

**THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY**

**C.R.P.No.914 of 2017**

**ORDER:**

This revision petition is filed under Article 227 of the Constitution of India assailing the order dated 30.01.2017 passed in I.A.No.3 of 2017 in O.S.No.322 of 2011 on the file of Additional Senior Civil Judge Court, Narasaraopet, Guntur District.

2. Heard the learned counsel appearing for both the parties and perused the material on record.

3. The point that arises for consideration is:

“Whether there is any illegality, irregularity or impropriety in the impugned order?”

4. A perusal of the record reveals that the first respondent filed O.S.No.322 of 2011 on the file of Additional Senior Civil Judge Court, Narasaraopet, against the petitioner and respondents 2 to 4 for declaration to declare the settlement deed dated 08.03.1995, sale deeds dated 08.04.2001 and 27.07.2011 as null and void and consequential perpetual injunction. After completion of evidence on both sides, the trial Court posted the matter for arguments. The first respondent has taken number of adjournments to advance arguments. After completion of the arguments on both sides, the first respondent filed I.A.No.3 of 2017 under Order VI Rule 17 CPC for amendment of the plaint to include the relief of recovery of possession. The petitioner filed counter *inter alia* contending that the first respondent filed the petition with an ulterior motive to drag on the matter. The trial Court after affording a reasonable opportunity to both parties, allowed the petition. Hence, the revision.

5. As rightly pointed out by the learned counsel for the petitioner, the Court can allow the petitions filed under Order VI Rule 17 CPC in order to bring to the notice of the Court about the subsequent events. As per the averments made in the affidavit, during the pendency of the suit, the first respondent was dispossessed from the suit schedule property on 02.12.2016. The trial Court allowed the petition on the ground that the petitioner trespassed into the suit schedule property on 02.12.2016. It is the case of the petitioner that she has been in possession and enjoyment of the suit schedule property. In view of the pendency of the suit, this Court is not inclined to express any opinion touching the merits of the main case.

6. It is the duty of the first respondent to establish that she was dispossessed from the suit schedule property on 02.12.2016. Learned counsel for the petitioner strenuously submitted that the trial Court has not considered the testimony of first respondent, who examined herself as P.W.1.

7. This Court carefully perused the testimony of P.W.1 (first respondent) produced before this Court. The testimony *prima facie* reveals that defendant No.4 has been residing in the suit schedule property. She was cross-examined before the trial Court on 01.07.2013. If the testimony of first respondent (P.W.1) is taken into consideration, she was not in possession of the suit schedule property in the year 2013 itself. If that is so, the averment made in the affidavit that the first respondent was dispossessed on 02.12.2016 *prima facie* is not correct. The trial Court without considering this aspect, allowed the petition. The trial Court proceeded on a wrong premise as if the first respondent was dispossessed on 02.12.2016. If the order of the trial Court is allowed to stand, certainly it would

amount to miscarriage of justice. The finding recorded by the trial Court is not sustainable either on facts or in law. There is illegality and irregularity in the impugned order, which warrants interference of this Court while exercising jurisdiction under Article 227 of the Constitution of India. In view of the facts and circumstances of the case, this Court is of the considered view that it is a fit case to allow the revision.

8. Hence, the Civil Revision Petition is allowed setting aside the order dated 30.01.2017 passed in I.A.No.3 of 2017. Consequently, I.A.No.3 of 2017 in O.S.No.322 of 2011 on the file of the Additional Senior Civil Judge Court, Narasaraopet, Guntur District, stands dismissed. The trial Court is hereby directed to dispose of the matter without being influenced by the observations, if any, made by this Court. There is no order as to costs. As a sequel, miscellaneous petitions pending, if any, shall stand closed.

**Dt:11.12.2018**  
Rns

**T.SUNIL CHOWDARY, J**