for giving reservation in promotion to the SC and ST community or to determine their inadequacy of representation in promotion and the whole decision of whether to grant reservation or not would be left on the respective states.

JUDGMENT IN BK PAVITRA CASE WAS SET ASIDE[20]

By recognizing 'cadre' as the unit for collecting quantifiable data the court set aside the judgment it had given earlier in case of BK Pavitra and held that the decision of the court that approved collection of data on the basis of groups and not cadres is in contradiction of the law laid down in the earlier cases of Nagaraj and Jarnail Singh by the Supreme Court. The court also said that the judgment given by it in case of Nagaraj v. Union of India would have '**prospective effect'**.

ORDER OF REVIEW

The Supreme Court gave the obligation to the association government to fix a 'reasonable' time for the states to direct the review with respect to the data for determining the inadequacy of reservation in promotion. Subsequently the court has left on it on the states to decide whether the representation of SCs and STs in special posts is inadequate or not by considering about significant factors.

RESRVATION IN PROMOTIONS AND ITS IMPORTANCE

¢' In a caste-based socioeconomic system, the SCs and STs have experienced centuries of discrimination and prejudice, which has created major barriers to opportunity. To eradicate all these discriminations, there should be a stringent mechanism for achieving and enjoyed the real object of equality.

¢' Another one of the major reason for awarding upgrades in promotions is that there are very few SC/ST applicants in government positions at the higher levels.

- ¢’ The Constitution’s requirement for consideration of their claim to appointment would remain illusory unless specific procedures are introduced for SCs and STs in promotions as well.

- ¢’ The word “efficiency of administration” was not characterized clearly in the Constitution by the founders. It is a prevalent misunderstanding that promotees selected from the SCs and STs are inefficient or that their appointment affects efficiency. So it is one of the fundamental obligations of the governments to understand the real interpretations of the various aspects relating to reservations in promotions and try to remove ambiguous or misconception which was developed by several years in a Independent India.

CONCLUSION

Accordingly, it is currently settled, that assuming a state wishes to provide reservation to individuals from the SCs and STs, it must initially gather quantifiable data on the representation of SCs and STs in a specific cadre of a service and then from an opinion on the inadequacy of representation based on that data. Besides, notwithstanding matter how troublesome it very well might be, the state should decide the impact of reservation on regulatory effectiveness. The state may possibly legitimize its activity of offering reservations in promotions if these prerequisites are met. As far as reservations concern equality should be always prevails. For the purpose of achieving that equality between various vernacular groups, states should formulate different manifests and with proper implementation strategies to achieve true equality. “Dr Babasaheb Ambedkar had envisaged reservation for … just 10 years” is erroneous. Ambedkar’s idea of nation, equality, democracy, his constitutional values and ideology his unrelenting support for women’s rights have, over the years, found resonance in the entire country. The Ambedkarite movement and constitutional values drive millions of Downtrodden and youth who want an equitable society.

“TWO EQUALS TREATING UNEQUALLY ARISE, INEQUALITY SIMILARLY TWO UNEQUAL’S TREATING EQUALLY IS ALSO ARISING INEQUALITY”

1.https://legislative.gov.in/amendment-acts
2.https://www.constitutionofindia.net/constitution_assembly_debates
3.https://main.sci.gov.in/jonew/judis/16589.pdf
4.https://www.constitutionofindia.net/
5.https://indiankanoon.org/doc/1113850/
6.https://main.sci.gov.in/jonew/judis/10894.pdf
7.http://ncsc.nic.in/

8.https://main.sci.gov.in/jonew/judis/10894.pdf
9.https://main.sci.gov.in/jonew/judis/16589.pdf
10.https://legislative.gov.in/constitution-seventy-seventh-amendment-act-1995
11.https://main.sci.gov.in/jonew/judis/30289.pdf
12.https://legislative.gov.in/constitution-eighty-first-amendment
13.https://legislative.gov.in/constitution-eighty-second-amendment-act
14.https://legislative.gov.in/constitution-eighty-fifth-amendment-act-2001
15.https://indiankanoon.org/doc/113526/
16.https://indiankanoon.org/doc/102852/
17.https://indiankanoon.org/doc/189858661/
18.https://indiankanoon.org/doc/190772988/
19https://main.sci.gov.in/supremecourt/2019/24419/
24419_2019_17_1501_21562_Judgement_19-Mar-2020.pdf
20.https://www.livelaw.in/top-stories/before-providing-reservation-in-promotions-to-a-cadre-state.

LAW SUMMARY
2022 (3)
Andhra Pradesh High Court Reports

2022(3) L.S. 1 (A.P.)

IN THE HIGH COURT OF
ANDHRA PRADESH

Present
The Hon'ble Mr. Justice
Battu Devanand

Konisa Konisi Trinadha
Rao ..Petitioner
Vs.
Subudhi Rama Rao ..Respondent

CIVIL PROCEDURE CODE, Or.39, Rule 1 and 2 r/w Sec.151 - Civil Revision Petition has been filed against the decree made in C.M.A. which was filed against the order made in I.A. in O.S. on the file of the Junior Civil Judge - Along with suit, Respondents filed I.A. praying to grant ad-interim injunction - Trial Court, allowed the I.A, granting ad-interim injunction - Aggrieved thereby, Petitioners herein filed Civil Miscellaneous Appeal which was dismissed – Hence, present Civil Revision Petition.

HELD: Appellate Court also opined that the documents filed by the Respondents are prior to the filing of the suit and on the other hand, some documents filed by the Petitioners are subsequent to the suit and some documents are not corresponding to the suit schedule property - Considering the same, Appellate Court held that the Respondents could establish their possession as on the date of filing of the suit - No irregularity or infirmity in the order passed by the appellate Court - Civil Revision Petition stands dismissed.

CRP.No.655/2022 Date: 17.08.2022

Mr.K A Narasimham, Advocate for the Petitioner.
Mr.T V Sri Devi, Advocate, for the Respondent.

O R D E R

This Civil Revision Petition has been filed against the decree and judgement, dated 09.12.2021 made in C.M.A.No.7 of 2019 on the file of the Principal District Judge, Vizianagaram (which was filed against the order made in I.A.No.440 of 2018 in O.S.No.99 of 2018 on the file of the Junior Civil Judge, Cheepurupalli, Vizianagarama District).

2. Heard Sri K.A. Narasimham, learned Counsel for the Petitioners, Smt.T.V. Sridevi, learned counsel for the Respondents and perused the material available on record.

3. The Petitioners are the defendants and the Respondents are the Plaintiffs in the suit in O.S.No.99 of 2018 on the file of the Junior Civil Judge, Cheepurupalli, Vizianagaram District.

4. The respondents herein filed a suit in O.S.No.99 of 2018 on the file of the

Junior Civil Judge, Cheepurupalli, Vizianagarama District, against the petitioners herein for permanent injunction restraining the petitioners, their men, agents and servants from in any way interfering with the peaceful possession and enjoyment of the plaint schedule property in any way and also from trespassing into the plaint schedule property. Along with the said suit, the Respondents filed I.A.No.440 of 2018 under Order 39, Rule 1 and 2 r/w section 151 of CPC praying to grant ad-interim injunction. The trial Court, after careful perusal of the material available on record, allowed the I.A.No.440 of 2018, dated 20.03.2019, granting ad-interim injunction. Aggrieved by the said order, the petitioners herein filed Civil Miscellaneous Appeal No.7 of 2019 before the Principal District Judge, Vizianagaram.

5. The learned Principal District Judge, Vizianagaram, dismissed the Civil Miscellaneous Appeal No.7 of 2019 confirming the order and decree passed in I.A.No.440 of 2018 in O.S.No.99 of 2018 by the Junior Civil Judge, Cheepurupalli, by order, dated 09.12.2021 and also observed that since the suit is of the year 2018, the learned Junior Civil Judge, Cheepurupalli is directed to give priority and dispose of the suit within four months from the date of receipt of the Judgement. Aggrieved by the said judgement, the present Civil Revision Petition has been filed.

6. Learned counsel for the petitioners contends that the lower Appellate Court erred in not considering the fact that the petitioners have purchased an extent of Ac.0-05 cents site way back in the year 1975 from third party, who in turn purchased it from the respondents in the year 1939 and now the petitioners are constructing their house in their own site. The lower appellate court also erred in not considering the records of the petitioners which include geo-tagging, mutation, sanction of loan by A.P. Housing Corporation, etc. It is also erred in not considering the fact that previously the petitioners' family had exchanged land with the respondents and thereby provided them a right of way to reach the cement road.

7. Learned counsel for the petitioners further contends that the lower appellate Court should have seen that the petitioners have proved their case and proceeding with their construction activity and in such a case a suit for an injunction simplicitor is unsustainable under law, if the grievance of the respondents is that their land was occupied by the petitioners and constructing their house thereon. Therefore, the learned counsel prayed to allow the present Civil Revision Petition.

8. The learned counsel for the respondents submits that the Respondent Nos.1 and 2 are brothers and sons of late Subuddhi Sriramulu, the 3rd Respondent is son of 1st Respondent and he is looking after the properties of 1st Respondent. The plaint schedule property is an extent of nearly Ac.0-15 cents in Sy.No.112/6 of Cheepurupalli Village which is a vacant land. The plaint schedule property and some other properties were succeeded by them from their ancestors and after death of their father, they are enjoying the same.

9. The Respondents having Ac.0-76 cents in Sy.No.112/6 in which the 2nd Respondent constructed his house and residing therein and some land was sold away to others by the Respondents Nos.

1 and 2 and they remains the plaint schedule property (i.e.) Ac.0-15 cents. The revenue authorities recognized the title and possession of the Respondents and they got issued pattadar pass books and title deeds in favour of Respondent Nos.1 and 2 separately, but, they enjoying the same jointly on ground. The pattadar pass book of the 1st Respondent was misplaced and he is having the title deed. The 1st Respondent also applied for pattadar pass book through Mee-Seva on 08.10.2018. The 2nd Respondent obtained recent pattadar pass book and title deed from the revenue authorities. The 1B Register and the cultivation Adangal clearly shows the title and enjoyment of the Respondents over the plaint schedule property.

10. The petitioner Nos.1 and 2 are husband and wife and they requested the Respondents to sell away the plaint schedule property to them, for that, the Respondents refused to do so as they are intending to construct a house in it. In order to construct a house, the respondents levelled the site, dug bore-well and raised temporary foundations and they are about to start the work by obtaining necessary permissions. While so, the petitioners being the active supporters of the ruling party came to the schedule property on 06.10.21018 and threatened the respondents proclaiming that they would not allow the respondents to enjoy the petition schedule property. As the petitioners have no manner of right, title or possession over the petition schedule property, the respondents filed the suit for permanent injunction. Therefore, the learned counsel prays to dismiss the presents Civil Revision Petition.

11. This Court carefully considered the contentions of the both parties and perused the material available on record. The 1st Appellate Court while dismissing the C.M.A.No.7 of 2019 by order, dated 09.12.2021 held that without examining the witnesses including the revenue officials, this Court cannot come to definite conclusion. The Appellate Court also opined that the documents filed by the respondents are prior to the filing of the suit and on the other hand, some documents filed by the petitioners are subsequent to the suit and some documents are not corresponding to the suit schedule property. Considering the same, the Appellate Court held that the respondents could establish their possession as on the date of filing of the suit.

12. On careful consideration of the reasons given by the appellate Court while dismissing the Civil Miscellaneous Appeal, this Court is of the opinion that there is no irregularity or infirmity in the order passed by the appellate Court.

13. The learned counsel for the petitioners relied on a decision in ***S.P. Chengalvaraya Naidu (Dead) by LR s. v. Jagannath (Dead) by LR s. And others (1994) 1 SCC 1*** wherein the Hon'ble Apex Court held as extracted herein under:

> "We do not agree with the observations of the High Court that the appellants-defendants could have easily produced the certified registered copy of Ex.B.15and non-suited the plaintiff. A litigant, who approaches the court, is bound to produce all the documents executed

by him which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side then he would be guilty of playing fraud on the court as well as on the opposite party."

14. There is no dispute with regard to the opinion expressed by the Hon'ble Apex Court in the decision relied by the petitioners. But, in the present case, as the appellate Court rightly observed that without examining the witnesses including the revenue officials in this regard, this Court cannot come to a definite conclusion, however, upon considering the documents placed by both parties. Under the circumstances, in our view, the said decision is not applicable to the facts and circumstances of the present case.

15. The facts and circumstances of the present case are squarely covered by the decision rendered by this Court in ***Jonnalagadda Rajendra Prasad Edukondalu RP v. Yogananda Lakshmi Narasimhaswami Vari Temple, Nidumolu, Movva Mandal, Avanigadda 2019 (1) AndhLD 269*** wherein it is held at para No.11 as extracted herein under:

11. "The contention of the learned Counsel for the petitioners is that the land in question is a Grama Kantam land and that there was overwhelming evidence to show the possession of the defendants. But I do not think that the petitioners can pray for a re-appreciation of the entire material by this Court in a revision under Article 227 of the Constitution. The pleadings as well as all the documents produced on both sides are analysed threadbare by the first appellate Court before coming to the conclusion that the temple deserved an order of injunction. As rightly pointed out by the first appellate Court, Google earth images are not to be taken as documents to prove the possession. An entry made in a statutory Register by the competent authority and the decision of the Division Bench of the Madras High Court, of the year 1952 actually clinched the issue, alt east prima facie. Therefore, I find no material irregularity or illegality in the order of the first appellate Court. In fact, it must be pointed out that the jurisdiction of this Court in a revision under Article 227 of the Constitution is more circumscribed than the jurisdiction of this Court in a revision under section 115 CPC. I find no justification for invoking the jurisdiction under Article 227 of the Constitution. Therefore, the revision is dismissed."

16. However, since the suit is of the year 2018, the appellate Court directed the trial Court to give priority and dispose of the suit within four months from the date of receipt of the order. In view of considering all these aspects, in our considered opinion, the present Civil Revision Petition is devoid of merits and liable to be dismissed.

17. Accordingly, this Civil Revision Petition is dismissed.

18. There shall be no order as to costs.

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

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2022(3) L.S. 5 (A.P.)

IN THE HIGH COURT OF
ANDHRA PRADESH

Present
The Hon'ble Justice
Dr. V.R.K. Krupa Sagar

P. Venkayamma ..Petitioner
Vs.
Bhimavarapu Bhimeswara
Prasad ..Respondent

(INDIAN) STAMP ACT, 1899, Sec.33 - CIVIL PROCEDURE CODE, Sec.151 - Civil Revision Petition impugning the Order passed in I.A. – Respondents/Defendants filed a suit seeking relief of cancellation of a sale deed executed by the 1st defendant in favour of the 2nd defendant - Petitioner/ Plaintiff filed an I.A. with a prayer to the trial Court to evaluate the deficit stamp to be paid, as during the course of evidence when the possessory agreement for sale was sought to be exhibited as one of the documents on behalf of the plaintiff, trial Court objected to admit it on the ground that the document was not properly stamped.

HELD: When a document is not duly stamped, but it is tendered for evidence, the first duty of the Court is to act in accordance with Sec.33 of the Indian Stamp Act, 1899, which mandates that the Court shall impound the document - Before trial Court, only prayer made by Petitioner was for the purpose of evaluation of stamp duty so that the same could be paid - What was required on part of the trial Court was to decide that particular submission - A reading of the impugned Order does not indicate any finding on that aspect of the matter - I.A. stands allowed and trial Court shall proceed further with agreement for sale dated for the purpose of collection of stamp duty and penalty - Civil Revision Petition stands allowed.

CRP.No.755/2018 Date: 18.8.2022

Mr.Ambadipudi Satyanarayana, Advocate for the petitioner.
Mr.Madhava Rao Nalluri, Advocate for the Respondent.

O R D E R

The plaintiff before the learned trial Court has come up with this civil revision petition under Article 227 of the Constitution of India impugning the order dated 12.12.2017 passed by learned I Additional Senior Civil Judge, guntur in I.A.No.662 of 2014 in O.S.No.379 of 2013. the respondents herein are the defendants before the learned trial Court.

2. O.S.No.379 of 2013 was filed seeking the relief of cancellation of a sale deed dated 02.02.2013 executed by the 1st defendant in favour of the 2nd defendant and it further seeks for a relief of permanent injunction restraining the defendants from interfering with peaceful possession and enjoyment of the plaintiff over the plaint schedule immovable property. the suit was filed by a woman and the suit has been prosecuted through the mechanism of appointing a special power of attorney holder,

who is her son-in-law. the averments in the plaint disclose that it is that son-in- law, who conveyed certain properties, which include suit schedule property to the plaintiff. the father of the son-in-law seems to have obtained a possessory agreement for sale dated 23.02.1963 and got 60 square yards of site which seems to be a part of the suit schedule property. On the death of the agreement holder, his son allegedly succeeded the property and then what was said to have been succeeded was conveyed by a registered deed in favour of the plaintiff. It is that part of the property that fell in dispute since the opposite parties allegedly transacted with this property under certain registered conveyances. It is in the context of such facts and circumstances, the litigation before the trial Court cropped up. both sides put in their pleadings and it seems that the trial Court commenced the trial and started recording evidence. It was at that stage, the plaintiff in the suit filed I.A.No.662 of 2014 under Section 151 C.p.C. stating that during the course of evidence when the possessory agreement for sale dated 23.02.1963 was sought to be exhibited as one of the documents on behalf of the plaintiff, the learned trial Court objected to admit it on the ground that the document was not properly stamped. therefore, the petitioner/plaintiff/revision petitioner by the said application made a prayer to the trial Court to evaluate the deficit stamp to be paid on the said document and that she is prepared to pay the deficit stamp duty after it is being evaluated.

3. On that application, a counter was invited and the defendants/respondents/ respondents filed a counter stating that it is a fabricated document and with unclean hands and with untenable contentions, with a view to delay the proceedings, the plaintiff was pursuing the litigation including the application. It is further stated that the said possessory agreement for sale is a compulsorily registerable document and it cannot be received in evidence and cannot be impounded and cannot be sent for collection of stamp duty and sought for dismissal of the petition.

4. Learned trial Court considered the submissions on both sides and at para No.6 of the impugned order, it recorded the point for determination which is:

> “Whether document i.e., possessory agreement of sale dt. 23.02.1963 be sent for impounding as prayed for?”

5. In answer to the question raised above, the learned trial Court recorded that the chief purpose of filing of this document is to establish the rights of the plaintiff and it is not for any collateral purpose and that document requires registration and it is unregistered document and therefore, collection of deficit stamp duty does not make any difference. It is with that reason and with an observation that the petition is filed only to drag on the matter, the learned trial Court found no merits with the petition and answered the point against the petitioner and dismissed the petition.

6. Aggrieved by that order, the present civil revision petition is filed by the plaintiff in the trial Court. It is stated that the impugned order is wrong and against law and the learned trial Court did not pass any

order on evaluation of deficit stamp duty, but decided the matter about the admissibility of the document, which is incorrect. there is no bar for receiving the deficit stamp duty on the possessory agreement for sale. the learned trial Court ought to have considered the prayer and allowed it, but erroneously it dismissed the petition and therefore, for reversed of it, the revision petitioner makes a prayer.

