

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

**WEDNESDAY, THE TWENTY FIRST DAY OF SEPTEMBER
TWO THOUSAND AND TWENTY TWO**

PRESENT

THE HONOURABLE SMT. JUSTICE P.SREE SUDHA

CIVIL REVISION PETITION Nos.748 and 750 of 2022

CRP No.748 of 2022

Petition under Section 227 of Constitution of India aggrieved by the order dated 15.03.2022 in I.A. No. 42 of 2022 in O.S. No. 826 of 2010 on the file of the Court of the I Additional Senior Civil Judge at Warangal by dismissing I.A.No.42/2022 filed by 1st Respondent.

Between:

1. Barkam Kalavathi, W/o. Late Chinna Rajaram, Age. 54 years, Occ. Household, R/o. H. No. 1-328/2-1, Vidyanagar, Kazipet, Warangal District (died per LRs).
2. Barkam Rajnikanth, S/o. Late Rajaram, Age. 51 years, Occ. Railway Employee, R/o. H. No. 25-8-610, Bapujinagar, Kazipet, Warangal District.
3. Barkam Srikanth, S/o. Late Rajaram, Age. 48 years, Occ. Home Guard, R/o. H. No. 25-8-610, Bapujinagar, Kazipet, Warangal District.
4. Barkam Srinivas, S/o. Late Rajaram, Age. 45 years, Occ. Private Employee, R/o. H. No. 25-8-610, Bapujinagar, Kazipet, Warangal District.

...PETITIONERS/RESPONDENTS/PLAINTIFFS

AND

1. Valdas Vijaya, W/o Asheervadam, Age. 60 years, OCC. Household, R/o. H.No. 2-12-114, Kazipet, Warangal District.

...RESPONDENT/PETITIONER/DEFENDANT No.2

2. Md.Mazharuddin, S/o.Naseeruddin, aged 64 years, Occ.Busniess, R/o.H.No.1-3-60, Rahamathnagar, Kazipet, Warangal District.

...RESPONDENT/RESPONDENT/DEFENDANT No.1

IA NO: 2 OF 2022

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased To grant interim

suspension of the order and decree passed in I.A.No.42 of 2022 in O.S. No. 826 of 2010, dated 15.03.2022 by the Hon'ble I Addl. Senior Civil Judge at Warangal, pending disposal of the above revision petition in the interest of justice.

IA NO: 3 OF 2022

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to extend the interim order granted in I.A.No.2 of 2022 in C.R.P.No.748 of 2022, dated. 01.04.2022 till the disposed of the above CRP in the interest of justice.

Counsel for the Petitioners: SRI S. SURENDER REDDY

Counsel for the Respondent No.1: SRI S. GANESH RAO

CRP.No.750 of 2022

Petition under Section 227 of Constitution of India aggrieved by the order dated 15.03.2022 passed in I.A. No. 41 of 2022 in O.S. No. 826 of 2010 on the file of the Court of the I Additional Senior Civil Judge at Warangal by dismissing I.A.No.41/2022 filed by the 1st Respondent.

Between:

1. Barkam Kalavathi, W/o. Late Chinna Rajaram, Age. 54 years, Occ. Household, R/o. H. No. 1-328/2-1, Vidyanagar, Kazipet, Warangal District (died per LRs).
2. Barkam Rajnikanth, S/o. Late Rajaram, Age. 51 years, Occ. Railway Employee, R/o. H. No. 25-8-610, Bapujinagar, Kazipet, Warangal District.
3. Barkam Srikanth, S/o. Late Rajaram, Age. 48 years, Occ. Home Guard, R/o. H. No. 25-8-610, Bapujinagar, Kazipet, Warangal District.
4. Barkam Srinivas, S/o. Late Rajaram, Age. 45 years, Occ. Private Employee, R/o. H. No. 25-8-610, Bapujinagar, Kazipet, Warangal District.

...PETITIONERS/RESPONDENTS/PLAINTIFFS

AND

1. Valdas Vijaya, W/o Asheervadam, Age. 60 years, OCC. Household, R/o. H.No. 2-12-114, Kazipet, Warangal District.

...RESPONDENT/PETITIONER/DEFENDANT No.2

2. Md.Mazharuddin, S/o.Naseeruddin, aged 64 years, Occ.Business, R/o.H.No.1-3-60, Rahamathnagar, Kazipet, Warangal District.

...RESPONDENT/RESPONDENT/DEFENDANT No.1

IA NO: 1 OF 2022

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to grant interim suspension of the order and decree passed in I. A. No. 41 of 2022 in O.S. No. 826 of 2010, dated 15.03.2022 by the Hon'ble I Addl. Senior Civil Judge at Warangal, pending disposal of CRP.

Counsel for the Petitioners: SRI S. SURENDER REDDY

Counsel for the Respondents: NONE APPEARED

The Court made the following: COMMON ORDER

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THE HONOURABLE SMT. JUSTICE P.SREE SUDHA

CIVIL REVISION PETITION NOS.748 AND 750 OF 2022

COMMON ORDER:

C.R.P.No.748/2022 is filed against the Common Order of the Trial Court in I.A.No.42/2022 in O.S.No.826/2010.

