

**THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA  
RAO**

**CIVIL REVISION PETITION Nos.2978 and 4422 of 2014**

**COMMON ORDER:**

The petitioners in C.R.P.No.2978 of 2014 are defendants in O.S.No.458 of 2012 on the file of IV Addl. Junior Civil Judge, Kadapa.

2. The respondent in the said C.R.P. filed the said suit for a perpetual injunction restraining the petitioners from interfering or meddling with the suit schedule property and for costs.

3. The suit schedule property is a house with vacant site bounded within the specific boundaries with the extents as mentioned in the plaint is as follows:

*“East-west on north : 12.3 feet or 3.73 meters,  
East-west on South: 14.8 feet or 4.47 meter.  
North-south : 35.4 feet or 10.77 meters total  
square yards 52.80 within the above extent  
East-West 18.8 feet or 2.64 meters, North-south :  
13.9 feet or 4.19 meters cement sheet vasara  
Cement sheet vasara covers to ... square feet  
119.16.”*

4. The plaintiff is the daughter of one A.Krishnaiah, and claims to have obtained plaint schedule property under Ex.A-1 gift settlement deed dt.02-09-2011 executed by the said Krishnaiah in her favour. According to recitals in the said gift deed, she was gifted the plaint schedule property. In the said document, there is a reference to a

partition deed dt.20-08-2011 between himself and his brothers wherein the plaint schedule property was allotted to him. This is marked as Ex.A-2. There is a reference in Ex.A-2 to an earlier partition which is said to have taken place on 29-11-1926 between Krishnaiah's father and his grand father Venkata Ratnam, Venkata Ratnam's brother Abbaiah and Venkata Ratnam's father Venkata Subbaiah. 'C' schedule property in the said partition fell to the share of Venkata Ratnam. It is mentioned in the said document that a house bearing Door No.1 in Municipal Ward -3 having on its west-north, the property of Marella Narayanamma and to South: Bellary road, comprising of a house in 2 ankanams with measurements East-West: 7 mooralu (equivalent to 10½ feet) and North-South: 18 mooralu (equivalent to 27 feet) only.

5. It is the plaintiff's case that the plaint schedule property was gifted to her by her father under a gift deed dt.02-09-2011 (Ex.A-1) and that the defendants are obstructing her in construction of the house in the plaint schedule property without having any right or title in respect of the plaint schedule property.

6. Defendants' case is that plaintiff's father, for more one year had been trying to grab the property of defendants, and only to that end, he executed Ex.A-1 gift deed in her favour after creating Ex.A-2 partition deed with false measurements. It is also pleaded that plaintiff's

father had filed O.S.No.167 of 2012 before the Senior Civil Judge, Kadapa in respect of a fire wood depot run by the tenants of defendants and to create some kind of documentary evidence in support of his claim for the fire wood shop on the West, the father of plaintiff got filed the suit through plaintiff. They alleged that the site marked as ABCD in the written statement plan is the site belonging to defendants in possession and enjoyment for more than 100 years. They claimed that Marella Narayanamma is the paternal grand mother of defendant Nos.3 and 4 and there is a reference to her even in

Ex.A-3 partition deed dt.29-11-1926 referred to above. It is specifically contended that in the said partition deed Ex.A-3

dt.29-11-1926, plaintiff's great grand father Venkata Ratnam got towards his share, the backyard with measurement of 10 feet 6 inches only towards East to West, and now the plaintiff and her father, under the guise of Exs.A-2 and A-1 documents are claiming more area (12.3 feet).

7. Along with the suit, the plaintiff filed I.A.No.724 of 2012 reiterating the plaint averments and seeking a temporary injunction pending disposal of suit restraining defendants from interfering with her alleged possession and enjoyment of the plaint schedule property.

8. The 1<sup>st</sup> defendant filed a counter opposing grant

of such relief to plaintiff.

9. By order dt.21-02-2013, the Court below allowed I.A.No.724 of 2012. It held that plaintiff is claiming property relying upon Exs.A-1 and A-2; respondents had filed the partition deed

dt.29-11-1926 as Ex.B-1, but did not file any document showing the measurements of the property and proving that petitioner is claiming property of respondents with excess measurements. It held that except the rough sketch filed by defendants, there is no documentary evidence placed by defendants in respect of their contention. It also observed that Exs.A-1 to A-3 establish that plaintiff acquired the plaint schedule property by virtue of Ex.A-1 and there is imminent threat of dispossession in the hands of defendants, and that she has *prima facie* case and balance of convenience and is entitled to a temporary injunction.