7. Learned counsel for the respondents submitted that the order impugned need not be disturbed and the fact remains that the document proposed to be adduced in evidence is a compulsorily registerable document and since it was not registered, learned trial Court rightly dismissed the petition of the revision petitioner. It is further submitted that after collection of stamp duty, once again the petitioner would seek admission of this document and that would cause irreparable loss to the respondents. for these reasons, learned counsel seeks for dismissal of this revision and in support of the submissions made, learned counsel for the respondents cited legal authorities.

8. Learned counsels on both sides submitted their arguments and both sides relied on the same legal authorities that are cited by learned for the respondents.

9. In the above referred circumstances, the point that arises for consideration of this Court is:

> "Whether the impugned order suffers from illegality or material irregularity requiring correction?

10. point:

> the document in question is a possessory agreement for sale dated 23.02.1963. the said document is not made available to this Court for consideration. be that as it may. It is undisputed that it was not a document that was registered. the submission of learned counsels on both sides and the material on record including the impugned order does not indicate whether this particular document is totally unstamped or it is partly stamped and thereby under stamped. It is under these circumstances, this Court cannot record any finding about the amount of stamp that is required and as to whether registration of this document is required or not? With this caveat, this Court shall proceed further.

11. Even according to the revision petitioner, the said document has to be evaluated for paying required stamp duty. As per the sworn affidavit of this revision petitioner filed before learned trial Court, when this document was tendered in evidence, the Court raised an objection about the stamp duty on the document and declined to mark the document and that necessitated moving the application for evaluation of the document for the purpose of stamp duty so that the revision petitioner could pay the deficit stamp duty as provided under law.

12. before the learned trial Court, the only prayer made by revision petitioner was for the purpose of evaluation of stamp duty so that the same could be paid by the revision petitioner. What was required

on part of the learned trial Court was to decide that particular submission. A reading of the impugned order does not indicate any finding on that aspect of the matter. Learned trial Court did not evaluate the requirement of payment of stamp duty and did not impound the document for that purpose. When a document is not duly stamped, but it is tendered for evidence, the first duty of the Court is to act in accordance with section 33 of the Indian Stamp Act, 1899, which mandates that the Court shall impound the document. 'Impound' means to keep in custody of the law (vide ***Suresh Nanda v. CbI (2008) 3 SCC 674***). failure to adjudicate on a fact that was presented before it for adjudication is failure to exercise jurisdiction and therefore, the impugned order suffers from that illegality requiring interference. the trial Court shall verify these documents and evaluate the need for payment of any stamp duty and penalty and then proceed in accordance with law after consultation with the petitioner as to whether the petitioner is inclined to pay the stamp duty and penalty at the Court or would have it done at the office of the learned Registrar.

13. the entire impugned order shows that while the prayer made before the learned trial Court was about stamp duty, the learned trial Court made an order concerning very admissibility of the document. All the reasons furnished by the learned trial judge in the impugned order were irrelevant for consideration for deciding the petition that was placed before him. Even if it is true that it is a compulsorily registerable document etc., that is a matter that the learned trial Court is to consider as and when the document is once again tendered for evidence after payment of stamp duty and penalty, if any.

14. the apprehension of the learned counsel for the respondents is that after payment of stamp duty when this document is going to be tendered before the learned trial Court, the revision petitioner may press for its admission in evidence. this apprehension is a mere apprehension without any merit. A party to a litigation is entitled to pursue the legal course that is provided by law. Mere payment of stamp duty and penalty does not by itself obviate the need for registration of a document if the subject matter document requires registration. this has been the law and reference in this regard could be made to ***golla Dharmanna v. Sakari poshetty @ Wadoor poshetty 2013 SCC Online Ap 653*** especially at para No.12.

15. Learned counsel for the respondents cited a decision in ***Yellapu Uma Maheswari and another v. buddha Jagadheeswararao (2015) 16 SCC 787***. that was a case where the document that came up for consideration was a deed of relinquishment of rights it was found to be not stamped and registered. It was in that context, the Hon'ble Apex Court was pleased to say that on payment of deficit stamp duty together with penalty a document could be admitted in evidence for collateral purpose. In that case, the proposed document was found to be compulsorily registerable document and therefore, that could not be admitted in evidence for the purpose of proving the terms and conditions of the document. Learned counsel for the respondents also cited a decision of this

Court in ***Anga bhuloka Rao v. Smt. Noorjahan begum 2011 SCC Online Ap 1129/(2011) 2 ALt 373*** and that was a case of an agreement for sale and it was found to be a document that requires stamp duty and registration and when the trial Court objected for its marking and directed for payment of stamp duty and penalty, the revision had come up before this Court. this Court found that the particular document in that case was properly analysed by the trial Court and order concerning stamp duty and penalty was right and the point is contest about its inadmissibility for want of registration was also upheld.

16. On both the propositions of law that are cited by learned counsel for the respondents, there is absolutely no controversy. the endeavour of this Court in the present matter is only to state that all that law contained in this legal authorities shall be complied with by the learned trial Court and this Court only states that going by the purport of the prayer made before the learned trial Court in the application moved by this revision petitioner what was required was not done by the trial Court and it is only that part of the order that is set aside here. the questions concerning registration and admissibility of the document shall now be considered by the trial Court.

17. for the reasons stated above, I find merit in this revision and the point is answered in favour of the revision petitioner.

18. In the result, the Civil Revision petition is allowed. As a consequence of it, order dated 12.12.2017 of learned I Additional Senior Civil Judge, guntur in I.A.No.662 of 2014 in O.S.No.379 of 2013 stands set aside. the said I.A.No.662 of 2014 stands allowed. the learned trial Court shall proceed further with the subject matter of the document, which is agreement for sale dated 23.02.1963 for the purpose of collection of stamp duty and penalty, if any, either by itself or through the office of the learned Registrar. the question of want of registration and admissibility of this document are left open to the trial Court to be decided at an appropriate stage. there shall be no order as to costs. As a sequel, miscellaneous applications pending, if any, shall stand closed.

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2022(3) L.S. 9 (A.P.)

IN THE HIGH COURT OF
ANDHRA PRADESH

Present
The Hon'ble Mr. Justice
Subba Reddy Satti

.
Addagalla Anjaneya
Varaprasad & Ors., ..Petitioners
Vs.
Central Bank of India ..Respondents

CIVIL PROCEDURE CODE,Sec.96 - LIMITATION ACT, 1963, Article 62 - Defendants 5 to 8 and 10, preferred appeal against the judgment and decree in O.S. - Plaintiff, a nationalized bank, represented by Assistant Regional Manager filed the suit against the defendants 1 to 13 for recovery of an

A.S.No.148/2010. Date: 17.08.2022.

amount of basing on mortgage.

HELD: Suit was filed in 2005 for recovery of money basing on mortgage - Article 62 of the Limitation Act prescribes period of limitation in case of equitable mortgage is 12 years - Suit filed by the plaintiff bank is within the limitation - Appellants also stood as guarantors and their liability is coextensive with that of the principal debtors - Suit, is one filed for recovery of loan amount basing on mortgage of properties shown in the plaint schedule offered as security by the guarantors i.e., defendants 5, 7 to 11, some of the Appellants herein - Appellants remained ex parte and did not contest the suit - Trial Court on consideration of both oral and documentary evidence, passed preliminary decree - Going by the oral and documentary evidence and in the absence of any contra evidence elicited from the evidence of P.W.1 regarding the execution of documents, this Court is of the view that preliminary decree passed by the trial Court is based on evidence on record and it does not call for any interference - Appeal stands dismissed with costs.

Mr.CH Dhanamjaya, Advocate for the petitioner.
Mr.CH Siva Reddy, Advocatefor the Respondent.

J U D G M E N T

Defendants 5 to 8 and 10, filed the above appeal under section 96 of the Code of Civil procedure, 1908 against the judgement and decree dated 20.04.2009 in O.S.No.111 of 2005 on the file of Senior Civil Judge, Ramachandrapuram.

2. For the sake of convenience, parties to this judgement are referred to as they were arrayed in the suit.

3. Plaintiff, a nationalized bank, represented by Assistant Regional manager filed the suit against the defendants 1 to 13 for recovery of an amount of Rs.8,18,498/- basing on mortgage.

4. Averments, in the plaint, in brief, are that 1st defendant is a partnership firm carrying on rice mill business in tapeswaram village. Defendants 2 to 7 are partners of 1st defendant firm along with 3 others, by name, Nune Sujatha, W/o Veerraju Chowdary, Chikkala Vemanna, S/o Suryanarayana murthy and Rimmalapudi Veera Venkata Satyanarayana, S/o Venkataraju. Defendants 8 to 13 stood as guarantors to the 1st defendant firm.

(b)2nd defendant being managing partner of 1st defendant firm approached the plaintiff on 17.04.1999 for grant of cash credit limit of Rs.10,00,000/- for carrying on their rice milling business. plaintiff bank sanctioned cash credit limit of Rs.10,00,000/- and 1st defendant utilized the same from time to time. Cash credit loan account No.30019 was opened on 22.04.1999 in the name of 1st defendant firm and its partners in the plaintiff's books of account. managing partner of 1st defendant firm and all its partners executed a demand promissory note

for Rs.10,00,000/- on 22.04.1999 agreeing to repay the same with interest at 15.81% p.a. with quarterly. they also executed an interest variation letter dated 22.04.1999 in favour of plaintiff bank agreeing to pay interest at such higher rate as may be notified by the bank from time to time as per bankers usual practice. they also executed a letter of continuity in favour of plaintiff bank. Hypothecation dated 22.04.1999 was executed hypothecating goods and trade as security. Defendants 8 to 13 agreed to stand as guarantors to 1st defendant firm and executed a letter of guarantee for advances and credits generally dated 22.04.1999.

(c) Defendants 4, 12 and 13 executed equitable mortgage over their properties on 22.04.1999. Defendants 5, 7 to 11 executed equitable mortgage over an extent of Ac.2-43 cents of land, which is described in plaint schedule by deposit of title deeds i.e. registered sale deed dated 28.08.1974 and registered sale deed dated 12.05.1977 executed in favour of Addagalla Venkata Rao, S/o Seshayya, who is father of defendants 5, 7, 9 to 11 and husband of 8th defendant.

(d) At request of managing partner of 1st defendant firm, the plaintiff bank enhanced the cash credit limit to Rs.15,00,000/- on 08.04.2000 and accordingly, all the defendants once again executed relevant documents in favour of plaintiff bank for the enhanced limit of Rs.15,00,000/- on 08.04.2000. Interest variation letter, letter of continuity, agreement of hypothecation, letter of guarantee and revival letters were executed. the 2nd defendant and one Reddy Suryakumari, W/o bharata Raju, who stood as guarantors, created equitable mortgages separately for the enhanced limit of Rs.15,00,000/-, in addition to equitable mortgages created by defendants 4, 12, 13 and 5, 7 to 11.

(e) Later, cash credit limit was reduced at the request of 2nd defendant being manager partner of 1st defendant firm to Rs.10,00,000/- from Rs.15,00,000/- with interest at 15.15% p.a. with quarterly rests on 30.03.2002.

(f) Nune Sujatha, Chikkala Vemanna and Rimmalapudi Veera Venkata Satyanarayana retired from the partnership firm and hence, the remaining partners entered a partnership firm and got executed a partnership deed dated 27.01.2002. Letter of partnership to that effect dated 30.03.2002 was also given to the plaintiff bank. At that time, Reddy Suryakumari, W/o bharata Raju who created equitable mortgage has been given up by releasing her security at her request by all the partners and guarantors. All the defendants again executed relevant documents in favour of plaintiff bank for reduced

limit of Rs.10,00,000/-.

(g) 1st defendant executed a debt confirmation letter in favour of plaintiff bank confirming the amount due by it as on 23.03.2005 for Rs.3,05,647/- plus interest from 01.08.2002. A sum of Rs.8,18,498/- is due as on 19.04.2005 and despite repeated demands, defendants failed to discharge the amount. Hence, plaintiff filed the suit for recovery of Rs.8,18,498/- with interest at 15.15% p.a. with quarterly rests and for sale of plaint schedule property by passing preliminary and final decree

5. 2nd Defendant, managing partner of 1st defendant firm filed written statement and the same was adopted by defendants 1, 3, 4, 12 and 13. 2nd defendant contended that the bank has created forged and fabricated documents; that the claim is barred by limitation; that 1st defendant firm was dissolved long back and the same is not in existence; that the plaintiff bank failed to return some of the documents and eventually, prayed to dismiss the suit.

6. pending the suit, the name of 1st defendant was amended from Sri Hanuman traders to Sri Sri Hanuman traders.

7. basing on the pleadings, the trial Court framed the following issues:

(1) Whether the suit is barred by time?

(2) Whether the plaintiff is entitled for the suit amount?

(3) to what relief?

8. During trial, p.W.1 is examined on behalf of plaintiff and Exs.A-1 to A-27 were marked. 2nd Defendant examined himself as D.W.1 and no documents were marked on behalf of defendants.

9. the trial Court on consideration of both oral and documentary evidence, passed preliminary decree on 20.04.2009. Aggrieved by the same, defendants 5 to 8 and 10 filed the above appeal. Appellants herein did not contest the suit and the appellants, who contested the suit, did not file the appeal.

10. Heard ms.Anusha, learned counsel, representing Sri Ch.Dhanamjaya, learned counsel for appellants and Sri Ch.Siva Reddy, learned Standing Counsel for 1st respondent.

11. Learned counsel for the appellants would submit that even before the borrowed amount is discharged, properties of the other guarantors were returned and since some of the guarantors were discharged, that itself shows the collusion between the bank and those persons. She would further submit that the appellants neither stood as guarantors to the loan availed by the 1st defendant firm and when the appellants nor created any equitable mortgage over their landed property by depositing of title deed under Exs.A-7 and A-8.

12. Learned counsel for 1st respondent-bank supported the preliminary passed by the trial Court.

13. basing on the pleadings and evidence, the following points arise for consideration in this appeal:

(1) Whether the appellants stood as guarantors to the loan borrowed by 1st defendant firm and created equitable mortgage over the landed properties by deposit of title deeds under Exs.A-7 and A-8?

(2) Whether the suit claim is barred by limitation?

(3) to what relief?

14. Since the points 1 and 2 are inter-connected, this Court deems it appropriate to deal with the same together.

15. point No.2:

going by the pleadings and evidence, the suit was filed on 19.04.2005 for recovery of money basing on mortgage. Article 62 of the Limitation Act, 1963 prescribes period of limitation in case of equitable mortgage is 12 years. Defendants did not deny about the borrowal of loan and execution of mortgage deeds on three occasions i.e. 22.04.1999, 08.04.2000 and 30.03.2002. Suit was filed in the year 2005. Hence, the contention of defendants that claim is barred by limitation falls to ground. In view of the same, this Court is of the considered opinion that the suit filed by the plaintiff bank is within the limitation.

16. point No.1:

the branch manager of plaintiff bank was examined as p.W.1 and got marked promissory note, interest variation letter, letter of continuity, letter of hypothecation, agreement of guarantee executed by defendants on 22.04.1999 and deposit of title deeds creating equitable mortgage as Exs.A-1 to A-7. promissory note, interest variation letter, letter of continuity, agreement of

hypothecation executed by 1st defendant firm dated 08.04.2000 are marked as Exs.A-9 to A-12. Agreement of guarantee dated 08.04.2000 executed by defendants 8 to 13 is marked as Ex.A-13. In respect of second loan transaction, debt revival letter dated 30.09.2001 executed by 1st defendant is marked as Ex.A-14. promissory note, interest variation letter, letter of continuity, agreement of hypothecation dated 30.03.2002 executed by 1st defendant firm and its partners were marked as Exs.A-16 to A-19. Agreement of guarantee executed by defendants 2, 8 and 13 and another agreement of guarantee executed by defendants 2, 5, 7, 11 and 13 dated 30.03.2002 were marked as Exs.A-20 and A-21. these documents relate to third transaction. Debt revival letter dated 01.08.2002 executed by 1st defendant firm through managing partner 2nd defendant and another revival letter dated 23.03.2005 were marked as Exs.A-22 and A-23. Exs.A-24 and A-25 are the letters dated 05.04.2002 sent by defendants 7 to 11 and by 5th defendant, confirming the deposit of title deeds. Copy of loan account is marked as Ex.A-26.

17. Appellants are defendants 5 to 8 and 10. In the light of defences by the defendants that the most of the documents are forged and fabricated, neither a suggestion put to p.W.1 regarding execution nor their signatures on those documents. It is not even their case that they did not understand the contents of documents. In

fact, it is not even the case of defendants that they are illiterates or some of them are paradashin ladies. In the cross examination, D.W.1 admitted that he and other defendants executed Exs.A-1, A-6, A-13 and A-14. However, it was suggested that Ex.A-14 was blank when he put his signature. In fact D.W.1 also admitted with regard to execution of Exs.A-5 to A-21 and also Exs.A-22 and A-23.

18. As per Exs.A-20 and A-21 agreement of guarantee, clause Nos.7 and 8 show guarantee shall not be revoked and shall remain in force till all the amounts due and payable to the bank are paid up in full inclusive of interest, charge etc. It also manifests that the guarantee shall continue to remain in force and the guarantor continued to be liable thereunder for all the amounts due and payable by the principals even though the principals have not renewed the documents and even though the amounts due from the principals get time barred.

19. going by the averments in the written statement filed by 2nd defendant, appellants also stood as guarantors and their liability is coextensive with that of the principal debtors. Suit, is one filed for recovery of loan amount basing on mortgage of properties shown in the plaint schedule offered as security by the guarantors i.e. defendants 5, 7 to 11, some of the appellants herein. As noted supra, appellants remained exparte and did not contest the suit.

20. trial Court on consideration of both oral and documentary evidence, passed preliminary decree vide judgement dated 20.04.2009. As narrated supra nothing contra was elicited in the cross examination of p.W.1. In fact, D.W.1 admitted execution of documents including letter of guarantee and creating mortgage. However, he pleaded blank paper theory. Having pleaded no evidence was let in by D.W.1. going by the oral and documentary evidence and in the absence of any contra evidence elicited from the evidence of p.W.1 regarding the execution of documents, this Court is of the view that preliminary decree passed by the trial Court is based on evidence on record and it does not call for any interference.

21. Appeal was filed with a delay of 71 days and the same as condoned by this Court on 04.03.2010. Later, on 27.09.2010 this Court granted stay subject to depositing half of the decretal amount together with costs. there are no merits in the appeal and the appeal is liable to be dismissed.

22. Accordingly, the appeal suit is dismissed with costs.

As a sequel, all the pending miscellaneous applications shall stand closed.

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2022(3) L.S. 15 (A.P.)

