

HON'BLE SRI JUSTICE A.V.SESHA SAI

CIVIL REVISION PETITION No.3639 of 2012

Between:

Dandam Sivakumar,  
S/o Rajababu

... Petitioner

And:

Kandula Ramam,  
S/o Kasiviswanatham and five others.

... Respondents

JUDGMENT PRONOUNCED ON 12.10.2017

HON'BLE SRI JUSTICE A.V.SESHA SAI

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1. Whether Reporters of Local newspapers : No  
may be allowed to see the Judgment?
  2. Whether the copies of judgment may be  
marked to Law Reporters/Journals? : Yes
  3. Whether His Lordships wishes to  
see the fair copy of the Judgment? : No

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JUSTICE A.V.SESHA SAI

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< Gist:

> Head Note:

! Counsel for the Petitioner: Mr. G.Vivekanand

^ Counsel for the Respondents: Mr. K.Subramanyam

? Cases Referred:

NIL



HON'BLE SRI JUSTICE A.V.SESHA SAI

CIVIL REVISION PETITION No.3639 of 2012

ORDER.

This Revision filed under Section-115 of the Code of Civil Procedure calls in question the order, dated 07.6.2012, passed by the learned Senior Civil Judge, Narsipatnam, in E.A.No.91 of 2010 in E.P.No.62 of 2006 in O.S.No.10 of 1983.

The petitioner herein is a third party to the said suit proceedings. Respondent Nos.1 and 2 herein instituted O.S.No.10 of 1983 on the file of the Court of the Senior Civil Judge, Chodavaram, against respondent Nos.3 to 6 for partition of the suit schedule properties. The said suit was decreed on 06.10.1988 and as against the same, respondent Nos.3 to 6 preferred Appeal Suit No.126 of 1989 and the said Appeal Suit was dismissed by the learned III Additional District Judge, Visakhapatnam by judgment, dated 17.01.1992. Aggrieved by the same, respondent Nos.3 to 6 preferred S.A.No.122 of 1994 before this Court. This Court dismissed the said Second Appeal on 04.2.1994. Eventually, a Commissioner was appointed in the final decree proceedings, who partitioned the suit schedule properties in accordance with the

preliminary decree, and a final decree was passed on 17.7.1996. Thereafter in E.P.No.62 of 2006 filed by the decree-holders, the petitioner herein filed the present E.A.No.91 of 2010 under the provisions of Section-26 read with Section-151 of the Code of Civil Procedure praying for stay of execution of E.P.No.62 of 2006 pending disposal of ATC.No.1 of 2010 on the file of the Court of the learned Principal Junior Civil Judge, Narsipatnam. The said E.A.No.91 of 2010 was contested by respondent Nos.1 and 2/decreed-holders by way of filing a counter-affidavit. The learned Senior Civil Judge, Narsipatnam by the order under challenge dismissed the said E.A.

Heard Sri G.Vivekanand, learned counsel for the petitioner and Sri K.Subramanyam, learned counsel for respondent Nos.1 and 2/decreed-holders apart from perusing the material available before the Court.

It is contended by the learned counsel for the petitioner that the order under challenge is contrary to law and opposed to the very spirit and object of the provisions of the Code of Civil Procedure. It is the further contention of the learned counsel that the Court below did not properly consider the contents of the

affidavit, filed in support of the application, which resulted in passing of the order under challenge; that the Court below grossly erred in not recording any valid reasons for arriving at the conclusions in the impugned order; and that the impugned order is a result of improper interpretation of the provisions of the Andhra Pradesh (Andhra Area) Tenancy Act, 1956 (for short 'the Tenancy Act'). In support of his submissions and contentions, the learned counsel placed reliance on the judgments of the Hon'ble Apex Court in *Santlal Gupta and Others Vs. Modern Co-Operative Group Housing Society Limited and Others*<sup>1</sup> and *Raviyashwant Bhoir Vs. District Collector, Raigad and Others*<sup>2</sup>.

Per contra, it is contended by the learned counsel for respondent Nos.1 and 2/deed holders that there is absolutely no illegality nor there exists any perversity and infirmity in the impugned order and in the absence of the same, the order passed by the Court below is not amenable for any judicial review under Section-115 of the Code of Civil Procedure. It is also the submission of the learned counsel that the order under challenge is supported by valid and convincing reasons; that the contentions contra

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<sup>1</sup> (2010) 13 SCC 336

<sup>2</sup> (2012) 4 SCC 407

advanced by the learned counsel for the petitioner cannot be sustained; that the Court below after elaborately considering each and every issue involved in the case came to the conclusion correctly and the same cannot be disturbed in the absence of any perversity; and that respondent Nos.3 to 6/judgment-debtors are behind the present application and only at their instance, the present application came to be filed by the petitioner only with the intention of frustrating the validly passed decree by delaying the proceedings. It is the further submission of the learned counsel that the present E.A. filed under Section-26 of the Code of Civil Procedure is not maintainable.

