

**IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

FRIDAY, THE THIRTY FIRST DAY OF DECEMBER
TWO THOUSAND AND TWENTY ONE

PRESENT

THE HONOURABLE SMT. JUSTICE P.SREE SUDHA

CIVIL REVISION PETITION NO: 4846 OF 2013

Petition under Article 227 of the Constitution of India aggrieved by the order dated 11.06.2013 in IA.No.934 of 2012 in AS.No.58 of 2012 on the file of the Court of the I Additional District Court at Mahabubnagar.

Between:

1. Gaddameedi Golla Balalah, S/o. Gopana, (died) aged 56 years, Occ: Agriculture, r/o. Near Chowdamma, Gudi, Veeranapet Street, Mahabubnagar Town and District.
 2. J. Srinivasulu, S/o. Gaddameedi Golla Balaiah, aged 49 years, Occ: Auto Driver,
 3. J. Ramanjaneyulu, S/o. Late Gaddameedi Golla Balalah, aged 39 years, Occ: Labour
 4. J. Gopikrishna S/o. Gaddameedi Golla Balaiah, aged 35 years, Occ: Hamali
- All are R/o. H.No.3-13-62/5, Veerannapet Street, Mahabubnagar Town & District.

(Petitioners 2 to 4 are brought on record as LRs of the deceased P1 as per Court Order dated 26.11.2021 in I.A.No.3 of 2021)

...PETITIONER/PETITIONER/APPELLANT

AND

1. Gangaraj Krishnalah, S/o. Sayanna, (died) aged 60 years, Occ: Agriculture, R/o. H.No.1-8-97/3/A, Tirmaldev Gutta, Mahabubnagar Town and District.
2. Gangaraj Srinivas, S/o. Late Gangaraj Krishnalah, aged 45 years,
3. Gangaraj Yadaiah, S/o. Late Gangaraj Krishnalah, aged 40 years,
4. Gangaraj Vishwanath, S/o. Late Gangaraj Krishnalah, aged 35 years,
5. Gangaraj Ramesh, S/o. Late Gangaraj Krishnalah,

All are R/o. 1-8-97/3/A, Tirmaldev Gutta, Mahabubnagar Town & District
(RR2 to 5 are brought on record as LRs of the deceased R1 as per Court Order dated 26.11.2021 in I.A.No.7 of 2021.)

...RESPONDENTS/RESPONDENTS/RESPONDENTS

CRPMP. NO: 6637 OF 2013

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to suspend the operation of order dated 11.06.2013 in IA.No.934 of 2012 in AS.No.58 of 2012 on the file of the court of the I Additional District Court at Mahabubnagar,

Counsel for the Petitioner: M/S. N. USHA KIRAN

Counsel for the Respondent Nos.3, 4 & 5: SRI K. CHAITANYA

The Court made the following: ORDER

HON'BLE SMT.JUSTICE P.SREE SUDHA
CIVIL REVISION PETITION No.4846 of 2013

ORDER

1. This Revision is directed against the order dated 11.06.2013 passed in I.A.No.934 of 2012 in A.S.No.58 of 2012 on the file of the learned I Additional District Court, Mahabubnagar, whereby dismissing the application filed by the petitioner-plaintiff to receive the enclosed documents as additional evidence.

2. The petitioner filed an application under Order 41 Rule 27 CPC to receive the enclosed documents as additional evidence in the pending appeal being A.S.No.58 of 2012. The respondent herein filed a suit in O.S.No.No.58 of 2007 in the Court of I Additional Senior Civil Judge (FTC), Mahabubnagar, seeking perpetual injunction restraining the petitioner herein and his men from interfering with the suit schedule property. The said suit was decreed with costs by order dated 01.06.2010. Aggrieved by the same, the petitioner preferred the above appeal. Pending appeal, he filed the present application, which was dismissed.

3. Learned counsel for the petitioner would contend that the Appellate Court failed to appreciate the relevancy of the evidence sought to be produced as additional evidence. He would further contend that the spirit and substance of Order 41 Rule 27 CPC where the petitioner has made out sufficient cause for his non-production of the documents in the suit and that the documents sought to be produced in the appeal are misplaced due to the ill-health of the petitioner and after recovery from his illness, the petitioner had found the documents at his home, which are

essential to prove his possession over the suit schedule property, and filed the present application pending the appeal.