IN THE HIGH COURT OF
ANDHRA PRADESH

Present
The Hon'ble Mr. Justice
Battu Devanand

Surabattula Venkata
Ramarao Ramliabu ..Petitioner
Vs.
Surabattula Sanjeeva Rao
Died ..Respondent

CIVIL PROCEDURE CODE, 1908 Section 151 - Civil Revision Petition is filed against the Docket Order in O.S. - Petitioner filed a suit for partition, when the matter is at the stage of the cross examination of PW.1, he filed Memo stating that the matter was settled out of the Court before the elders of both parties on certain terms and sought permission of the trial Court to not-press the suit - Trial Court, dismissed the suit as not-pressed - Thereafter, Respondents did not execute the Statement of Understanding entered into between both the parties - Petitioner filed an application to restore the suit on its file, but the trial Court returned the said application - Challenging the same, the present Revision Petition is filed.

HELD: Trial Court committed error in returning the application filed by the Petitioner to recall the Order and to restore the suit on its file - Civil Revision Petition stands allowed - Trial Court is directed to entertain the application filed by the Petitioner to recall the Order and to restore the suit, in the light of the law laid down by the Hon'ble Apex Court in *Manohar Law Chopra v. Rai Bahadur Rao Raja Seth Hiralal AIR 1962 SC 527* wherein, it was held that "It is well settled that the provisions of the Code are not exhaustive, for the simple reason that the Legislature is incapable of contemplating all the possible circumstances which may arise in future litigation and consequently for providing the procedure for them."

CRP.No.1318/2022. Date: 17.8.2022.

Mr.GVS Kishore Kumar, Advocate for the Petitioner.

O R D E R

This Civil Revision Petition is filed against the Docket Order dated 28.02.2022 in O.S.No.42 of 2014 on the file of the I Additional District Judge, Vizianagaram District.

2. Heard learned Counsel for the Petitioner and perused the material available on record.

3. The Petitioner is the Plaintiff and the respondents are the Defendants in O.S.No.42 of 2014 on the file of the I Additional District Judge, Vizianagaram.

4. The case of the petitioner is that he filed a suit in O.S.No.42 of 2014 before I Additional District Judge, Vizianagaram, for partition of plaint schedule property. When the matter is at the stage of the cross

examination of PW.1, he filed Memo dated 06.08.2018 stating that the matter was settled out of the Court before the elders of both parties on certain terms and conditions and sought permission of the trial Court to not-press the suit. Accordingly, the trial Court, by Order dated 06.08.2018, dismissed the said suit as not-pressed. Thereafter, the respondents did not execute the Statement of Understanding entered into between both the parties, the petitioner filed an application to restore the suit on its file, but the trial Court by Order dated 28.02.2022 returned the said application. Challenging the same, the present Revision Petition is filed.

5. Learned counsel for the petitioner/ plaintiff submits that believing the assurance of the defendants and the statement of understanding executed between the petitioner and the 1st respondent, he filed Memo dated 06.08.2018 seeking withdrawal of O.S.No.42 of 2014, without seeking any liberty. On 22.12.2021, the 1st respondent died. The legal heirs of the 1st respondent are trying to alienate the schedule property in O.S.No.42 of 2014 to third parties. The trial Court ought

to have appreciated that the provisions of the Civil Procedure Code are not exhaustive and as such, the inherent power under section 151 of CPC is incorporated to enable the Court's of equity to exercise the inherent powers for the ends of justice. The trial Court ought to have appreciated that the suit filed by the petitioner is for partition of the plaint schedule property and the vested right of the petitioner shall be affected by non considering the case of the petitioner. The trial Court ought not to have returned the said application by way of an unreasoned order dated 28.02.2022. Therefore, the Order of the trial Court is contrary to law, weight of evidence and probabilities of the case, and as such, he prays to allow the present Civil Revision Petition.

6. Learned counsel for the petitioner placed reliance on the judgment reported in ***Jet Ply Wood (P) Limited and another v. Madhukar Nowlakha and others (2006) 3 SCC 699.***

7. This Court anxiously considered the submissions of the learned counsel for the petitioner and perused the judgment relied on by him.

8. In the Judgment stated supra, the relevant paragraphs are extracted hereinunder:

> "As indicated hereinbefore, the only point which falls for our consideration in these appeals is whether the Trial Court was entitled in law to recall the order by which it had allowed the plaintiff to withdraw his suit.
>
> From the order of the Learned Civil Judge (Senior Division) 9th Court at Alipore, it is clear that he had no intention of granting any leave for filing of a fresh suit on the same cause of action while allowing the plaintiff to withdraw his suit. That does not, however, mean that by passing such an order the learned court divested itself of its inherent power to recall its said order, which fact is also evident from the order

itself which indicates that the Court did not find any scope to exercise its inherent powers under section 151 of the Code of Civil Procedure for recalling the order passed by it earlier. In the circumstances set out in the order of 24th September, 2004, the learned trial court felt that no case had been made out to recall the order which had been made at the instance of the plaintiff himself. It was, therefore, not a question of lack of jurisdiction but the conscious decision of the Court not to exercise such jurisdiction in favour of the plaintiff.

The aforesaid position was reiterated by the learned Single Judge of the High Court in his order dated 4th February, 2005, though the language used by him is not entirely convincing. However, the position was clarified by the learned Judge in his subsequent order dated 14th March, 2005, in which reference has been made to a bench decision of the Calcutta High Court in the case of Rameswar Sarkar (supra) which, in our view, correctly explains the law with regard to the inherent powers of the Court to do justice between the parties. There is no doubt in our minds that in the absence of a specific provision in the Code of Civil Procedure providing for the filing of an application for recalling of an order permitting withdrawal of a suit, the provisions of section 151 of the Civil Procedure Code can be resorted to in the interest of justice. The principle is well established that when the Code of Civil Procedure is silent regarding a procedural aspect, the inherent power of the court can come to its aid to act ex debito justitiae for doing real and substantial justice between the parties. This Court had occasion to observe in the case of ***Manohar Lal Chopra v. Rai Bahadur Rao Raja Seth Hiralal, AIR 1962 SC 527***, as follows:

"It is well settled that the provisions of the Code are not exhaustive, for the simple reason that the Legislature is incapable of contemplating all the possible circumstances which may arise in future litigation and consequently for providing the procedure for them."

9. In the present case, originally, the petitioner sought permission of the trial Court to not-press the suit in O.S.No.42 of 2014 pending on the file of the I Addl. District Judge, Vizianagaram, as the matter was settled out of the Court before the elders of both parties on certain terms and conditions. Accordingly, the trial Court by Order dated 06.08.2018, dismissed the said suit as not- pressed. Thereafter, the respondents did not comply the Statement of Understanding entered into between both the parties. Under those circumstances, the petitioner filed an application under section 151 of CPC before the trial Court to restore the suit on its file. The trial Court returned the said application by return endorsement dated 28.02.2022.

10. In the light of the law laid down

by the Hon'ble Apex Court in Madhukar's case (referred supra) and ***Manohar Law Chopra v. Rai Bahadur Rao Raja Seth Hiralal AIR 1962 SC 527***, this Court holds that the trial Court committed error in returning the application filed by the petitioner to recall the Order dated 06.08.2018 and to restore the suit on its file.

11. Accordingly, this Civil Revision Petition is allowed. The trial Court is directed to entertain the application filed by the petitioner to recall the Order dated 06.08.2018 and to restore the suit in O.S.No.42 of 2014 on its file, in the light of the law laid down by the Hon'ble Apex Court in the above referred Judgments.

12. There shall be no order as to costs.

As a sequel, miscellaneous petitions, if any, pending in this case shall stand closed.

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2022(3) L.S. 18 (A.P.)

IN THE HIGH COURT OF ANDHRA PRADESH

Present
The Hon'ble Ms. Justice
Tarlada Rajasekhar Rao

Seva Sudarsana Rao ..Petitioner
Vs.
Govt. of A.P., ..Respondent

PENSIONARY AND TERMINAL BENEFITS - Writ Petition in the nature of Writ of Mandamus declaring the action of the Respondent nos.1 to 6 in not releasing full pensionary benefits and terminal benefits payable to Petitioner without any just cause, on account of retirement on 31.11.2011 on attaining age of superannuation.

HELD - There is no pecuniary loss to the State Government and no disciplinary/criminal proceedings are pending against the Petitioner - Alleged crime which was a social crime ended in acquittal - Criminal case pertains to family matter and it cannot be construed as an offence of serious in nature - As rightly contested by the Petitioner, pension is not a gratituous payment depending upon the sweet will or grace of the employer not claimable as a right - Therefore, withholding the pension, without any sufficient reason, amounts to violation of fundamental right guaranteed under Article 21 of the Constitution of India viz., right to life and personal liberty - Respondents are directed to release the pensionary and terminal benefits of the Petitioner within a period of three (3) months from the date of receipt of a copy of the order - Failing which, Petitioner is entitled to interest on the total sum @ 18% per annum.

Mr.Gottumukkala Aristotle, Advocate for the Petitioner.
GP Services III, for the Respondent.

O R D E R

The present Writ Petition is filed under Article 226 of the Constitution of India

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W.P.No.2826/2021 Date: 17.8.2022

for the following relief:-

> "... to pass Order or direction or Writ more particularly one in the nature of Writ of Mandamus declaring the action of the respondent nos.1 to 6 in not releasing my full pensionary benefits and terminal benefits payable to me without any just cause, on account of my retirement on 31.11.2011 on attaining my age of superannuation is arbitrary, illegal, capricious, violative of Article 14, 21, 22 and mandate of A.P. Revised Pension Rules, 1980 and also violative of the judgments of the Hon'ble Apex Court in ***"Dr. Uma Agarwal v. State of U.P. & another*** on 22nd March, 1999", ***"State of jharkhand v. jitendra Kumar Srivastsava*** , 2013" and ***"D.S. Nakara v. Union of India*** , 1982" and thereby direct the respondent nos.1 to 6 to release my Full Pensionary benefits of Rs.30,000/- (Rupees thirty thousand only) per month and terminal benefits of Rs.20,00,000/- (Rupees twenty lakhs only) with interest @ 24% per annum from the date of retirement i.e., 31.11.2011, till the date of payment, in the interest of justice".

2. Heard both sides.

3. The grievance of the petitioner is that he worked as LFL Headmaster of M.P. Elementary School in Kanakapuram, jeelugumilli Mandal, for a period of 221/2 years with unblemished record. He retired from service on 31.12.2011. As per procedure the pensionary benefits of the petitioner have to be released by making necessary correspondence with respondent nos.1 to 4 immediately after his retirement. but the District Educational Officer-5th respondent and the Mandal Educational Officer- 6th respondent failed to do so, inspite of several representations. As such the petitioner was constrained to file the present Writ Petition.

4. Learned counsel for the petitioner stated that the pensionary benefits of the petitioner were stalled due to the complaint given by one person by name Smt Varaga jayamma, who claimed to be the wife of the petitioner and the complaint was numbered as C.C.No.226 of 2008 on the file of learned judicial First Class Magistrate, Sathupalli, Telangana for the offence under Section 498-A Indian Penal Code (for short, "I.P.C."). It is the further case of the petitioner that, he filed O.A.No.2615 of 2008 on the file of the Andhra Pradesh Administrative Tribunal, at Hyderabad against respondent nos.5 and 6 herein to treat the whole period of suspension as duty period. The same was allowed and the Tribunal has directed the respondents therein to treat the suspension period from 25.03.2008 till the date of reinstatement as on duty with consequential benefits, as per rules. It is also the case of the petitioner that he has filed O.A.No.4057 of 2008 on the file of the Andhra Pradesh Administrative Tribunal, at Hyderabad against the respondent nos.5 and 6 herein for awarding punishment i.e., postponement of one increment without cumulative effect and order for release of arrears of salary for the period of suspension. The Tribunal vide Order dated 09.08.2010 in O.A.No.4057 of 2008 has directed the respondents to pass

appropriate orders regarding the regularization of the suspension period from 24.08.2006 to 26.04.2007 and extend the consequential benefits within a period of four (4) weeks therefrom.

5. Learned counsel for the petitioner further submitted that on the conviction and judgment against the petitioner in C.C.No.226 of 2008, he preferred the Criminal Appeal No.39 of 2018 before the learned IV Additional Sessions judge, Sathupalli, Telangana and the petitioner was acquitted. Despite the several representations made, the respondents paid a deaf ear and failed to pay the pensionary and terminal benefits of the petitioner and sought a direction to the respondents to release the pensionary benefits and terminal benefits with interest @ 24% from the date of retirement till the date of payment. He further relied on the judgment of the Hon'ble Apex Court in ***"D.S. Nakara v. Union of India (1983) 1 SCC 305"***. Therefore, the petitioner prayed to direct the respondents to release the pensionary benefits to the tune of Rs.30,000/- per month and terminal benefits of Rs.20,00,000/- with interest @ 24% per annum.

6. Learned counsel for the petitioner further contended that the demand for pension is not a gratituous payment depending upon the sweet will or grace of the employer, claimable as a right, therefore, right to pension can be enforced through Court. It is a right which is in the nature of property which accrues to an employee. He further stated that there are no disciplinary or judicial proceedings pending against him under Rule 9 of Andhra Pradesh Revised Pension Rules, 1980 (for short, "Pension Rules"). Hence, withholding pension is arbitrary and illegal and therefore, he prayed to award interest @ 24% per annum by directing the respondents to release the pensionary and terminal benefits.

7. Per contra, Sri bheema Rao, learned Government Pleader for Service-III stated that against the acquittal of the petitioner in Criminal Appeal No.39/2018, the alleged wife of the petitioner preferred a Criminal Appeal No.383 of 2019 before the High Court of Telangana, at Hyderabad. She addressed a letter/representation praying not to release the retiral benefits. He further contended that (a) if the pensioner is found in a departmental or judicial proceeding to have been guilty of grave misconduct or (b) where a pensioner is found in a departmental or judicial proceeding to have caused pecuniary loss to the Central or State Government by his misconduct or negligence during his service (including the service rendered on re-employment after retirement), (c) the State Government is entitled to withhold or withdraw pension or any part of it whether permanently or for a specified period. He further relied on the Full bench judgment of the Allahabad High Court in ***"Shivagopal v. State of Uttar Pradesh and Others AIR 2019 Allahabad 168"*** and further relied on ***"jarnail Singh v. The Secretary, Ministry of Home Affairs and others AIR 1994 SC 1484"***, ***"Mahanadi Coalfields Limited v. Rabindranath Choubey (2020) 18 SCC 71***".

8. In ***"Mahanadi Coalfields Limited***

v. Rabindranath Choubey (2020) 18 SCC 71", the delinquent therein has committed serious misconduct of dishonestly causing coal stock shortages amounting to Rs.31.65 crores, thereby causing substantial loss to the employer, for which the Hon'ble Supreme Court held that the delinquent is not entitled to gratuity even after superannuation/ retirement during pendency of disciplinary proceedings observing that superannuation cannot come to his rescue and would amount to condonation of guilt.

9. In the present case, there is no pecuniary loss to the State Government and no disciplinary/criminal proceedings are pending against the petitioner herein. The alleged crime which was a social crime ended in acquittal. Hence, the above stated citations are not applicable to the present facts and circumstances of the case. Moreover, the criminal case pertains to family matter and it cannot be construed as an offence of serious in nature. As rightly contested by the petitioner, pension is not a gratituous payment depending upon the sweet will or grace of the employer not claimable as a right. Therefore, withholding the pension, without any sufficient reason, amounts to violation of fundamental right guaranteed under Article 21 of the Constitution of India viz., right to life and personal liberty. Moreover, as per the counter affidavit there is no pecuniary loss caused to the State.

10. This Court relied on the judgment of this Court ***dated 28.01.2010 in "Chief Commissioner of Land Administration v. R.S. Rama Krishna Rao"***. The issue that arose for consideration in the said case is that, whether the applicant is entitled for payment of retirement/pensionary benefits after acquittal from the criminal cases inspite of pending criminal appeals. It was held that, directing the respondents therein to pay full pension, gratuity and other retiral benefits to the applicants therein holding that pendency of the criminal appeal against the order of acquittal is of no consequence in view of the Rules 9 and 52 of Pension Rules.

11. In the present case, after the judgment dated 31.12.2019 in Criminal Appeal No.39/2018 passed by the first appellate Court, acquitting the petitioner, from the charge, there is no power on the Government to withhold the pension or retirement benefits. Therefore, the benefits are liable to be paid immediately after the Order of acquittal. If the appeal or revision proceedings are in continuation of the criminal proceedings, there will be no end for litigation and the employees who have been acquitted honourably shall not get retirement benefits till the conclusion of all appeals, revisions, special leave petitions etc. Appeal against the acquittal, not being continuation of original criminal proceedings. Hence, Rules 9 and 52 of Pension Rules will not be available to the Government for withholding the retirement benefits.

12. Hence, in view of the afore stated reasons, as there are no criminal/judicial proceedings or disciplinary proceedings pending against the petitioner, I am persuaded to dispose of the Writ Petition by directing the respondents to release the pensionary and terminal benefits of the petitioner within a period of three (3) months

from the date of receipt of a copy of the order. Failing which, the petitioner is entitled to interest on the total sum @ 18% per annum.

13. With the above direction, the Writ Petition is disposed of. No costs. Miscellaneous Petitions pending, if any, shall stand closed.

2022(3) L.S. 22 (A.P.)

IN THE HIGH COURT OF ANDHRA PRADESH

Present
The Hon'ble Mr. Justice
Ninala Jayasurya

Seva Swarna Kumari
@ Kumaramma & Ors., ..Petitioners
Vs.
The State of A.P. ..Respondent

CRIMINAL PROCEDURE CODE, Sec.311 - TO RECALL SOME OF THE WITNESSES.

Criminal Petition seeking to quash the Order passed in Criminal Miscellaneous Petition - Petitioners are accused for the offences under Sections 147, 148 r/w 149 and 324 of Indian Penal Code - Petitioners Criminal Miscellaneous Petition seeking to recall some of the witnesses for cross examination was dismissed - Hence, the present quash petition.

Crl.P.No.4390/2022 Date: 18.08.2022

HELD: Court is required to exercise its discretion judiciously and not capriciously or arbitrarily and the said power must be invoked to meet the ends of justice - Trial Court instead of allowing the Petitioners to cross examine P.W.13, came to a conclusion that the evidence of P.W.13 is having very limited scope - Trial Court ought to have allowed the petition to recall and to enable the Petitioners/accused to adduce evidence and meet the requirements of a fair trial - As the Petitioners were denied the opportunity of cross examination, the order of the Trial Court cannot be sustained - Criminal Petition stands allowed with a direction to the Trial Court to fix a specific date for appearance of P.W.13(L.W.14)- and afford an opportunity to the Petitioners/Accused to cross examine the said witness.

Mr.V. Mallik, Advocate for the Petitioner.
The Assistant Public Prosecutor, for the Respondent.

O R D E R

The present Criminal Petition is filed seeking to quash the Order dated 11.04.2022 passed in Criminal miscellaneous Petition No.182 of 2022 in C.C.No.1 of 2018 on the file of the Court of Special Sessions Judge for Trial of cases under SC & ST(POA) Act-cum-XI Addl.District Judge, Visakhapatnam.