10. The defendants questioned it by way of C.M.A.No.7 of 2013 before the I Additional District Judge, Kadapa.

11. By judgment dt.07-04-2014, the said appeal was dismissed. The lower appellate Court, while accepting that the plaint schedule is tallying with Ex.A-3 partition deed, curiously stated that the property which Venkata Ratnam got under Ex.A-3 in 1926, by 2011, on account of change of boundaries might have increased in

area; and since the schedule mentioned in the injunction application tallied with Exs.A-1 and A-2, the trial Court was correct in granting temporary injunction.

12. Questioning the same, C.R.P.No.2978 of 2014 is filed.

13. The plaintiff in the said suit also filed I.A.No.1475 of 2013 for police aid for implementation of the orders passed in I.A.No.724 of 2012. By order dt.13-10-2014 police aid was also granted to plaintiff.

14. Questioning the same, C.R.P.No.4422 of 2014 is filed.

15. The learned counsel for petitioners/defendants in both the Revisions contends that when Venkata Ratnam got land measuring East-West only 10 feet 6 inches under Ex.A-3 = Ex.B-1 partition deed, it was not possible for his successor Krishnaiah to get under Ex.A-2 partition deed East-West 12 inches 3 feet and gift the same to plaintiff under Ex.A-1. He contends that the lower appellate Court acted perversely in holding that by efflux of time, what Venkata Ratnam obtained enlarged into a larger area.

16. The learned counsel for respondent/plaintiff sought to support the findings of the Courts below and contended that the concurrent findings of the Courts below ought not to be interfered by this Court in exercise

of its revisional jurisdiction under Article 227 of the Constitution of India.

17. I have noted the submissions of both sides.

18. It is true that this Court cannot review or reappreciate the evidence in a Revision Petition filed under Article 227 of the Constitution of India. But where a finding is perverse, or where the Court below while arriving at findings failed to take into consideration the relevant factors, or based their decision on irrelevant factors, the power under Article 227 of the Constitution of India can be exercised (See **Sneh Gupta Vs. Devi Sarup and others**<sup>[1]</sup>).

19. In the present case, admittedly the extent obtained by Venkata Ratnam under Ex.A-3 = Ex.B-1 partition deed measured from East to West only 10 feet 6 inches. If so, it is inconceivable that in the partition deed Ex.A-2 dt.20-08-2011, plaintiff's father could have got more area i.e. 12 feet 3 inches. It is impossible for him to get more than what Venkata Ratnam had got under Ex.A-3. Therefore it is not open to him to gift more than what he has got under Ex.A-1 to plaintiff.

20. In view of this, the reasoning of the trial Court that Exs.A-1 to A-3 establish the plaintiff's *prima facie* title, cannot be accepted. The reasoning of the lower appellate Court that due to efflux of time between

1926 to 2011, when Exs.A-1 and A-2 were executed, boundaries would change and area would get enlarged, is clearly perverse. Merely because defendants have not filed any document in support of their title to the property, that does not absolve the Courts from scrutinizing the claim of plaintiff carefully.

21. I am therefore of the opinion that the title of plaintiff to the extent claimed by her is *prima facie* not established, in which event there is no question of consideration of balance of convenience and irreparable loss. Therefore, the orders dt.07-04-2014 in C.M.A.No.7 of 2013 of the I Additional District Judge, Kadapa confirming the order dt.21-02-2013 in I.A.NO.724 of 2011 in O.S.No.458 of 2012 of the VI Additional Junior Civil Judge, Kadapa are both set aside. C.R.P.No.2978 of 2014 is allowed. No costs.

22. Consequently, the order granting police aid in favour of respondent/plaintiff vide order dt.13-10-2014 in I.A.No.1475 of 2013 in O.S.No.458 of 2012 of the VI Additional Junior Civil Judge, Kadapa is set aside, and C.R.P.No.4422 of 2014 is also allowed. No costs.

23. As a sequel, all miscellaneous petitions, if any pending, in these Revisions shall stand closed.

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**JUSTICE M.S.RAMACHANDRA RAO**

Date: 10-03-2015

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[\[1\]](#) (2009) 6 SCC 194