In the above background, now the issues that emerge for consideration of this Court are:

- “1. Whether the order passed by the Court below which is impugned in the present Revision is sustainable and tenable? and
2. Whether the same warrants any interference of this Court under Section-115 of the Code of Civil Procedure?”

In the instant case, as stated above, the suit was decreed by the learned Senior Civil Judge, Chodavaram as long back as on



06.10.1988 and a preliminary decree for partition of the suit schedule properties was passed and the said preliminary decree attained finality in view of the dismissal of A.S.No.126 of 1989 and S.A.No.122 of 1994 by the first and second appellate Courts, respectively. It is also to be noted that in the final decree proceedings, a final decree was also passed as long back as on 17.7.1996. Thereafter, the decree-holders filed EP.No.62 of 2006 praying for delivery of the schedule properties. In the said E.P., the petitioner herein filed E.A.No.91 of 2010 under Section-26 read with Section-151 of the Code of Civil Procedure.

Broadly, two contentions are raised by the learned counsel for the petitioner in this Revision, *viz.*, (1) the impugned order is not supported by any valid, convincing and cogent reasons, and (2) the Court below wrongly interpreted the provisions of the Tenancy Act.

In support of the first contention, the learned counsel for the petitioner has placed reliance on the judgments of the Hon'ble Apex Court in *Santlal Gupta and Others* (1 supra) and *Raviyashwant Bhoir* (2 supra). While referring to the above said pronouncements of the Hon'ble Apex Court, it is the submission of the learned counsel for the petitioner that since the Court below

did not assign any reasons for arriving at the conclusions in the impugned order, the same is liable to be set aside.

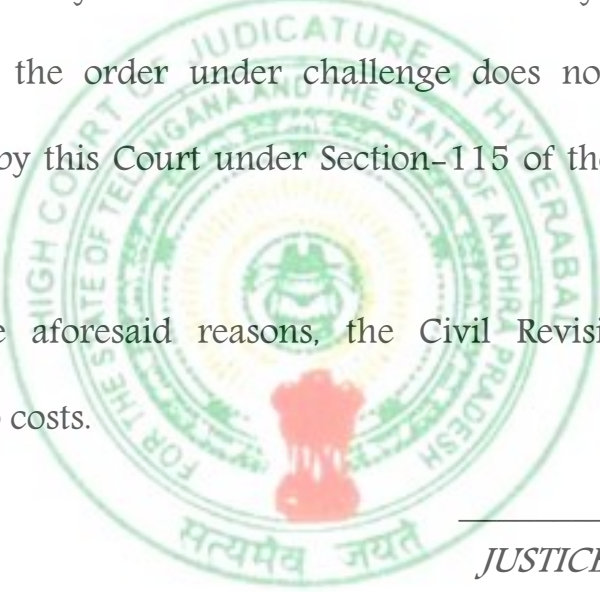
In order to consider the same, it may be appropriate to look into the order passed by the Court below which is under challenge. A perusal of the said order reveals that at paragraph-13 thereof, the Court below elaborately considered various aspects and also meticulously discussed various averments in the affidavit, filed in support of the application, and their sustainability including the finality attained in the litigation. The Court below also recorded a categorical finding with regard to the brain behind the present application. There is also no dispute with regard to the fact that respondent Nos.3 to 6/judgment debtors did not contest the application before the Court below. Therefore, by any stretch of imagination, it cannot be concluded that the order passed by the Court below is devoid of any reasons. As the Court below has meticulously and extensively considered various aspects and came to the conclusion supported by valid reasons, the judgments of the Hon'ble Apex Court cited by the learned counsel for the petitioner would not render any assistance to the petitioner.



As regards the second contention advanced by the learned counsel for the petitioner that the provisions of the Tenancy Act were wrongly interpreted by the Court below, the same also falls to the ground in view of the reasons assigned by the Court below at paragraph-14 of the impugned order.

Therefore, this Court, in the facts and circumstances of the case, has absolutely no scintilla of hesitation nor any traces of doubt to hold that the order under challenge does not warrant any interference by this Court under Section-115 of the Code of Civil Procedure.

For the aforesaid reasons, the Civil Revision Petition is dismissed. No costs.



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JUSTICE A.V.SESHA SAI

*12<sup>th</sup> October, 2017*

*Note:*

*LR copy to be marked.*

*B/o*

*dr*