2. The petitioners herein are accused in the above referred Calendar Case, which was registered for the offences under

Sections 147, 148 r/w 149 of Indian Penal Code (for short 'IPC') and 324 of IPC. They filed the above mentioned miscellaneous Petition seeking to recall some of the witnesses i.e., L.W.12- Chief medical Officer, K.G.Hospital, Visakhapatnam, L.W.14- Investigation Officer for cross examination and L.W.1(P.W.1) for further cross examination. By the impugned Order, the said application was dismissed. Hence, the present quash petition.

3. Learned counsel for the petitioners while submitting that though the petition was filed to recall L.Ws.12 and 14, as also L.W.1(P.W.1), he is confining arguments to the extent of L.W.14 who was examined as P.W.13. He submits that there is a case and counter case, wherein the

petitioners/accused are the victims in Crime No.297 of 2009 and C.C.No.693 of 2009 arising out of the said crime that L.W.14 in the present case i.e., P.W.13 was the main Investigating Officer in the said case, and therefore, his cross examination is essential. He submits that the learned Trial Court, without appreciating the matter in a proper perspective, went wrong in dismissing the petition by making certain observations and the petitioners/accused are denied a fair opportunity to establish their case.

4. Relying on the decisions of the Hon'ble Supreme Court in ***P.Sanjeeva Rao v. State of Andhra Pradesh (2012) 7 SCC 56***, ***State represented by the Deputy Superintendent of Police v. Tr. N.Seenivasagan 2021 SCC Online SC 212*** and a decision of a learned Single Judge of this Court in Criminal Petition No.6091 of 2020 dated 30.12.2020, the learned counsel submits that the order under challenge is liable to be set aside.

5. The learned Assistant Public Prosecutor appearing for the respondent-State, on the other hand, submits that the Order passed by the learned Trial Court contains cogent reasons, in accordance with Law and the same warrants no interference by this Court. He accordingly prays to dismiss the Criminal Petition.

6. This Court has considered the submissions made by the learned counsel for both sides and perused the material on record.

7. In P.Sanjeeva Rao's case referred to supra, the Hon'ble Supreme Court was dealing with an appeal against the order of High Court in a Criminal Revision Petition, confirming the order passed by the Trial Judge. In the said case, applications were filed under Sections 242 and 311 Cr.P.C., to recall prosecution witnesses for cross examination. The prosecution opposed the said applications, inter alia, contending that recall of P.Ws.1 and 2 for cross examination more than 3-1/2 years, after they had been examined in relation to an incident that had taken place seven years back was bound to cause prejudice to the prosecution. The petitions were dismissed. While setting the said order as confirmed by the High Court aside, the Hon'ble Supreme Court at para No.12, referred to the observations made in ***Hanuman Ram v. The State of Rajasthan & Others, (2008) 15 SCC 652***, the relevant portion of which, may be

extracted for ready reference:

> "12..........
>
> The object underlying Section 311 of the Code is that there may not be failure of justice on account of mistake of either party in bringing the valuable evidence on record or leaving ambiguity in the statements of the witnesses examined from either side. The determinative factor is whether it is essential to the just decision of the case. The section is not limited only for the benefit of the accused, and it will not be an improper exercise of the powers of the Court to summon a witness under the Section merely because the evidence supports the case of the prosecution and not that of the accused. The section is a general section which applies to all proceedings, enquires and trials under the Code and empowers the magistrate to issue summons to any witness at any stage of such proceedings, trial or enquiry. In Section 311 the significant expression that occurs is "at any stage of enquiry or trial or other proceeding under this Code". It is, however, to be borne in mind that whereas the section confers a very wide power on the Court on summoning witnesses, the discretion conferred is to be exercised judiciously, as the wider the power the greater is the necessity for application of judicial mind."

8. In Tr.N.Seenivasagan's case referred to supra, the Hon'ble Supreme Court was dealing with a matter wherein the miscellaneous petition filed by the prosecution under Section 311 of Cr.P.C., for recalling some witnesses dismissed by the Trial Court was confirmed by the High Court. The Hon'ble Supreme Court at para No.15, inter alia, held as follows:

> "15. The scope and object of the provision is to enable the court to determine the truth and to render a just decision after discovering all relevant facts and obtaining proper proof of such facts, to arrive at a just decision of the case. Power must be exercised judiciously and not capriciously or arbitrarily, as any improper or capricious exercise of such power may lead to undesirable results. An application under Section 311 Cr.P.C., must not be allowed only to fill up a lacuna in the case of the prosecution, or of the defence, or to the disadvantage of the accused, or to cause serious prejudice to the defence of the accused, or to give an unfair advantage to the opposite party "

9. Thus, it is clear from the expression of the Hon'ble Supreme Court that while dealing with an application under Section 311 Cr.P.C., the Court is required to exercise its discretion judiciously and not capriciously or arbitrarily and the said power must be invoked to meet the ends of justice. In the present case, the learned Trial Court instead of allowing the petitioners to cross examine P.W.13, came to a conclusion that the

evidence of P.W.13 is having very limited scope. Such a view, with a pre-conceived notion amounts to arbitrary exercise of power and denial of fair opportunity to the petitioners which is contemplated under Law. Therefore, the Order under challenge is liable to be set aside on that ground.

10. Further, as seen from the impugned Order, the learned Trial Judge was also not inclined to allow the petition, inter alia, on the ground that the counsel for the petitioners/accused did not turn up after completion of the chief examination of P.W.13 for cross examination, that the witness was working as a Deputy Superintendent of Police, District Training Centre, West Godavari District, came from far away distance of 300 Kms., and therefore, he cannot be recalled.

11. The said reasoning of the learned magistrate is not sustainable. In similar circumstances, in Crl.Petition No.6091 of 2020 on which reliance is placed, a learned Judge of this Court, set aside the order passed by the Trial Court in rejecting an application filed under Section 311 Cr.P.C., to recall the witnesses therein. In the said case, as the Senior Counsel was held up before the other Court and could not attend for cross examination of the prosecution witnesses, the evidence was closed. Seeking to recall the witnesses, a petition was filed and the same was dismissed. The learned Judge quashed the said order while holding, inter alia, as follows:

> “Cross examination of a witness in a criminal case is an important part of trial and it is only means to elicit truth from the witness to prove the innocence of the accused. If, such right is denied, the petitioners/ accused will be put to serious loss and it amounts to denial of fair trial. If, it is purely on account of negligence of the accused, certainly such denial is justifiable. The witness was absent on several occasions as stated above and on account of absence of the witness P.W.17, cross examination could not be completed. merely because he is an official witness, the Rules of the Court cannot be relaxed and he is on par with any other witness. Therefore, denial of an opportunity to cross-examine the witness would cause serious prejudice to the rights of the petitioners/accused.
>
> According to Section 311 Cr.P.C., any Court may, at any stage of any enquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to be essential to the just decision of the case.
>
> Section 311 Cr.P.C contains two limbs. The first limb is discretion of the Court and the second limb does not confer any discretion and it is

obligatory for the Court to summon, recall and re- examine a witness, if the Court finds that the evidence of the proposed witness is necessary to decide the real controversy between the parties, effectively. But, here, the Trial Court denied the opportunity to cross-examine the witness and it is against the principles of fair trial, since, fair trial is a fundamental right guaranteed under Article 21 of the Constitution of India."

12. This Court is of the considered opinion that the above said decision aptly applies to the facts of the present case. At this juncture, it may be appropriate to refer to some of the principles laid down by the Hon'ble Supreme Court in ***AG v. Shiv Kumar Yadav and Others AIR 2015 SC 3501*** which are to be kept in mind for exercising power under Section 311 Cr.P.C., and the relevant to the present context are:

a)The exercise of widest discretionary power Under Section 311 Code of Criminal Procedure should ensure that the judgement should not be rendered on inchoate, inconclusive and speculative presentation of facts, as thereby the ends of justice would be defeated;

b)The wide discretionary power should be exercised judiciously and not arbitrarily;

c)The object of section 311 of Code of Civil Procedure simultaneously imposes a duty on the court to determine the truth and to render a just decision.

13. In the light of the above legal position, the learned Trial Court ought to have allowed the petition to recall P.W.13 and to enable the petitioners/accused to adduce evidence and meet the requirements of a fair trial. As the petitioners are denied the opportunity of cross examination, the order of the Trial Court cannot be sustained in the light of the legal position referred to supra.

14. Accordingly, the impugned Order dated 11.04.2022 in Criminal miscellaneous Petition No.182 of 2022 in C.C.No.1 of 2018 on the file of the Court of Special Sessions Judge for Trial of cases under SC & ST(POA) Act-cum-XI Addl.District Judge, Visakhapatnam, is set aside and the Criminal Petition is allowed with a direction to the Trial Court to fix a specific date for appearance of P.W.13(L.W.14)-mr.K.Prabhakar and afford an opportunity to the petitioners/accused to cross examine the said witness. The petitioners/accused shall proceed with the cross examination of the said witness on the date fixed by the learned Trial Court, without seeking any adjournment.

miscellaneous Petitions, if any, pending in this Civil Revision Petition shall stand closed.

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2022(3) L.S. 27 (A.P.)

IN THE HIGH COURT OF ANDHRA PRADESH

Present
The Hon'ble Ms. Justice
B.S. Bhanumathi

Bolisetty Prem Sai ..Petitioner
Vs.
Rallapalli Venkata Lakshmana Swamy ..Respondent

CIVIL PROCEDURE CODE - ORDER OF EXTENSION OF STAY.

Suit for Specific Performance - Plaintiff filed the execution petition, Pending the first appeal filed by Defendant, High Court granted Stay of Execution of the Decree - Plaintiff/ Respondent Filed Vacate Stay Petition, which stood dismissed, and stay was made absolute - Execution Court, by docket Order, observed that the judgment debtors have not produced the extended speaking order of stay as ordered by the Supreme court in a reported decision "Agency Private Limited v. Central Bureau of Investigation" and therefore, further proceedings shall continue - Aggrieved thereby, Petitioner, who is judgment debtor No.17, has preferred this revision.

HELD: Contingency of expiry of stay after six months would arise only in cases where there is stay of trial – Revision stands allowed – Impugned Order to the extent of directing further execution proceedings to continue is liable to be set aside and the execution Court is directed to follow the Order of stay so long as it remains in force.

C.R.P.NO.738/2020 Date:24-8-2022

M.Radhakrishna, Advocate for Petitioner.

O R D E R

This Civil Revision Petition, under Section 115 CPC, is preferred against the docket order, dated 20.02.2020, passed in E.P.No.68 of 2013 in O.S.No.62 of 1996 on the file of the Court of Additional Senior Civil Judge, at Machilipatnam.

2. Heard *Sri M. Radhakrishna*, learned counsel appearing for the petitioner. In spite of service of notice on 1st respondent/ defendant, there is no appearance on his behalf. Respondent Nos.2 to 25 are shown to be not necessary parties to this revision.

3. The facts which are relevant and necessary for disposal of this revision petition, in brief, are as follows:

> Questioning the decree and judgment, dated 12.10.2012, passed in O.S.No.62 of 1996, judgment debtor Nos.17 & 18 in E.P.No.68 of 2013 in the aforesaid suit, preferred appeal in A.S.No.180 of 2014 before this Court. Along with the appeal, they also filed A.S.M.P.No.764 of 2014 seeking interim stay against the said decree and judgment. This

Court, 17.04.2014, granted interim stay subject to deposit of costs within four weeks from the said date. Accordingly, the JDrs complied with the said order, by depositing costs of Rs.30,556/- on 29.04.2014. Subsequently, the DHr filed petition before this Court to vacate the stay granted in A.S.M.P.No.1126 of 2014 and the said petition was dismissed, by order dated 26.06.2014, and the interim order was made absolute. Thus, the orders passed in A.S.M.P.No.764 of 2014 became final as the respondent/DHr has not moved any petition against the said orders. Hence, an application in E.A.No.238 of 2019 is filed by the petitioner/JDr No.17 to reopen the matter for hearing the judgment debtors in the execution petition.

4. The execution Court, by docket order, dated 20.02.2020, observed that the judgment debtors have not produced the extended speaking order of stay from 18.04.2018 till date and therefore, further proceedings shall continue. The order of the execution Court, dated 20.02.2020 reads as under:

> "As stay is not extended by a speaking order, as per the directions of the Honourable Supreme Court of India and as per circular order of the Honourable High Court in ROC No.2573/OP Cell/2018, dt.18.4.2018, the stay will automatically lapse after 6 months. In this case, stay was granted on 26.6.2014. Hence as per the said circular, the trial Court, on expiry of 6 months from the date of stay, in view of no speaking order extending stay order, resume the proceedings without waiting for other intimation. The judgment debtor No.17 and 18 have not produced extended speaking order of stay from 18.4.2018 till this day. Hence further proceedings shall continue in this case. As a last chance for obtaining speaking order of extension of stay, call on 10.03.2020."

5. Aggrieved thereby, the petitioner, who is judgment debtor No.17, has preferred this revision contending that the order impugned of the trial Court is perverse and contrary to the principles laid down by the apex Court. The trial Court exceeded its jurisdiction and caused substantial injury to the petitioner. It failed to consider the case of the petitioner in a right perspective and hence, the order impugned is liable to be set aside.

6. The main grievance of the revision petitioner is that in spite of an absolute order passed by the appellate Court staying the execution of the decree which is the subject matter before the execution Court, the impugned order was passed with an erroneous view that the decision of the Supreme Court in **Asian Resurfacing of Road Agency Private Limited v. Central Bureau of Investigation**2018 SCC Online SC 310 is applicable even to the proceedings in execution. Learned counsel for the revision petitioner submitted that in spite of the earlier decisions of this Court in **K.Ranga Prasad Varma v. Kotikalapudi Sitarama Murthy and another**2019 (4) ALT 345 (A.P)

LAW SUMMARY
2022 (3)
Telangana High Court Reports

2022 (3) L.S. 1 (T.S)

IN THE HIGH COURT OF TELANGANA

Present:
The Hon'ble Justice
G. Sri Devi

R. Praveen Kumar ..Petitioner
Vs.
V.P.Ram Babu & Anr., ..Respondent

MOTOR VEHICALS ACT - Being not satisfied with the quantum of compensation awarded passed in O.P. before the Motor Accidents Claims Tribunal - Appellant/Claimant preferred the present Appeal seeking enhancement of the compensation.

HELD - Victims of accident, who are disabled either permanently or temporarily, adequate compensation should be awarded not only for the physical injury and treatment but also for the loss of earning and inability to lead a normal life and enjoy amenities, which one would have enjoyed had it not been for the disability - Compensation amount awarded by the Tribunal is hereby enhanced from Rs.4,48,800/- to Rs.5,48,800/- - Enhanced amount will carry interest at 7.5% p.a. from the date of passing of award by the Tribunal till the date of realization, payable by Respondents 1 and 2 jointly and severally - However, the Claimant is directed to pay Deficit Court Fee on the enhanced amount.

Ganta Ramakrishna, Advocate for the Petitioner.
T. Ramulu, Advocate, for the Respondent.

J U D G M E N T

Being not satisfied with the quantum of compensation awarded in the order and decree, dated 28.03.2012 passed in O.P.No.2161 of 2009 on the file of the Motor Accidents Claims Tribunal-cum-III Additional Chief Judge, City Civil Court, Hyderabad (for short "the Tribunal) the appellant/claimant preferred the present appeal seeking enhancement of the compensation.

2. Brief facts of the case are that the appellant filed a petition under Section 166 of the Motor Vehicles Act claiming compensation of Rs.5,00,000/- for the injuries sustained by him in a road accident that occurred on 13.07.2009. It is stated that on that day, the appellant, along with his friend were proceeding on bicycle from Miyapur to Bollaram Cross Road and when they reached in front of Tawakkal Hotel, one Lorry bearing No.AP 16 X 7650 driven by its driver in a rash and negligent manner at high speed and dashed the bicycle from its behind, due to which the appellant

M.A.C.M.A.No. 1174 /2014. Dt.07.06.2022.

sustained grievous crush injury to his right foot and other multiple injuries all over the body. Immediately after the accident, the appellant was shifted to Gandhi Hospital, Secunderabad, where his right foot was amputated below the knee. Since the accident occurred due to the rash and negligent driving of the driver of the Lorry, the appellant filed the aforesaid O.P. against the respondents 1 and 2, who are the owner and insurer of the said Lorry, respectively, claiming compensation for the injuries sustained by him.

3. The 1st respondent remained ex parte, while the 2nd respondent filed counter denying all the allegations made in the claim-petition. It is also contended that the accident caused due to the negligence of the appellant and that there was no negligence on the part of the offending vehicle. It is further contended that the compensation claimed is excessive and prayed to dismiss the claim- petition.

4. Basing on the above pleadings, the Tribunal framed the following issues:

1 Whether the petitioner sustained injuries in the accident on 13.07.2009 due to the rash and negligent driving of the driver of the Lorry bearing No.AP 16 X 7650?

2 Whether the petitioner is entitled to any compensation? If so, to what amount and from whom?

3) To what relief?

5. In support of his claim, the appellant examined himself as PW.1 besides examining the Doctors, who treated the appellant, as PWs.2 and 3 and got marked Exs.A1 to A15. On behalf of the respondents, no oral evidence was adduced but Ex.B1-Policy was marked.

6. After analyzing the evidence available on record, the Tribunal held that the driver of the Lorry was responsible for the accident and accordingly awarded an amount of Rs.4,48,800/- together with interest @ 7.5% per annum from the date of petition till the date of realisation to be paid by the respondents. Challenging the quantum of compensation awarded, the present appeal is filed by the appellant/ claimant.

7. Heard both sides and perused the record.

8. The finding of the Tribunal with regard to the manner in which the accident took place has become final as the same is not challenged either by the owner or insurer of the vehicle.

9. Insofar as the quantum of compensation, a perusal of the impugned order would show that after considering the evidence the doctors, who treated the appellant, and also the nature of disability sustained by the appellant, the Tribunal has rightly awarded Rs.3,88,800/- towards permanent disability; Rs.50,000/- towards pain and suffering; Rs.5,000/- towards medical expenses and Rs.5,000/- extra nourishment and transportation. The Tribunal did not award any amount towards attendant charges and loss of amenities in life as the right foot of the appellant was amputated below the knee.

10. Admittedly, the appellant was aged about 20 years at the time of accident. The medical records also conclusively prove that the right foot of the appellant has been

amputated. In ***Kavita v. Deepak and others (2012) 9 SCC 604*** the Apex Court held that victims of accident, who are disabled either permanently or temporarily, adequate compensation should be awarded not only for the physical injury and treatment but also for the loss of earning and inability to lead a normal life and enjoy amenities, which one would have enjoyed had it not been for the disability. The Supreme Court further held that the amount awarded under the head of loss of earning capacity is distinct and does not overlap with amount awarded for pain, suffering, loss of enjoyment of life and medical expenses. Relying upon the decision of ***Nizam's Institute of Medical Sciences v. Prasanth S.Dhananka (2009) 6 SCC 1***, the Apex Court also held that "assuming the claimant's life expectancy to be 55 years, we deem it appropriate to award a sum of Rs.3,00,000/- under the head of loss of amenities and loss of expectation of life".