4. Admittedly, it is a suit for injunction and the possession is to be established by the respective parties and the trial Court in its judgment observed that after considering the oral and documentary evidence the plaintiff is in possession and enjoyment over the suit land for the years 1992-93, 2004-2005 and the certified copy of extract of record of rights would also show that the plaintiff is the pattadar of the land and therefore came to the conclusion that the plaintiff proved his possession and enjoyment over the suit lands and granted the relief. Whereas the documents sought to be filed by the petitioner herein are certified copies of pahanies and some of which are attested copies, but the Court below did not consider and as such now he wanted to file those documents to demonstrate that he was in continuous possession. The petitioner herein on the one hand contends that the documents which are sought to be included as additional evidence are essential for effective and complete disposal of the appeal and on the other hand the respondent would contend that Exs.A1, A3 to A14 clearly establish his possession.

5. Now the point to be determined by this Court is whether the appellate Court disposed of the application under Order 41 Rule 27 in a proper perspective.

6. It is the case of the petitioner herein that the concerned documents were misplaced by him at home and could not be found and produced before the lower Court due to his illness. The petitioner also contend that the interlocutory applications have to

be dealt with and disposed of independently and not along with the main appeal. In this regard, he placed a judgement of this Court in **KARNAKANTI GOPI V/s. K.RAMESH**¹ wherein it was held as follows:

"7. While disposing of the application filed under Order 41, Rule 27 CPC for receiving additional evidence, the appellate Court has to consider whether those documents are necessary for effectively and completely disposing of the appeal before it. For that purpose, it is essential to hear the appeal together with the additional evidence application. Unless the said procedure is adopted, the appellate Court may not be in a position to correctly appreciate as to whether the documents are to be received as additional evidence in the appeal and necessary for disposing of the appeal."

"10. ... Since the appellate Court failed to dispose of the additional evidence petition as well as the CMA simultaneously in accordance with law, the decision rendered by the first Appellate Court being not legal and contrary to the established procedure is liable to be set aside in these revisions."

7. In the above case law this Court observed that the appellant has provided reasons for his inability in producing the said documents at an earlier stage. Order 21, Rule 27(1)(aa) CPC provides for the parties to file additional evidence at the stage of appeal on one of two grounds after the exercise of due diligence. Firstly, if the concerned evidence was not within the knowledge of the party and secondly, after application of due diligence, they could not produce it when the decree appealed against was passed.

8. In the instant case, the appellate Court dismissed the application saying that the petitioner herein obtained all the documents prior to pronouncement of the judgment in the suit. If at all the petitioner is so desirous to file those documents, he can do so during the pendency of the suit. But the appellate Court lose

¹ 2012 (2) ALD 330

sight of the fact that while disposing of the application filed under Order 41 Rule 27 CPC for receiving additional evidence, it has to consider whether those documents are necessary for effectively and completely disposing of the appeal before it, for which it is essential to hear the appeal together with the additional evidence application and unless the same is adopted, the appellate Court may not be in a position to correctly appreciate as to whether the documents are to be received as additional evidence in the appeal. Therefore, the approach of the appellate Court in dismissing the application is contrary to the established procedure, and as such, it is liable to be set aside.

9. Accordingly, the Civil Revision Petition is allowed and the order dated 11.05.2013 passed in I.A.No.934 of 2012 in A.S.No.58 of 2012 on the file of the learned I Additional District Court, Mahabubnagar, is setting aside.

10. Miscellaneous Petitions, if any, pending in this appeal shall stand closed in the light of this final order.

Note: Name of the Counsel for the Petitioner
Was substituted as per letter of the Counsel
For the Petitioner dated 15.03.2022

SD/-K.AMMAJI
ASSISTANT REGISTRAR

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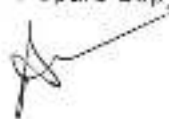
SD/-K.AMMAJI
ASSISTANT REGISTRAR

SECTION OFFICER

To,

1. The I Additional District Judge, Mahabubnagar.
2. One CC to M/s. N. Usha Kiran, Advocate [OPUC]
3. One CC to Sri K. Chaitanya, Advocate [OPUC]
4. Two CD Copies
5. One Spare Copy

gbr



HIGH COURT

DATED: 31/12/2021



AMENDED ORDER

CRP.No.4846 of 2013

ALLOWING THE CRP

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REMA
D-23/3/2022