11. In the instant case, since the right foot of the appellant was amputated below the knee, this Court deems it fit to award a sum of Rs.75,000/- towards loss of amenities and loss of expectation of life and Rs.25,000/- towards attendant charges. Except awarding the said amount, rest of the compensation awarded by the Tribunal under various heads is not disturbed. Thus, in all the appellant is entitled to Rs.5,48,800.

12. At this stage, the learned Counsel for the Insurance company submits that the claimants claimed only a sum of Rs.5,00,000/- as compensation and the quantum of compensation which is now awarded would go beyond the claim made which is impermissible under law.

13. In ***Laxman @ Laxman Mourya v. Divisional Manager, Oriental Insurance Company Limited and another (2011) 10 SCC 756***, the Apex Court while referring to ***Nagappa v. Gurudayal Singh 2003 ACJ 12 (SC)*** held as under:

> "It is true that in the petition filed by him under Section 166 of the Act, the appellant had claimed compensation of Rs.5,00,000/- only, but as held in ***Nagappa v. Gurudayal Singh (2003) 2 SCC 274,*** in the absence of any bar in the Act, the Tribunal and for that reason any competent Court is entitled to award higher compensation to the victim of an accident."

14. In view of the Judgments of the Apex Court referred to above, the claimants are entitled to get more amount than what has been claimed. Further, the Motor Vehicles Act being a beneficial piece of legislation, where the interest of the claimants is a paramount consideration the Courts should always endeavour to extend the benefit to the claimants to a just and reasonable extent.

15. Accordingly, the M.A.C.M.A. is allowed. The compensation amount awarded by the Tribunal is hereby enhanced from Rs.4,48,800/- to Rs.5,48,800/-. The enhanced amount will carry interest at 7.5%p.a. from the date of passing of award by the Tribunal till the date of realization, payable by respondents 1 and 2 jointly and severally. However, the claimant is directed to pay Deficit Court Fee on the enhanced amount. There shall be no order as to costs. Miscellaneous petitions, if any, pending shall stand closed.

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2022 (3) L.S. 4 (T.S)

IN THE HIGH COURT OF
TELANGANA

Present:
The Hon'ble Dr. Justice
Chillakur Sumalatha

Mohd. Ibrahim Hussain
Sarwar ..Petitioner
Vs.
State of A.P., & Anr., ..Respondent

CRIMINAL PROCEDURE CODE, Sec.482 - DISPUTE, IS PURELY CIVIL IN NATURE - Criminal Petition seeking to quash the proceedings that are pending against Petitioner/Accused No.1 - Respondent No.2/Defacto complainant filed a private complaint against the Petitioner under Sections 196, 406, 420, 506 r/w 34 IPC.

HELD - Entire dispute revolves around a piece of immovable property - Present dispute, is purely civil in nature - An attempt is made to clothe the complaint with criminal flavor - Basic ingredients to constitute the offences punishable under Sections 196, 406, 420 and 506 IPC are found missing - No prima facie material to show that the Petitioner and another, in pursuance of their common intention, have committed the offences, as arrayed in the complaint - Criminal Petition stands allowed.

Mr.Mir Masood Khan, Advocate for the petitioner.

Public Prosecutor.for the Respondents.

Crl.P.No.9407/2013. Dt: 21.03.2022

J U D G M E N T

Heard the submission of learned counsel for the petitioner as well as the learned Assistant public prosecutor, who is representing respondent No.1. though Sri E. madan mohan Rao, Advocate, is on record representing respondent No.2, yet, the learned counsel failed to make his appearance and submit his contentions. However, the contents of the counter and the supporting documents filed are looked into.

2. Seeking to quash the proceedings that are pending against him, who is arrayed as Accused No.1, in Crime No.222 of 2012 of falaknuma police Station, the petitioner approached this Court by filing an application under Section 482 Cr.p.C.

3. By the material available on record, what could be perceived is that, respondent No.2 (hereinafter be referred to as the "defacto complainant") filed a private complaint against the petitioner herein and another contending that they committed offences punishable under Sections 196, 406, 420, 506 r/w 34 IpC. the said complaint was referred to police for investigation and report. On that, police registered a case in Crime No.222 of 2012 of falaknuma police Station, Hyderabad, and took up investigation. Aggrieved by the same, the petitioner approached this Court.

4. thus, in the light of the afore-mentioned factual scenario, the point that emerges for consideration is :

"Whether there exist any justifiable grounds to invoke the powers under Section 482 Cr.p.C. and quash the proceedings that are pending against the petitioner/Accused No.1 in Crime No.222 of 2012 of falaknuma police Station, Hyderabad, as prayed for."

5. making his submission, learned counsel for the petitioner contended that the prevailing civil disputes between the parties resulted in registration of case against the petitioner and another and, indeed, they have not committed any offence whatsoever, as contended by the de facto complainant, and a perusal of the private complaint itself reveals the said fact. the learned counsel further submits that there were cases and counter cases, both civil and criminal, between the parties and the defacto complaint gave around 5 complaints against the petitioner and his men and the present criminal case, the proceedings of which are under challenge, is one among them. the learned counsel also states that the civil disputes have to be resolved and decided by the Civil Courts and not by the Criminal Courts.

6. On the other hand, the learned Assistant public prosecutor contends that though the contents of the complaint reveal that the dispute is civil in nature, yet, as it is clearly brought on record that the Accused threatened the defacto complainant and his people, Section 506 IpC attracts to the case facts and, therefore, permission has to be accorded to investigate the matter.

7. Opposing the said version, learned counsel for the petitioner contends that no date or time is mentioned in respect of commission of the said offence attracting Section 506 IpC and hence the case would not stand, even if the matter is investigated.

8. Having considered the aforementioned rival submissions, this Court considers it desirable to look into the contents of the complaint, so that the genuineness in the versions of both parties could be known.

9. the averments in the complaint, in brief, are that the brother of the defacto complainant, by name S.A. Rafeeq, is the proprietor of m/s. Lucky Real Estate and Developers. He entered into an Agreement of Sale on 08.10.2002 with the Accused and their two elder brothers in respect of the property, admeasuring 790-00 square yards, which is located at Bahadurpura, Hyderabad. As regards the said property, a dispute arose and, therefore, the brother of the defacto complainant filed a Civil Suit and obtained an order of injunction and also an order of police protection. However, the Accused, in collusion with their elder brothers and also in collusion with the police of Bahadurpura, got filed proceedings under Section 145 Cr.p.C. before the Special Executive magistrate, Hyderabad. the elder brother of the defacto complainant challenged those proceedings by filing a Revision petition. However, the said Revision petition stood dismissed on contest. Having lost the legal battle against the defacto complainant and his brother, the elder brother of the Accused, by name mohd. farooq

Hussain @ Viqar approached the defacto complainant for settlement of dispute and executed a Supplementary Agreement. But, Accused No.1, suppressing all the material facts, filed Criminal petition before this Court questioning the proceedings pending before the Special Executive magistrate, Hyderabad. Accused No.1, in collusion with Accused No.2, by inducing and cheating the brother of the defacto complainant, committed an offence punishable under Section 420 IpC and further committed the offences of criminal breach of trust and also by threatening the defacto complainant and his brothers, the Accused committed an offence punishable under Section 506 IpC. the afore-mentioned particulars themselves reveal that the entire dispute is purely civil in nature.

10. the learned counsel for the petitioner brought to the notice of this Court the contents of the Supplementary Agreement. Basing on the said Supplementary Agreement, the learned counsel submits that the said Supplementary Agreement is dated 02.11.2011 and, indeed, the executant i.e., md. Ibrahim Hussain @ Sarwar Hussain was in judicial custody as on that date. the learned counsel brought to the notice of this Court the contents of the order dated 03.11.2011 that was passed by IV Additional Judicial magistrate of first Class, guntur, directing the Superintendent, District Jail, guntur, to release mohd. Ibrahim Hussain @ Sarvar. therefore, by the said order dated 03.11.2011, it is clear that mohd. Ibrahim Hussain @ Sarvar remained in judicial custody till the said date. the learned counsel states that when the said person remained in judicial custody till 03.11.2011, the same person executing the Supplementary Agreement on a day earlier i.e. 02.11.2011 does not arise, and thus, the Supplementary Agreement is a created document.

11. As earlier discussed, the entire dispute revolves around a piece of immovable property, over which both the parties laid their respective claims.

12. making his submission that in the circumstances like this, initiation and continuation of criminal proceedings is undesirable, learned counsel for the petitioner relied upon the decision of the Hon'ble Apex Court in ***prof. R.k. Vijayasarathi & Another v. Sudha Seetharam & Another ,2019 (5) RCR (Criminal) 537*** wherein, at para No.11, dealing with power that can be exercised under Section 482 Cr.p.C, held as follows :-

> "11. the High Court, in the exercise of its jurisdiction under Section 482 of the Code of Criminal procedure, is required to examine whether the averments in the complaint constitute the ingredients necessary for an offence alleged under the penal Code. If the averments taken on their face do not constitute the ingredients necessary for the offence, the criminal proceedings may be quashed under Section 482. A criminal proceeding can be quashed where the allegations made in the complaint do not disclose the commission of an offence under

the penal Code. the complaint must be examined as a whole, without evaluating the merits of the allegations. though the law does not require that the complaint reproduce the legal ingredients of the offence verbatim, the complaint must contain the basic facts necessary for making out an offence under the penal Code".

13. further, the same decision envisages necessary ingredients that are required to constitute the offence punishable under Section 420 IpC, the court at para Nos. 17 and 18, observed as follows:-

> "17. the condition necessary for an act to constitute an offence under Section 405 of the penal Code is that the accused was entrusted with some property or has dominion over property. the first respondent has stated that the disputed sum was transferred by the son of the appellants of his own volition to her. the complaint clearly states that the amount was transferred for the benefit of the son of the appellants and that the first respondent was to hold the amount 'in trust' for him. the complaint alleges that the money was transferred to the appellants 'as per the dicta' of the son of the appellants. there is on the face of the complaint, no entrustment of the appellants with any property".

"18. the condition necessary for an act to constitute an offence under Section 415 of the penal Code is that there was dishonest inducement by the accused. the first respondent admitted that the disputed sum was transferred by the son of the appellants to her bank account on 17 february 2010. She alleges that she transferred the money belonging to the son of the appellants at his behest. No act on part of the appellants has been alleged that discloses an intention to induce the delivery of any property to the appellants by the first respondent. there is thus nothing on the face of the complaint to indicate that the appellants dishonestly induced the first respondent to deliver any property to them. Cheating is an essential ingredient to an offence under Section 420 of the penal Code. the ingredient necessary to constitute the offence of cheating is not made out from the face of the complaint and consequently, no offence under Section 420 is made out."

14. finally, the Hon'ble Apex Court, at para No.23, held as under :

> "23. the jurisdiction under Section 482 of the Code of Criminal procedure has to be exercised with care. In the exercise of its jurisdiction, a High Court can examine whether a matter which is essentially of a civil nature has been given a cloak of a criminal offence. Where the ingredients required to constitute a criminal offence are not made out from a bare reading of the complaint, the continuation of the criminal proceeding will constitute an abuse of the process of the court."

15. the present dispute, as could be

perceived, through the contents of the complaint, is purely civil in nature. It appears that an attempt is made to clothe the complaint with criminal flavor. the said attempt cannot be permitted to continue. the basic ingredients to constitute the offences punishable under Sections 196, 406, 420 and 506 IpC are found missing. Also, there is no prima facie material to show that the petitioner and another, in pursuance of their common intention, have committed the offences, as arrayed in the complaint. If the proceedings are permitted to be continued, as rightly submitted by learned counsel for the petitioner, the same would amount to abuse of process of law. therefore, this Court considers it desirable to quash the proceedings.

16. Resultantly, this Criminal petition is allowed. the proceedings that are pending against the petitioner/ Accused No.1 in Crime No.222 of 2012 of falaknuma police Station, are hereby quashed. Interim stay granted through order dated 04-09-2013 stands vacated.

17. As a sequel, pending miscellaneous applications, if any, shall stand closed.

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2022 (3) L.S. 8 (T.S)

IN THE HIGH COURT OF TELANGANA

Present:
The Hon'ble Smt. Justice Lalitha Kanneganti

Gummadi Kiran Kumar ..Petitioner
Vs.
Greater Warangal Municipal Corporation, ..Respondent

TELANGANA MUNICIPALITIES ACT, 2019 - Writ petitions are filed questioning the action of Respondents No.1 and 2 in granting construction permission to Respondent No.3 in violation of Municipal Laws when the matter is subjudice, as illegal and arbitrary.

HELD: When there is a dispute with regard to the boundaries of the property and particularly, when Respondent No.3 has purchased the property, Petitioner ought to have made Respondent No.2-Municipality as a party to the said suit as Defendant and whatever relief he wants to claim, he can claim before the competent Civil Court - Only legal ground that is raised by petitioner is that in view of Section 178(6) of the Act, the Respondents are duty bound to consider his representations - Respondents No.1 and 2 shall consider the Representations of Petitioners after giving notice to the unofficial Respondent No.3 and pass appropriate orders within 15 days from the date of receipt of copy of this order.

W.P. Nos.25411/2021 Dt. 21.03.2022

Mr.C M R Velu, Advocate for the Petitioner.
Mr.Pingali Lakshmi SC for Warangal MC.for the Respondent.

C O M M O N O R D E R

Since both these writ petitions arise out of the common issue and the parties are also similar, they are being disposed of by this common order.

2. Both these writ petitions are filed questioning the action of respondents No.1 and 2 in granting construction permission to respondent No.3 in violation of Municipal Laws when the matter is sub- judice, as illegal and arbitrary.

3. Learned counsel for petitioner Mr.C.M.R.Velu submits that the petitioner has made representations dated 15.02.2021 and 29.09.2021 to the official respondents No.1 and 2 stating that a suit in O.S.No.63 of 2021 on the file of VI Additional Junior Civil Judge, Warangal, is pending between the petitioner and unofficial respondent No.3 and respondents No.1 and 2 have granted construction permission to respondent No.3 vide Permit No.3006/26189/W32/2020 dated 05.10.2021 without considering the petitioner's representations and respondent No.3 is going ahead with the construction. He submits that the petitioner has earlier filed W.P.No.25411 of 2021 questioning the action of the respondents No.1 and 2 in granting construction permission to respondent No.3 in violation of the municipal laws when the matter is sub-judice and no interim orders were passed in the said writ petition, but respondents No.1 and 2 were directed to consider the petitioner's representation dated 15.02.2021 and in spite of the same, his representation was not considered and respondent No.3 is going ahead with the construction. Learned counsel for the petitioner further submits that as per Section 178(6) of the Telangana Municipalities Act, 2019 (in brief 'the Act'), whenever a representation is made to the authorities, they are duty bound to consider the same within one week from the date of such representation. So far, they failed to consider the representations of the petitioner, which is a clear violation of Section 178(6) of the Act. He has relied upon two decisions of Andhra Pradesh High Court in ***T.Rameshwar v. Commissioner, Municipal Corporation of Hyderabad and others in W.P.No.14025 and 23731 of 2005 dated 18.03.2006*** and in ***V.Jaya Prakash v. Commissioner of Municipality, Kapra Municipality, Kapra, Ranga Reddy District and another in W.P.No.3979 of 2003 dated 24.11.2003***. Learned counsel seeks a direction to the respondents to consider the representations of petitioner and to see that unofficial respondent No.3 did not proceed with the construction till his representations are disposed of.

4. Ms.P.Lakshmi, learned Standing Counsel for the official respondents No.1 and 2, submits that when there is a dispute with regard to the property, the Municipal Commissioner is not competent to decide the same. She further submits that the petitioner should have made respondents No.1 and 2 as parties to the suit and sought the relief which he is asking before this Court from the competent Court, but without choosing the same, he has approached this Court. However, she does not dispute

the fact that the representations of the petitioner are pending for consideration before respondent-Corporation.

5. Learned counsel appearing for respondent No.3 Mr.P.Ramachander Rao submits that respondent No.3 has purchased the subject property in the year, 1988 and ever since she is in possession and enjoyment of the same, whereas the petitioner has purchased the property in the year, 2019. He submits that the petitioner is claiming the property in Sy.No.570/A, whereas respondent No.3 is claiming property in Sy.No.558/A and B of Shyampet Jagir Village, as such the Survey Numbers are different and there is also a dispute with regard to the boundaries of the subject property. He further submits that the Municipal Commissioner has no jurisdiction to decide the said issue and the writ petitions filed by petitioner are not maintainable and further, the petitioner has already availed alternative remedy available to him.

6. Taking into consideration the circumstances, as rightly pointed out by the learned Standing Counsel for respondents No.1 and 2 as well as the learned counsel for the unofficial respondent No.3 that the petitioner has filed a suit before the Court in respect of the subject properties. Admittedly, when there is a dispute with regard to the boundaries of the property and particularly, when the unofficial respondent No.3 has purchased the property in the year, 1988, the petitioner ought to have made respondent No.2-Municipality as a party to the said suit as defendant and whatever relief he wants to claim, he can claim before the competent Civil Court. Further, the decisions relied on by the learned counsel for petitioner are not applicable to the facts of the present case, particularly, the fact that when a suit is pending between parties.

7. The only legal ground that is raised by petitioner is that in view of Section 178(6) of the Act, the respondents are duty bound to consider his representations and pass orders within seven days. Hence, respondents No.1 and 2 shall consider the representations of petitioners dated 15.02.2021 and 29.09.2021 after giving notice to the unofficial respondent No.3 and pass appropriate orders within 15 days from the date of receipt of copy of this order.

8. With the aforesaid direction, both the Writ Petitions are disposed of. No order as to costs.

9. Miscellaneous petitions, if any pending in these writ petitions, shall stand closed.

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2022 (3) L.S. 11 (D.B.) (T.S)

IN THE HIGH COURT OF TELANGANA

Present:
The Hon'ble Mr.Justice
A. Rajashekar Reddy &
The Hon'ble Smt.Justice
M.G.Priyadarsini

Mirza Ibrahim Baig ..Petitioner
. Vs.
State of Telangana ..Respondent

A.P. RIGHTS IN LAND AND PATTADAR PASS BOOKS ACT, 1971, Secs.5(3) & 9 - REGISTRATION ACT, 1908, Sec.22-A - Tahsildar issued proceedings in favour of petitioners and their vendees for mutation of their names in revenue records - Joint Collector suo moto in revision cancelled orders of Tahsildar - Orders of Joint Collector are violation of principles of natural justice, accordingly writ petition, allowed and set aside the orders of Joint Collector and restored the orders of Tahsildar, including the subject land in the list u/Sec.22-A of Registration Act, is also quashed.

Mr.Mohd Moin Ahmed Quadri, Advocate for the petitioner.
GP For Revenue TG, for the Respondent.

O R D E R
(per the Hon'ble Mr.Justice
A. Rajashekar Reddy)

The 3rd respondent - Deputy Collector and Tahsildar, Balanagar Mandal, Ranga Reddy District, now Medchal District, Telangana, vide proceedings No.B/27308/ 2009 dated 16.04.2012 ordered for mutation of the names of the petitioners, who claimed to be the legal representatives of late Mahaboob Baig, donee of Nawab Ghousuddin Khan, the defendant No.52 in C.S.No.14 of 1958, to an extent of Acs.30.00 in Sy.No.172 situated at Hydernagar village; and the remaining extent of Acs.30.00 gts. out of Acs.60.00 in Sy.No.172 in favour of partners of Jayahoo estates. The operative portion of the order is as under:

> "Keeping in view of the preliminary decree, division of properties in favour of D-52 Ghousuddin Khan by the Receiver - cum - Commissioner, Government memos, memorandum of family settlement, directions of the Hon'ble High Court in W.P.No.1237 of 2009, dated 4-4-2008, W.P.No.8636 of 2009, dated 15-10-2009 and W.P.No.27028 of 2009 dated 11-12-2009, W.P.No.19123 of 2011 dated 19-07-2011 and orders in W.P.No.4787 of 2012 dated 10302912, mutation is hereby sanctioned in favour of L.Rs. of Mahboob Baig consisting of 15 members for an extent of Acs.30.00 and the remaining Acs.30.00 in favour of partners of jayaho Estates consisting of (14) as follows in respect of land bearing Sy.No.172 admeasuring Acs.60.00 situated at Hydernagar village. The following names are incorporated in the column of pattedr/possessor to an extent of Acs.60.00 in Sy.No.172 in pahani by

W.P.No.35004/2016 Date:26-4-2022

reducing the extents of Mirza Nazeer Baig and others."

2. On the ground that the Hon'ble Supreme Court of India in S.L.p.No.22420 of 2011 dated 12.03.2012 has granted status quo orders in respect of the lands covered by C.S.No.14 of 1958 and that the Government also issued Memo No.9302/ jA.1/2012 dated 27.04.2012 according permission to the District Collector to protect the interest of the Government in respect of the valuable Government lands covered in C.S.No.14 of 1958, the 2nd respondent - joint Collector - (I) Ranga Reddy District vide Case No.D5/5023/2013 entertained suo moto revision under Section 9 of the then A.p. Rights in Land and pattadar pass Books Act, 1971, and vide interim order dated 17.10.2013, suspended the orders passed by the 3rd respondent - Tahsildar dated 16.04.2012, and subsequently vide order dated 15.09.2016 set aside the orders of the Tahasildar dated 16.04.2012, and directed to take necessary action for correction of entries in the Revenue Records. The relevant portion of the order passed by the 2nd respondent, who is the revisional authority, is as under:

> "Examined the case and it is observed that Hon'ble High Court of A.p., based upon the preliminary decree passed on 28.06.1963 in C.S.No.14/1958 neither the Government nor the jagir Administration though parties to the suit, but not parties to the compromised preliminary decree. The Hon'ble High Court of A.p. restricted the preliminary decree only to the partition to the compromise and Government not being a party to the compromise. Hence it is not bound by the preliminary decree.

The rights of Government in respect of jagir Lands were not adjudicated by way of full fledged trial and moreover as per Telangana Area Atiyath and Enquiry Act, 1982 the decision of Nazir Nawab Atiyat Court shall be final and shall not be questioned in any court of law.

> The civil court has no jurisdiction to decide the rights of parties with regard to jagirs. Moreover by date of preliminary decree in C.S.Nol.14 of 1958 dated 28-06-1963 the schedule lands were held already come under the control of jagir Administration without any encumbrances and all these lands vested with jagir Administrator.

> In view of the above and in result, the orders issued by DC and Tahsildar, Balangar Mandal in file No.B/27308/2009 dated 16-04-2012 are hereby set aside and accordingly this Suo-Moto Revision is allowed. The DC and Tahsildar, Balanagar Mandal is directed to take necessary action for correction of entries in the Revenue Records."

3. Aggrieved by the same, the petitioners, who were granted mutation by the Tahsildar vide order dated 16.04.2012, filed the present writ petition.

4. Sri K.S.Murthy, learned counsel for the petitioners would submit that the main reason for entertaining the revision was the

status quo order passed by the Apex Court in S.L.p.No.22420 of 2011 dated 12.03.2012 in respect of the lands covered in C.S.No.14 of 1958. The other ground is that the Government and jagir Administration through parties to the suit, are not parties to the compromise petition between the parties. Further on the ground that the rights of the Government in respect of jagir Lands were not adjudicated by way of full fledged trial. He submits that the Apex Court has dismissed SLp.No.22420 of 2011 vide order dated 26.11.2013 and the Government and the jagair Administrator are defendants 53 and 43 respectively in C.S.No.14 of 1958, who filed written statements claiming some of the properties mainly the buildings and both these defendants never claimed possession, or ownership of the land in Sy.No.172 of Hydernagar village, which is the subject property in the present writ petition, and hence it cannot be said that they are not parties to the said proceedings.

5. Learned counsel referring to the averments made in the affidavit filed in support of the writ petition, submits that originally the property belongs to Sri Ghouse Mohiuddin Khan, s/o of late Himayath Nawz jung Bahadur, who was defendant No.52 in C.S.No.14 of 1958, which was filed by his legal heirs for partition of paigah Khursheed jah. During the pendency of the proceedings, some of the parties have entered into compromise and accordingly a preliminary decree dated 28.06.1963 was passed and the present subject property, which are the lands in Hydernagar village, was item No.38 of Schedule IV of the suit, and this Hon'ble Court has given specific finding on all the issues including the subject property in this writ petition holding that it is Matruka propery of Kurhseed jah paigah.

6. As per the preliminary decree dated 28.06.1963, the defendant No.52 - Sri Ghouse Mohiuddin was entitled to Acs.60.00 in Sy.No.172 of Hydernagar village. He orally gifted the said property to Mirza Mahaboob Baig on 10.10.1978 and subsequently the same was reduced into writing on 19.12.1978. After the death of the Mirza Mahoob Baig, the petitioners, who are his legal heirs, succeeded to the subject property, they are in physical possession of the property.

7. That the then State of A.p. filed Application No.44 of 1982 before the High Court to amend the preliminary decree so as to include the Hydernagar village i.e., the present subject land, for the purpose of Inam Enquiry, but the said application was dismissed on 18.12.1982, and then the State also filed O.S.A.No.1 of 1985, and when the same was also dismissed, State also carried the matter to Apex Court, but has withdrawn the said proceedings with liberty to challenge the preliminary decree dated 28.06.1963. Accordingly the State has challenged the preliminary decree in OSA (SR) 3526 of 2000, but the same was dismissed on 07.12.2001, and even the SLp Nos.10622 and 10623 of 2001 were dismissed vide order dated 16.07.2001.

8. Learned counsel submits that the original donar i.e., Sri Ghouse Mohiuddin, apart from tracing his title to C.S.No.14 of 1958, also has independent title to the subject property. He submits that after abolition of jagirs, the then Government of

A.p. initiated Inam Enquiry vide G.O.Ms.No.806, Revenue dated 06.06.1958. The enquiry was conducted by Nazir-Nawab Atiyat Court. In the process of inquiry, the said court has called for objections by way of Gazettee notifications in the State of Maharasthra, State of Mysore and State of A.p., and as no objections were received within the stipulated date, in the enquiry it was concluded that the village at Sy.No.380 and 381 have been verified as Inam Atlamagh in the name of Khurshid jah Bahadur as per Kaifiat jagirdaran. The village Sy.No.381 is Hydernagar village. The said enquiry was confirmed in the Appeal by the Board of Revenue on 1.4.1960 in file No.U3/ 63426/69. Challenging the Inam Atiyat enquiry and the order of Board of Revenue, W.p.Nos.632 of 1960 and 768 of 1960 were filed in the High Court, and the same were dismissed vide common order dated 11.11.1963. Thus after conclusion of Inam Enquiry, Muntakhad No.4 dated 14.02.1982 was issued and in the Inam Inquriy, the donor of the father of the petitioners i.e, Sri Ghouse Mohiuddin, was declared as legal heir and successor to the properties of Khurshid jah Bahadur and he was allotted share, which includes the subject land herein admeasuring Acs.60,00 in Sy.No.172 of Hyderagar village. Thus, even without reference to the preliminary decree in C.S.No.14 of 1958, the donor has independent title to the subject property.

9. That Government had issued memo No.28908/jAI/2004-1 dated 5.11.2004 directing the Revenue Officials to effect mutation in land records in respect of the lands under Sy.Nos.77, 78, 79 and 80 of Hafeezpet village and Sy.No.145, 163 and 172 of Hydernagar village in the name of the respective parties. Subsequently the Government have also issued another memo No.59734/jA.I/2005 dated 15.03.2008 confirming the earlier Memo of the Government dated 5.11.2004 and also directed the Revenue Officials to follow the instructions of the Government in Memo No.21162/jA.I/2004- 20 dated 25.04.2005, and thereafter also Government issued memo dated 18.05.2009 for effecting mutation in the revenue records.

10. As mutation was not effected, the petitioners have filed writ petitions before this court, and eventually the 3rd respondent, by virtue of the directions of this court and also by following due procedure and after issuance of notice to all the parties as required under Section 5(3) of the ROR Act, issued the proceedings dated 16.04.2012 for mutation of the names of the petitioners and also the vendees of the petitioner by name jayahoo estates in the revenue records. But the 2nd respondent, with untenable grounds, set aside the mutation and having regard to the facts and circumstances of the case, the impugned order of the 2nd respondent cannot be sustained and the same may be set aside by confirming the orders passed by the 3rd respondent - Tahsildar.

11. Counter affidavits are filed on behalf of the 2nd and 3rd respondent with similar averments. Sri Harinder prasad, learned Special Government pleader appearing on behalf of learned Advocate General, referring to the averments made in the counter affidavits would submit that preliminary decree in respect of the subject property

was obtained by playing fraud on the court and hence the same is not binding on the Government. He submits that a Division Bench of this court in OSA.Nos.54, 56, 57, 58 and 59 of 2004 dated 20.12.2019 at paragraph No.414(f) of the judgment held as under:

> "We declare that the preliminary decree dated 28.06.1963 in C.S.No.14 of 1958 as regards the lands in Hydernagar Village is obtained by practicing fraud both on the Courts as well as on the claim petitioners and other occupants of land in the said village and is declared void ab initio."

12. That a Division Bench of this court considering similar facts and circumstances in W.p.No.11032 of 2018 and batch held that since no final decree was passed, Tahsildar cannot pass any orders effecting mutation until a final decree is passed.

13. Learned Special Government pleader further submits that after coming into force of the jagir Abolition Regulations, entire land vests with the Government. He further submits that documents relied on by the petitioners to trace title i.e., gift and the subsequent sale to respondents 4 and 5 are all unregistered, and they will not confer any title, and in the entire proceedings, except relying on the orders passed by this court in different proceedings, petitioners have not filed any single document showing their title, and the 3rd respondent - Tahsildar, without examining the title of the petitioners, ordered for mutation of vast Government lands to an extent of Acs.60.00, which is illegal.

14. That in OSA.No.42 to 45 of 2013 a Division Bench of this court while dealing with batch of appeals, wherein final decree proceedings were challenged, held to be not binding on the State, and it was observed that any beneficiary under the final decree have to work out their remedies independently, and the said order has attained finality.

15. It is further averred that in the meanwhile the Government of Telangana has amended the Rights in Land and pattadar pass Books Act, 1971, vide Act No.1 of 2018, providing under Section 12-A that all the jagir lands including paigs, Samsthans part of jagirs, Makthas, village Agrahar, Umli and Mukasa etc., stood vested in the State. Under the said Act, the title and ownership of such lands shall never be transferred or shall never be deemed to have been transferred to any person. But the provision is not applicable to the lands which were already settled, transferred, assigned, allotted otherwise alienated by the State. It is submitted that the land in Sy.No.172 situated at Hydernagar village, Kukatpally mandal relating to Khursheed jagir paigah, was never alienated by the State, and hence they vest in the State.

16. That the writ petitioners claimed huge extent of land for which A.p. Land Reforms (COAH), 1973 and Urban Land (Ceiling and Regulation) Act, 1976 are applicable, but there is no single whisper in the writ petition that petitioners filed declarations under the relevant provisions

of the said Act, and thus they never exercised any right over the subject property and that the Government is exercising absolute right over the subject property, and hence a person howsoever long his possession is over the land, without any valid right, title or interest, cannot claim any right.

17. With these averments, the writ petition is sought to be dismissed.

18. M/s Goldstone Exports Ltd., represented by its Director filed I.A.No.2 of 2016 (old WpMp.No.45567 of 2016) claiming right over the subject property and seeking to implead as respondents 4 and 5 in the writ petition.

19. The said application was dismissed as withdrawn vide order dated 01.04.2022, and the said order reads as under:

> "Sri N.M.Krishnaiah learned counsel appearing for M/s Bharadwaj Associates seeks permission of this court to withdraw the present implead petition with liberty to work out their remedies in the SLp.No.2373-2377 of 2020 which is pending before the Hon'ble Supreme Court.
>
> permission accorded.
>
> Accordingly, this implead petition is dismissed as withdrawn granting liberty as prayed for."

20. M/s Survishal power Gen. Ltd., represented by its authorized signatory filed I.A.No.1 of 2021 in W.p.No.35004 of 2016 seeking to implead in the writ petition. Vide docket order 05.07.2021 the implead petition was ordered and the petitioner in this application was impleaded as respondent No.4 in the writ petition.

21. In the affidavit filed in support of the implead petition it is stated that this respondent No.4 has purchased the subject land to an extent of Acs.19.36 gts. in Sy.No.172 of Hydernagar village, Balanaagar Manadal under registered document bearing Nos.7665 of 2013, 205 and 206 of 2014 from the decree holders as well as the claim petitioners covered under Claim peition No.1318 of 2003 and O.S.A.No.55 of 2004 and thereafter its name has been mutated in the revenue records vide proceedings of Tahsildar No.B/1125/2014 dated 29.05.2014. The impleaded respondent No.4 also filed photo copy of the Adangal / pahani for the year 2016-17 showing its name in the khatadar/pattadar column and also in the possessory column to an extent of Acs.19.36 gts. in Sy.Nos.172/ 1 to 172/25.

22. It is further stated inter alia that after remand of the matter by the Apex Court, this court has dismissed O.S.A.Nos.54, 56, 57 and 58 of 2004 vide order dated 20.12.2019, wherein it is held that the inclusion of the lands in Sy.No.172 of Hydernagar village in the preliminary decree in the suit in C.S.No.14 of 1958 itself is bad, and that the decree holders have failed to establish their title to the

lands. Further this court by setting aside all the orders passed in the suit with regard to the lands, held that claim petitioners have established title to the lands in

Sy.No.172 of Hydernagar village.

23. That in the judgment of this court in OSA.Nos.54, 56, 57 and 58 of 2004 dated 20.12.2019, the claim of the decree holders in the suit in C.S.No.14 of 1958 was negatived and the claim of the claim petitioners have been declared with regard to the lands in Sy.No.172 of Hydernagar village. Therefore, the present writ petitioners, claiming through the oral gift given to their father Mr. Mohd. Mirza Mohboob Baig by defendant No.52 - Mohd. Ghusuddin Khan, who has no right over the subject lands, cannot derive any title and hence their claim is to be rejected. That in view of the registered sale deed executed by defendant No.52 on 03.08.1964 bearing document No.2460/1964 in favour of H.E.H., the Nizam and Nawab Khazim Nawaz jung, who were impleaded as defendants 156 and 157 respectively, the defendant No.52 has no right to execute oral Hiba in favour of the father of the writ petitioners in the year 1978.

24. With these averments, the writ petition was sought to be dismissed.

25. petitioners also filed reply affidavits denying the above averments made in the counter affidavits and reiterating the averments made in the writ affidavit.

26. One Mohammed Moizuddin Khan, claiming to be son of defendant No.52 in C.S.No.14 of 1958 i.e., late Mohammed Ghouse Mohiuddin Khan filed I.A.No.1 of 2022 seeking to implead him as respondent in the writ petition, and in the affidavit filed in support of the implead petition, he has supported the claim of the petitioners. Having regard to the facts and circumstances and in view of non-opposition by way of any counter affidavit, this petition is ordered.

27. Heard the respective counsel appearing for the parties and perused the material available on record.

28. In view of the above rival contentions and the facts and circumstances of the case, the issue that arises for our consideration is whether the impugned order dated 15.09.2016 passed by the 2nd respondents requires any interference?

29. The main basis on which the impugned order dated 15.09.2016 was passed, is the order of status quo passed by the Apex Court in SLp.No.22420 of 2011 dated 12.03.2012 in respect of the lands covered by C.S.No.14 of 1958 and the memo No.9302/jA.1/2012 DATED 27.04.2012 issued by the Government for protecting the lands covered by C.S.No.14 of 1958, and to file O.S.A. against the final decree passed on 24.12.2007 and 31.03.2010 by the High Court.

30. The SLp.No.22420 if 2011 was dismissed by the Apex Court on 26.11.2013, and there is also no material on record that Government has filed any O.S.A. against the final decree passed on 24.12.2007 and 31.03.2010. The fact remains that against the preliminary decree dated 28.06.1963 passed in C.S.No.14 of 1958 the State has carried the matter to the Apex Court in SLp.Nos.10622 and 10623 of 2011, and it ended in dismissal vide order dated 16.07.2001.

31. A perusal of the impugned order goes to show that the ground on which the

proceedings of the Tahsildar dated 16.04.2012 was set aside, is that, either the Government, or the jagir Administration were not parties to the compromise decree in C.S.No.14 of 1958, though they were parties to the suit. It is also stated that the rights of the Government in respect of jagir lands were not adjudicated by way of full fledged trial and that the decision of Athiyath Court shall be final. But as per the averments noted above, which are not disputed, the jagir Administration was D-43, and Government was D-53 in C.S.No.14 of 1958, and they also filed their respective written statements, which were considered and preliminary decree was passed on 28.06.1963. Hence, it cannot be said that they are not parties, and further the appeal filed by the Government against the preliminary decree was dismissed by the Apex Court on 16.07.2001, as it was filed after a delay of 38 years. So, the ground on which the order of the Tahsildar was set aside, can be said to be non-existing.

32. A perusal of the order passed by the 3rd respondent - Deputy Collector and Tahsildar, Balangar Mandal, Rangareddy dated 16.04.2012 goes to show that the claim of the petitioners is that the subject property which is to an extent of Acs.60.00 in Sy.No.172 of Hydernagar was allotted to D-52 Ghousiddin Khan, and he executed gift deed in favour of Mirza Mohaboob Baig, who is the father of the petitioners 1 to 3 on 19.12.1978 and their father expired on 25.10.1981, and after his death, his children as his legal heirs, succeeded to he property and they executed G.p.A. in favour of one C.j.Rama Krishna. The 3rd respondent - Tahsildar also considered the dismissal of the appeal filed by the State against the preliminary decree in SLp (Civil) No.10622 of 2001 and 10623 of 2001 dated 16.07.2001. It is also found that the petitioners, who are the legal heirs of Mahboob Baig, filed writ petitions for mutations of their names in the revenue records. They also filed O.S.No.1521 of 2010 for dividing the shares among the legal heirs and the same was allowed by this court on 26.04.2010. Based on the directions of this court in the earlier writ petitions filed by the petitioners, which are noted in the order of the Tahsildar, enquiry was conducted, and it was found that the petitioners, who are the applicants, are in actual possession and enjoyment of the land to an extent of Acs.60.00 in Sy.No.172 and the Tahsildar after service of notices to all the concerned as required under Section 5(3) of the ROR Act, ordered for mutation.

33. Apart from the above, the claim of the writ petitioners is that the original donar i.e., Sri Ghouse Mohiuddin, apart from tracing the title to C.S.No. 14 of 1958, has also independent title to the subject property. That after abolition of jagirs, the then Government of A.p. had initiated Inam enquiry vide G.O.Ms.No.806, Revenue dated 06.06.1958. The enquiry was conducted by Nazir Nawab Atiyat Court. In the process of the Inam enquiry, the Nizim Atiyat Court has called upon objections on 28-01-1960 by way of Gazette in the State of Maharashtra, 31-03-1960 in the State of Mysore and 28-07-1960 in the State of A.p. Accordingly, publication was made in the Gazettee calling for objections to the claim of the Nawab Himayat Nawaz

jung within six weeks from the date of publication of notification in the Gazette. In the said Gazettee notification, Hydernagar village was shown at Sr.No.381. In the said enquiry, it was concluded that the villages at Sl.No.380 and 381 have been verified as Inam Atlamagah in the name of Khurshid jah Bahadur as per Kaifiat jagirdaran etc. of 1296/H. Hydernagar was confirmed in the name of paigah, as compensation of Sayer and Inam Altamagagh. The said enquiry was confirmed in the Appeal by the Board of Revenue on 1.4.1960 in file No.U3/ 63426/69. Challenging the Inam Atiyat enquiry and the order of Board of Revenue, W.p.Nos.632 of 1960 and 768 of 1960 were filed in the High Court, and the same were dismissed vide common order dated 11.11.1963. Thus after conclusion of Inam Enquiry, Muntakhad No.4 dated 14.02.1982 was issued and in the Inam Inquriy, the donor of the father of the petitioners i.e, Sri Ghouse Mohiuddin, was declared as legal heir and successor to the properties of Khurshid jah Bahadur and he was allotted share, which includes the subject land herein admeasuring Acs.60,00 in Sy.No.172 of Hyderagar village. Thus, even without reference to the preliminary decree in C.S.No.14 of 1958, the donar has independent title to the subject property.

34. A perusal of the impugned order dated 15.09.2016 does not disclose that the revisional authority has considered the grounds on which the mutation was ordered. On the ground that an order of status quo was granted by the Apex Court in 22420 of 2011 and that the Government and jagir Administration are not parties to the compromise petition, order passed by the 3rd respondent - Tahsildar dated 16.04.2012, was set aside. As noted above, those grounds are found to be non-existing.

35. In the counter affidavit filed on behalf of respondents 2 and 3, it could be seen that new grounds have been raised, which does not form part of the impugned order. It is well settled that the impugned order has to stand based on the reasons contained in the said order, and those reasons cannot be supplemented by way of counter affidavit. (See ***Mohinder Singh Gill v. Chief Election Commissioner, AIR 1978 SC 851***).

36. In the counter affidavits it is sought to be contended that petitioners, except relying on the orders passed by various authorities, have not proved the source of their title and that this aspect has not been examined by the primary authority. Further it is sought to be contended that the preliminary decree was obtained by playing fraud on the court and in this regard reliance is sought to be placed on the observations made by a Division Bench of this court in OSA.No.54, 56, 57, 58 and 59 of 2004 dated 20.12.2019 at paragraph No.414(f).

37. As already noted above, the grounds, which are raised in the counter affidavit, does not form part of the impugned order and hence, considering these grounds, the impugned order cannot be adjudicated, and only on the reasons recorded in the impugned order, the validity of the same has to be gone into.

38. It is also needless to observe that if the 2nd respondent intends to pass orders

on the grounds raised in the counter affidavit, he has to issue notice indicating the said grounds and after affording opportunity to all the parties concerned, can pass appropriate orders in accordance with law, but certainly he cannot seek to set aside the order passed by the primary authority on non- existing grounds, and seek to justify those orders, by supplying reasons in the counter affidavit.

39. By virtue of the dismissal of SLp (Civil) No.10622 and 10623 of 2001 dated 16.07.2001 it is clear that the preliminary decree in respect of the claim of the Government has attained finality. Further the Government issued Memo No.28908/ jAI/2004-1 dated 5.11.2004 directing the collectors to effect mutation in land records in respect of the lands in C.S.No.14 of 1958 including Sy.No.172 of Hydernagar village. The then Government of A.p. has also issued another Memo No.59734/jAI/2005 dated 15.03.2008 confirming the earlier orders of the Government dated 5.11.2004 to effect mutation in the names of the decree holders duly comply with the subsequent orders of the High Court, and the Government instructions dated 25.04.2005 under intimation to Government.

40. The 3rd respondent - Tahsildar, considering all these facts and circumstances, ordered for mutation of the names of the petitioners in the revenue records. As noted above, without even adverting to these facts and circumstances, and on other grounds, which does not form part of the order passed by the 3rd respondent - Tahsildar, the 2nd respondent - revisional authority passed the impugned order, which cannot be sustained, and the impugned order is passed in violation of the principles of natural justice.

41. With regard to the impleaded 4th respondent, its claim is that it is the absolute owner and possessor of the land in Sy.No.172 of Hydernagar village, Balangar mandal to an extent of Acs.19-36 guntas by way of registered sale deed bearing document Nos.7665 of 2013, 205 and 206 of 2014, having purchased the same from the decree holder as well as from the claim petitioners covered by Claim petition No.1318 of 2003 and O.S.A.No.55 of 2004 and there after the mutation was granted by the Tahsildar vide proceedings No.B/ 1125/2014 dated 29.05.2014. The further claim of the impleaded respondent No.4 is that in O.S.A.Nos.54, 56, 57 and 58 of 2004 dated 20.12.2019, this court has negatived the claim of the decree holders in CS.No.14 of 1958 and claim of the claim petitioners have been declared with regard to the lands in Sy.No.172 of Hydernagar village, and as the petitioners are claiming through oral gift given to their father Mr. Mohd. Mirza Mohboob Baig by defendant No.52, 4th respondent has no right over the subject lands, they cannot derive any title.

42. The counsel for petitioners would submit that the name of impleaded respondent No.4, which is a company, is already entered into revenue records and hence it shall not have any grievance. The said assertion is not disputed by the counsel for impleaded respondent. In view of the same, impleaded respondent will not be affected if order of mutation dated 16.04.2012 in proceedings No.B/27308/09 in favour of

petitioners is restored. If impleaded respondent is still having any grievance, it can work out its remedies in an appropriate forum.

43. In view of above facts and circumstances, the writ petition deserves to be allowed, and accordingly allowed, and the impugned order passed by the 2nd respondent - joint Collector vide Case No.D5/5023/2013 dated 15.09.2016 is set aside, and consequently the order passed by the 3rd respondent - Deputy Collector and Tahsildar, Balangar Mandal Ranga Reddy District vide proceedings No.B/27308/2009 dated 16.04.2012 is restored.

44. At the time of pronouncement of order, learned counsel for the petitioners stated that based on the impugned order the subject land was included in the list under Section 22-A of the Registration Act, 1908 prohibiting registrations.

45. Since the impugned order is set aside, the consequential order including the subject land in the list under Section 22-A of the said Act, is also quashed.

46. Interlocutory Applications pending, if any, shall stand closed. No order as to costs.

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2022 (3) L.S. 21 (T.S)

IN THE HIGH COURT OF TELANGANA

Present:
The Hon'ble Mr.Justice K.Lakshman

Anasuya & Ors., ..Petitioners
Vs.
Chinna Ramulu & Ors., ..Respondents

CIVIL PROCEDURE CODE, Or.22, Rule 4 - LIMITATION ACT, Sec.5 - Lower Court dismissed the Petition filed by Plaintiff/Respondent No.1, to bring LRs of defendant No.5 (Revision petitioners), but Plaintiff has not challenged said order - Revision Petitioners/Defendant No.5 of legal heirs filed a petition in lower Court to condone 1098 days to bring them as LRs of Defentant No.5 and the same was dismissed by lower Court, hence this Revision by legal heirs of Defendant No.5.

HELD: Respondent No.1/Plaintiff filed suit for partition in lower Court and defendant no.5 living behind the Revision petitioners as his legal heirs - It is specific contention of Revision Petitioners that they have not received any notice from Court below, hence legal heirs of Defendant No.5 who are the present Revision Petitioners themselves approached lower Court to permit them in filing a petition to bring legal heirs of deceased Defendant No.5

C.R.P.No.661/2022 Date:18/07/2022

on record as they are necessary and proper parties to the suit and that from the date of death of defendant No.5 they were under impression that they may get notice from Court, therefore, they have not filed legal heir petition in time and the delay was caused in filing the said petition - Hence the present civil revision petition is allowed condoning the delay of 1098 days in filing petition to bring legal heirs of deceased defendant No.5.

Mr.M.Radhakrishna, Advocate for the Petitioners.
Mr.Gani Reddy and Sudarshan Malugari, Advocate for the Respondents.

O R D E R

Heard Mr. M. Radha Krishna, learned counsel for the petitioners, Mr. K. Gani Reddy, learned counsel for respondent No.1 and Mr. Sudarshan Malugari, learned counsel for respondent Nos.3 to

5. Learned counsel for the petitioners had filed a memo vide U.S.R. No.58413 of 2022, dated 11.07.2022 stating that respondent Nos.7 to 9 are not necessary parties to the present revision.

2. Challenging the order dated 28.02.2022 in I.A. No.5 of 2022 in O.S. No.170 of 2008 passed by the learned I Additional Junior Civil Judge at Shadnagar, the petitioners herein, proposed defendants in the suit, have filed the present revision.

3. FACTS:

i) Respondent No.1 herein - plaintiff in the suit, had filed a suit vide O.S. No.170 of 2008 against defendant Nos.2 to 8 therein for partition of the suit schedule lands.

ii) During the pendency of the aforesaid suit, defendant No.5 died on 15.08.2018. Therefore, the petitioners herein, wife, sons and daughter respectively of defendant No.5, had filed a petition vide I.A. No.5 of 2022 in O.S. No.170 of 2008, to condone the delay of 1098 days in filing the petition to bring the legal heirs of defendant No.5 as defendant Nos.9 to 12.

iii) According to the petitioners, being the legal heirs, they are entitled to succeed the share of the deceased defendant No.5 and, therefore, they are proper and necessary parties to the aforesaid suit.

iv) From the date of death of defendant No.5, the petitioners were under the impression that they may get notices from the Court and as such, due to lack of knowledge with regard to the legal procedure, they kept quiet all these days and petition for their impleadment was not filed within the stipulated time.

v) In the said circumstances, there is a delay of 1098 days in filing the petition to implead them as defendant Nos.9 to 12 in the aforesaid suit.

vi) The said petition was opposed by defendant Nos.2 to 4 contending that the petitioners herein have not explained the day-to- day delay caused in filing the application.

vii) The delay is not properly calculated.

viii) Respondent No.1 - plaintiff had filed an application vide I.A. No.23 of 2021 under Section - 5 of the Limitation Act, to bring the legal heirs of defendant No.5 on record, and the same was dismissed vide order dated 09.12.2021.

ix) Respondent No.1 - plaintiff has not challenged the said order and, therefore the same attained finality.

4. Vide impugned order dated 28.02.2022, Court below had dismissed the said application on the ground that the reasons mentioned by the petitioners herein to condone the delay of 1098 days caused in bringing the legal heirs of deceased defendant No.5 on record are not satisfactory. The Court presumes that every party is aware of the law and hence cannot claim ignorance of the law as a defence to escape liability.

5. CONTENTIONS ON BEHALF OF THE PETITIONERS:

i) Sri M. Radhakrishna, learned counsel for the petitioners, would submit that the impugned order is not a reasoned order and, therefore it is nullity. In support of his contention, he has relied on the principle laid down by the High Court of Judicature at Hyderabad in

Bolla V.K. Radha Krishna v. Viswanadha Venkata Subbaiah 2002 (5) ALT 355 (S.B.).

ii) He would further contend that the Court below could have treated the said application filed under Order 22 Rule 4 of the Code as one filed under Order 1 Rule 10 of the CPC, in order to do justice. Merely because of non-mentioning of correct provision of law as Order - 1 Rule - 10 of the Code at the initial stage by the advocate for the plaintiff, parties should not be made to suffer. Therefore, the Court below has committed jurisdictional error in passing the impugned order. He has placed reliance on the principle laid down in **Pankajbhai Rameshbhai Zalavadia v. Jethabhai Kalabhai Zalavadiya (deceased) through L.Rs** AIR 2018 SC 490.

iii) He would further submit that Section - 5 of the Limitation Act meant for doing substantial justice to the party but not curtail their valuable rights. It has to be applied in elastic manner but not rigid sense. Once the application is dismissed, any amount of injustice would be caused to the petitioner as well as legal heirs of deceased.

6. CONTENTIONS ON BEHALF OF RESPONDENT No1:

Sri K. Gani Reddy, learned counsel for respondent No.1 would submit that the plaintiff had already filed an application vide I.A. No.23 of 2021 to condone the delay of 1044 days caused in filing the petition to bring the legal heirs of the deceased defendant No.5 on record, and the same was dismissed by the Court below vide order dated 09.12.2021. Thus, the plaintiff had already taken steps to bring the legal heirs of the deceased defendant No.5 on record. Therefore, he sought to pass appropriate orders on merits considering the said submission.

7. CONTENTIONS ON BEHALF OF RESPONDENT Nos.3 to 5:

i) The petitioners herein have not

explained the day-to-day delay caused in filing the petition to bring the legal heirs of the decreased defendant No.5 on record.

ii) As per their own affidavit, they had knowledge of pendency of the suit. It is a collusive suit between the plaintiff and defendant No.5. Respondent No.1 herein - plaintiff had not challenged the order passed by the Court below dated 09.12.2021 in I.A. No.23 of 2021 in O.S.No.170 of 2008.

iii) Referring to the docket proceedings and earlier proceedings in the suit, he would submit that the suit was decreed *ex parte* and a petition for setting aside the same was filed and the same was allowed. Defendant No.5 was silent all through and he had not taken any step by filing an application to set aside the *ex parte* decree. It is binding on defendant No.5 and the petitioners herein as his legal heirs.

8. ANALYSIS AND FINDING OF THE COURT:

i) As stated above, respondent No.1 - plaintiff had filed the suit vide O.S.No.170 of 2008 for partition and separate possession of the suit schedule lands and defendant No.5 died on 15.08.2018 leaving behind the petitioners herein as his legal heirs. Respondent No.1 - plaintiff had also filed an application vide I.A. No.23 of 2021 in O.S. No.170 of 2008 on 23.11.2021 to condone the delay of 1044 days in filing the petition to bring the legal heirs of the deceased defendant No.5 on record. The said petition was dismissed by the Court below vide order dated 09.12.2021 on the ground that respondent No.1 - plaintiff has not explained the reasons for the abnormal delay of 1044 days in filing the petition. It is not in dispute that respondent No.1 - plaintiff has not challenged the said order.

ii) It is the specific contention of Mr. M. Radha Krishna, learned counsel for the petitioners herein that the petitioners herein have not received any notice in I.A. No.23 of 2021. In the order passed by the Court below in I.A. No.23 of 2021, there is no mention that a notice was served on the petitioners herein, the legal heirs of the deceased defendant No.5 and that they enter their appearance. However, it is mentioned that it had heard Mr. B. Rajashekar Raju, learned counsel for the respondents - defendants.

iii) It is the normal practice that plaintiff will take steps to bring the legal heirs of any deceased defendant in a suit. In the case on hand also, respondent No.1 - plaintiff had filed I.A. No.23 of 2021, but the same was dismissed for the afore-stated. Thereafter, the petitioners herein being the legal heirs of the deceased defendant No.5 have filed I.A. No.5 of 2022 to condone the delay of 1098 days in filing petition to bring the legal heirs of deceased defendant No.5 on record as they are entitled to the estate of deceased defendant No.5. They are necessary and proper parties to the suit and that from the date of death of defendant No.5 they were under the impression that they may get notice from the Court. Therefore, they have not filed legal heir petition in time and that delay was caused in filing the said petition.

iv) No doubt, there is huge delay of 1098 days in filing the petition to bring the legal heirs of the deceased defendant No.5. They are entitled to succeed the share of

the deceased defendant No.5 in suit schedule properties as his legal heirs.

v) In Sangram Singh v. Election Tribunal, Kotah AIR 1955 SC 425, the Hon'ble Supreme Court observed that a Code of Procedure is designed to facilitate justice and further its ends; not a penal enactment for punishment and penalties; not a thing designed to trip people up.

vi) In **Pankajbhai Rameshbhai Zalavadia**[2], the Apex Court held that in a suit for partition, the position of plaintiffs and defendants can be interchangeable. It is that each adopts the same position with the other parties. While dealing with an application filed under Order - 1, Rule - 10 of the C.P.C., Courts are not supposed to adopt hyper-technical approach which if carried to end may result in miscarriage of justice. If the trend is to encourage fair play in action in administrative law, it must all the more inhere in judicial approach. Such applications have to be approached with this view whether substantial justice is done between the parties or technical rules of procedure are given precedence over doing substantial justice in Court. Undoubtedly, justice according to law, law to be administered to advance justice. The Apex Court considered the object, scope and ambit of Order I, Rule 10 and Order XXII and Rule 4 of CPC.

vii) In **M/s. Motilal Padampat Sugar Mills Co. Ltd., v. The State of U.P**. AIR 1979 SC 621, the Apex Court held that there is no presumption that every person knows the law. It is often said that everyone is presumed to know the law, but that is not a correct statement, there is no such maxim known to the law. Over a hundred and thirty years ago, Maule, J., pointed out in **Martindala v. Faulkner [1846 2 CB 706]** that "there is no presumption in this country that every person knows the law, and it would be contrary to common sense and reason if it were so". Scrutton L.J., also once said that "it is impossible to know all the statutory law, and not very possible to know all the common law." But it was Lord Atkin who, as in so many other spheres, put the point in its proper context when he said in **Evans v. Bartlem [1937 AC 473]** that "……the fact is that there is not and never has been a presumption that everyone knows the law. There is the rule that ignorance of the law does not excuse, a maxim of very different scope and application."

viii) Coming to the facts of the case on hand, it is relevant to note that perusal of the impugned order would reveal that the Court below has reproduced verbatim the order dated 09.12.2021 passed in I.A. No.23 of 2021 including the cause title, reasons, maxims and findings etc. The reasons mentioned in the affidavits filed in I.A. No.23 of 2021 and in I.A.No.5 of 2022 are different. There is no consideration of the said reasons by the Court below. It is a copy- paste order. Thus, it is not a reasoned order. Any order without reasons is an order passed without application of mind and it is a nullity as held in **Bolla V.K. Radha Krishna**[1] supra.

ix) The Court below failed to consider the object of Order - XXII, Rule - 4 of the CPC. As rightly contended by the learned counsel for the petitioners herein that though the petition was filed under Order I Rule 10 of CPC., the relief sought is to bring Legal Representatives of defendant No.5 on

record. Therefore, mis-quoting and wrong quoting of a provision will not disentitle a party in seeking relief.

x) A bare reading of Order XXII Rule 4 of CPC makes it clear that it applies only in the case where the death of one of the several defendants or sole defendant occurs during subsistence of the suit.

xi) It is opt to note that it is a suit for partition wherein, the position of plaintiffs and defendants can be interchangeable, which adopts the same position with the other parties. Legal Representatives of a deceased defendant have to succeed his share in the suit schedule property. Therefore, while dealing with an application filed to condone the delay in bringing Legal Representatives of a deceased defendant, court is not expected to adopt hyper-technical approach. It has to adopt an approach to do substantial justice and to administer to advance justice.

xii) Admittedly, the petitioners herein are the legal heirs of the deceased defendant No.5, and the suit is filed for partition and they have to succeed the share of defendant No.5 being his Legal Representatives. They are necessary parties to the present suit.

xiii). It is relevant to note that the plaintiff is not opposing the present petition and defendants are opposing on the ground that it is a collusive suit. They have to take the defence during trial. But they cannot oppose the petition to condone the delay in bringing Legal Representatives of deceased defendant No.5 on record. In fact, plaintiff had already taken steps to bring Legal Representatives of the deceased defendant No.5 on record. There is no consideration of the said facts and law by the Court below in the impugned order.

9. Therefore, viewed from any angle, the impugned order is not a reasoned order on consideration of both facts and law. The Court below has committed error in dismissing the application. Therefore, this Court has power to correct the said error by exercising its power of superintendence under Article - 227 of the Constitution of India.

10. CONCLUSION:

i) In view of the above discussion, the present Civil Revision Petition is allowed and the impugned order dated 28.02.2022 in I.A. No.5 of 2022 in O.S. No.170 of 2008 passed by the learned I Additional Junior Civil Judge at Shadnagar is hereby set aside. I.A. No.5 of 2022 is accordingly allowed condoning the delay of 1098 days in filing the petition to bring the legal heirs of deceased defendant No.5 on record as defendant Nos.9 to 12 in O.S. No.170 of 2008.

ii) However, the suit is of the year 2008 and, therefore, learned I Additional Junior Civil Judge is directed to dispose of the very suit itself in accordance with law within a period of three (03) months from the date of receipt of a copy of this order.

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

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2022 (3) L.S. 27 (T.S)

IN THE HIGH COURT OF TELANGANA

Present:
The Hon'ble Dr.Justice Chillakur Sumalatha

Poojala Venkateswar Rao Medak & Ors., ..Petitioners

Vs.

The State of Telangana & Anr. ..Respondents

CRIMINAL PROCEDURE CODE - COGNIZANCE OF OFFENCE - Criminal Revision case challenging the Order of trial Court - On investigation, police laid chargesheet arraying the Petitioners herein as accused Nos. 1 to 5 for offences punishable u/Secs.324, 506 part II read with Sec.34 IPC - However, while taking cognizance, the trial Court made an observation that the facts of case also attract Sec.307 IPC and Sec.3(1)(x) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act and added the same.

HELD: There is a clear narration of the grounds as to why the Investigating Agency felt that the case is made out against the Petitioners/ Accused only for the offences punishable u/Secs.324, 506 part II r/w 34 IPC and further as no reasons are accorded in the impugned Order as to why a different view is taken - Petition stands allowed - Order of the trial Court stands set aside – Trial Court is directed to proceed with the case against the petitioners by according calendar case number and by conducting trial for the offences punishable u/Secs.324, 506 part II r/w 34 IPC.

Crl.R.C.No.1902/2016. Date:09.03.2022.

Mr.P. Gajendra Murthy, Advocate for the Petitioners.
Public Prosecutor TG. for the Respondents.

O R D E R

This Criminal Revision case is filed challenging the order of the Court of Principal Junior Civil Judge, Siddipet, in PRC No. 8 of 2015 dated 19.05.2015.

2. Heard the submission of the learned counsel for the petitioners, learned Assistant Public Prosecutor, who is representing the first respondent, and the learned counsel appearing for the second respondent.

3. On 22.02.2014, the second respondent (hereinafter be referred to as " the de facto complainant") gave a complaint to police alleging that the first petitioner herein and others attacked him and abused him in the name of his caste. Basing on the said complaint, on the same day, police registered a case in Cr.No. 37 of 2014 for the offences punishable under sections 324, 506 part II read with section 34 IPC and under section 3(1)(x) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. On investigation, police laid chargesheet arraying the petitioners herein as accused Nos. 1 to 5 and contending that they committed offences punishable under sections 324, 506 part II read with section 34 IPC. However, while taking

cognizance, the learned Principal Junior Civil Judge, Siddipet, through the impugned order, with an observation that the case facts also attract Section 307 IPC and section 3(1)(x) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, passed the following order:

> "...as per the statement of complainant and contents of complaint appear the ingredients of the offence under section 3(1)(x) of SC/ST (PoA) Act, 1989 and further Section 307 of IPC is also attracting. Hence, the cognizance of the offence taken on file under section 504, 307 of IPC and section 3(1)(x) of SC/ST (PoA) Act, 1989 against the A-1 and under section 324, 506(ii) r/ w 34 IPC against A-1 to A-5 "

4. Aggrieved by the said order, the petitioners are before this Court. Thus, the point that falls for consideration is:

"Whether basing on the facts and under the circumstances of the case, the impugned order is sustainable and if not, whether the same is liable to be set aside exercising the revisional jurisdiction of this Court."

5. Arguing at length in respect of merits of the case, the learned counsel for the petitioners contended that the petitioners have not committed any offence as alleged by the defacto complainant and in deed, only due to the political rivalry, this case is foisted against the petitioners. The learned counsel also stated that when the incident, as per the version of the defacto complainant, occurred on 18.02.2014, a complaint was given to the police on 22.02.2014 and therefore, there is inordinate delay in presentation of the complaint. The learned counsel further submitted that the defacto complainant had given another complaint earlier to the present complaint and in the said complaint, he has not narrated the facts as narrated in the present complaint and the same is observed by the police during the course of investigation also.

6. The learned Assistant Public Prosecutor, who is representing the first respondent, stated that after due investigation, police found that the case facts attract only Sections 324 and 506 IPC and, therefore, police filed chargesheet to that effect, but somehow, the Court took cognizance of graver offences. Making his submission, the learned counsel for the second respondent/defacto complainant stated that in case, case is not made out for the offences attracting the provisions of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act and Section 307 IPC, the petitioners/accused would be acquitted by the Court, and therefore, the order under challenge should not be set aside by exercising the revisional jurisdiction.

7. A prominent fact that is noticed on a meticulous perusal of the chargesheet is that, the petitioners No. 3 and 4, who are arrayed as accused as 3 and 4, also belong to scheduled caste. The provisions of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, does not apply to any act committed by any person belonging to Scheduled Caste or Scheduled Tribe against a person belonging to the same community. Therefore, and also

basing on the facts of the case and further the material collected during investigation, schedule property under the registered sale deed. The impugned I.A.No.322 of 2017 is filed under Order VII Rule 11 of CPC with a prayer to reject the plaint. The trial Court on considering the evidence, dismissed the petition.

4. The respondents/plaintiffs case is that on agreement to pay total sale consideration of Rs.5,24,81,000/- they have executed registered sale deed, but received only Rs.1,50,00,000/-, as the respondents/ defendants had undertaken to pay the remaining amount at the earliest. However, they failed to pay the balance sale consideration with interest at 12% per annum.

5. In the interlocutory application, the revision petitioners/defendants contested that the suit is filed only to harass them and the suit schedule property was entangled in urban land ceiling and other encumbrances to secure the property. However, they paid the entire sale consideration, which is evident by the recitals of the sale deed. That apart, after the sale the respondents/plaintiffs executed the registered rectification deeds, thereby reduced the area of schedule property, but they did not claim for reimbursement. Howsoever, the suit is hit by sections 91 and 92 of the Indian Evidence Act and for deliberate non-joinder of necessary parties.

6. In this revision, it is contended that the trial Court without appreciating these aspects and the purport of the Order VII Rule 11 of C.P.C. and by misreading the citations filed by the respondents, erred in dismissing the petition.

7. The respondents/plaintiffs pleaded that the recitals of the sale deed is clear as to the total sale

consideration but the revision petitioners/ defendants paid only Rs.1,50,00,000/-. Further the revision petitioners/defendants have purchased the property with all knowledge about the encumbrances, as such, they cannot claim advantage on this aspect. Further the suit is filed in the individual capacity, as such arraying all the share- holders as parties, is not necessary. That apart, the revision petitioners failed to make out essential factors of Order VII Rule 11 of C.P.C. Thus, the trial Court rightly dismissed the petition on merits.

8. The point arises for determination is whether there are justifiable grounds to reject the plaint as prayed for by the revision petitioners/defendants?

9. The primary contention of the revision petitioners/defendants is that the document of conveyance/registered sale deed itself is showing the payment of entire sale consideration, as such, the cause of action is hit by sections 91 and 92 of Indian Evidence Act. Therefore, there is no cause of action. On this aspect, the respondents/ plaintiffs plead that only part of the consideration was paid and basing on the undertaking given by the revision petitioners/ defendants, the sale deed was executed. This position is disclosing prima facie case. Further, at this juncture without examining the material to be placed, applying the rules of evidence and determining the plaintiffs' case at the threshold found not justified,

especially as the Explanation 3 of Section 91 and Proviso 2 of section 92 of the Indian Evidence Act is giving scope for adducing oral evidence. Further, the Order VII Rule 11 of C.P.C. contemplates the rejection of plaint, where it does not disclose a cause of action. Further, it is well settled that while considering this aspect, the averments of plaint alone are relevant. Thus, as the plaintiffs have mentioned certain facts under which claiming right to seek relief against the revision petitioners/defendants and those necessary facts are to be proved to establish the right against the adversary, rejection of plaint at this stage would not be proper, much less cannot be held that the claim of the respondents/plaintiffs does not disclose any cause of action.

10. The other objection pertains to non-joinder of necessary parties. This contention is answered by the respondents/plaintiffs that the claim is against the defendants in their individual capacity claiming as per their share in the suit against the revision petitioners and other shareholders are not necessary parties. Even otherwise non-joinder of necessary parties is not one of the grounds for rejection of plaint in any one of the stance under Order VII Rule 11 C.P.C. Even if there is non- joinder of necessary parties the plaintiffs can be afforded opportunity at appropriate stage of the suit by framing additional issue for impleading necessary parties, if required. But, the same cannot be stretched to reject the plaint without there being any opportunity. For non-joinder of necessary party even after the opportunity when the plaintiffs fail to act upon, ultimately the suit may be dismissed i.e. only after framing of issues and trial. This situation is distinguishable from the stage of the suit. Thus, the contention of non-joinder cannot be a ground for rejection of plaint.

11. The other disputed facts are not qualifying any of the factors to reject the plaint, hence it shall be held that the trial Court has rightly exercised its' discretion and in the absence of any material, no illegality or material irregularity is found necessitating interference by this Court. Therefore, the revision fails on merit.

12. Accordingly, the revision petition is dismissed. There shall be no order as to costs.

As a sequel, miscellaneous petitions pending if any in this Civil Revision Petition, shall stand closed.

LAW SUMMARY

2022(3)

Summary Recent Cases

2022 (3) S.R.C. 1 (Supreme Court)

Sanjay Kishan Kaul, J.
S.Ravindra Bhat, J.
Civil A.No.371/2022
Date:2-9-2022

M/s.Jagan Singh & Co.,
Vs.
Ludhiana Improvement Trust & Ors.,

CIVIL PROCEDURE CODE, Or.21, Rule 90(3) - Twin conditions of material irregularity or fraud and substantial injury has to be satisfied before an auction sale can be set aside.

2022 (3) S.R.C. 2 (Supreme Court)

Aniruddha Bose, J.
J.B.Pardiwala, J.
SLP(C)No.22443/2019
Date:1-9-2022

LIC of India
Vs.
Sanjay Builders PVt. Ltd.

CIVIL PROCEDURE CODE, Or.6, Rule 17 - AMENDMENT OF PLEADINGS - Mere delay would not be a ground for rejecting the application for amendment.

2022 (3) S.R.C. 3 (Supreme Court)

A.S.Bopanna, J.
Pamidighantam
Sri Narasimha, J.
Slp.(C)No.29207/2018
Date:30-8-2022

Mona Baghel
Vs.
Sajjan Singh Yadav

MOTOR VEHICLES ACT - Motor accident compensation exceeding the claimed amount can be awarded.

2022 (3) S.R.C. 4 (Supreme Court)

Dr.D.Y.Chandrachud, J.
A.S.Bopanna, J.
Crl.A.No.1260/2022
Date:16-8-2022

Oriental Bank of Commerce
Vs.
Prabobh Kumar Tewari

NEGOTIABLE INSTRUMENTS ACT - Drawer of a cheque is liable even if the details in the cheque have been filled up not by the drawer, but by some other person - The presumption which arise on the signing of the cheque cannot be rebutted merely by the report of hand writing expert.

–X–

2022 (3) S.R.C. 5 (High Court of A.P.)

Ninala Jayasurya J.
Crl.P.No.6182/2022
Date:11-8-2022

K.Subrahmanyam
Vs.
State of A.P.

IMMORAL TRAFFIC (PREVENTION) ACT, 1956 - Customer who visits Brothel for sex with a prostitute cannot be prosecuted under Act.

–X–

2022 (3) S.R.C. 6 (Supreme Court)

Indira Banerjee, J.
V.Ramasubramanian, J.
Crl.A.No.1224/2022
Date:11-8-2022

Wyeth Ltd.,
Vs.
State of Bihar

CRIMINAL PROCEDURE CODE, Sec.482 - A criminal complaint has to be quashed if no offence is made out by a careful reading of the complaint.

2022 (3) S.R.C. 7 (Supreme Court)

Indira Banerjee,J. Sakharam since
V.Ramasubramanian, J. deceased
Civil A.No.5067/2022 through Lrs.
Date:3-8-2022 Vs.
Kishan Rao

CIVIL PROCEDURE CODE, Or.22 - Second appeal does not abate on death of one of respondents when the right to sue survives against the surviving respondent.

–X–

2022 (3) S.R.C. 8 (High Court of A.P.)

K.Vijaya Lakshmi J. Sri Lakshmi Demullu
W.P.No.13764/2022 Rice Mill
Date:6-5-2022 Vs.
State of A.P.

ESSENTIAL COMMODITIES ACT, 1955, Sec.6(A) - Seizure of paddy and rice - Joint Collector rejecting for release of the seized stock on the ground Supreme Court observations issud in SLP that the seized stocks are not to be released to the same person from whom it is seized, as such the request made for release of seized stock same pending finalization of 6-A case is rejected.

HELD: The copy of SLP is not available with Joint Collector, it is not known as to how Joint Collector relied upon the order which is not even there before. The respondents are directed to release a paddy to the petitioner as expeditiously as possible, and the petitioner is directed to mill the same in the presence of the officials of respondent and the resultant rice has to be supplied to Civil Supplies Corporation.

–X–

2022 (3) S.R.C. 9 (Supreme Court)

Ajay Rastogi, J. Kewal Krishan
Abhay Shreeniwas Oka, J. Vs.
Civil.A.No.6989/2021 Rajesh Kumar
Date:22-11-2021

TRANSFER OF PROPERTY ACT, Sec.54 - Judgment on cancellation of sale deed for not receiving sale consideration.

–X–

2022 (3) S.R.C. 10 (High Court of A.P.)

D.Ramesh J. Chekka Suryanarayana
C.R.P.No.472/2021 Vs.
Date:3-9-2021 Saka Rajulamma

CIVIL PROCEDURE CODE, Or.18, Rule 17 and r/w Sec.151 - (INDIAN) EVIDENCE ACT, Sec.115 - Estoppel - Application to recall P.W.1 - Allowed subject to the condition of payment of Rs.3,000 as costs within specified time - In default application stands dismissed - Order in condition precedent - CRP filed challenging said order after acceptance the costs with protest.

HELD: Once the impugned order is condition precedent subject to payment of costs with default clause and the petitioner accepted the costs with protest, he is estopped from changelling the said order and CRP is not maintainable.

–X–

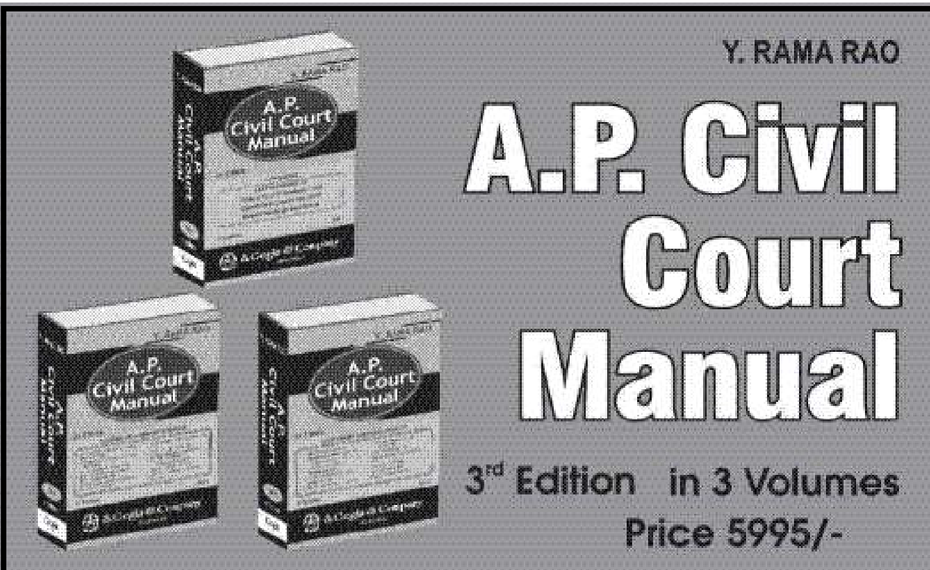
2022 (3) S.R.C. 11 (Supreme Court)

Ashok Bhushan, J. Khushi Ram
R.Subhash Reddy, J. Vs.
Civil A.No.5167/2010 Nawal Singh
Date:22-3-2021

SUCCESSION ACT, 1925, Sec.15 (1)(d) - Heirs of the father are covered in the heirs, who could succeed, when heir of father of a femable are included as person who can possibly succeeded, it cannot be held that they are strangers and not the members of the family qua the female.

Female Hindu succeeded her share of property, she was absolute owner when she entered into settlement.

–X–



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