C.R.P.No.750/2022 is filed against the Common Order of the Trial Court in I.A.No.41/2022 in O.S.No.826/2010.

2. I.A.No.41/2022 is filed by Defendant No.2 to reopen the defendants evidence to mark the documents. I.A.No.42/2022 is filed to recall the evidence of DW.1 for further chief-examination.

3. The Trial Court after considering the arguments of both sides, allowed the applications on costs of Rs.100/- each.

4. Aggrieved by the said Order, the present Civil Revision Petitions are preferred. Revision petitioners contended that respondent No.1 earlier filed

I.A.No.467/2021 to reopen the case for further evidence and the same was allowed on 01.12.2021 on payment of costs, which was posted on 04.01.2022 but respondent No.1 or her counsel did not attend and the condition imposed by the Court below was not complied as such the Order in I.A.No.467/2021 was vacated and matter is posted for arguments on 17.01.2022, 24.01.2022, 08.02.2022 and 14.02.2022 and after completing the arguments, matter was posted for Judgment on 23.02.2022. At that stage, after completion of arguments, respondent No.1 filed the present application to recall DW.1 for further chief-examination and to mark the documents only to drag on the proceedings. DW.1 was cross-examined on 25.09.2019 and the respondents side evidence was closed on 09.01.2020 and the matter was posted for arguments on 22.01.2020 but respondent No.1 dragged on the matter and finally arguments concluded on 14.02.2022 and the matter is posted for Judgment on 23.02.2022. At this stage, he filed this application though it is not permissible under eye of law. The story created by respondent No.1 that she contacted her earlier counsel on

16.02.2022, which is contrary to her own admission in her cross-examination. Respondent No.1 herself admitted that she has purchased the property in the 2012 during the pendency of the suit from Defendant No.1 and in the affidavit filed in I.A.No.467/2021 she stated that on 24.10.2021 she insisted her vendor to furnish the documents pertaining to claim petition filed by plaintiff No.1 and he has given Xerox copy of the claim petition in E.A.No.336/1998 but in the present application she stated that after alienation of the suit property in her favour, Defendant No.1 left to Warangal and his whereabouts are not known as such she could not produce him as witness. This contradictory statement shows her intention to drag on the matter. Moreover, the documents filed by other Co-defendant cannot be relied upon when they filed separate written statement and represented by the different counsel as such the petition is not maintainable and thus request the Court to set aside the Order.

5. Defendant No.2 filed an application and she stated that respondent Nos.1 to 4 are the plaintiffs in suit. The suit is filed for declaration and possession. She purchased

the suit property from Defendant No.1 under registered sale deed dated 24.03.2012 under Ex.B.1 but respondent No.1 did not appear before the Court as a witness inspite of filing of written statement. Her vendor Defendant No.1 purchased the property under Court auction in E.P.No.50/1997 in O.S.No.373/1992 and sale certificate to that effect was issued in his favour. During the pendency of the proceedings in O.S.No.373/1992, plaintiff No.1 purchased the schedule property under the registered sale deed dated 14.06.1994 vide Ex.A.1. Plaintiff No.1 filed claim petition in E.P.No.50/1997 and it was dismissed. But plaintiff No.1 suppressing the said fact and filed the suit. Her vendor colluded with the plaintiffs and not cooperating with her. On 24.10.2021 she insisted her vendor to furnish the documents for which he gave Xerox copy of the claim petition vide E.A.No.336/1998, which was dismissed in the month of March, 1999 and the said documents are relevant for just decision of the case as such she came up with this application for reopen of the case for further evidence of Defendant No.2.

6. Nothing was filed before the Trial Court. The revision petitioners herein raised some objections in detail. She further stated that her brother purchased the property during the suit proceedings in O.S.No.372/1992. Admittedly, suit property in the present suit is not the part and parcel of the suit covered in O.S.No.372/1992 in E.P.No.50/1997. She also stated that suit was filed on 10.12.2010 and Ex.B.1 was created on 24.06.2012 and all the documents were handed over at the time of Ex.B.1. Therefore, the contention of Defendant No.2 that she got Xerox copy of the claim petition is unbelievable. Considering the conduct of the parties, petition itself is not maintainable and it is only to drag the proceedings.

7. The Trial Court after hearing the arguments of both sides observed that the property claimed by plaintiff No.1 as claim petitioner and property purchased by Defendant No.2 through Defendant No.1 is one and the same. As such the arguments of the respondents before the Trial Court that the documents filed by Defendant No.1 cannot be marked through Defendant No.2 is not tenable. It was also observed that that Defendant No.2 was contesting the suit.

and the documents in E.A.No.336/1998 are relevant to dispose the case on merits and they were filed along with written statement long back vide S.R.No.1658 dated 07.07.2011. Due to non-availability of Defendant No.1, the said documents were not marked. The certified copies were obtained in the year 2006. Plaintiff No.1 was the claim petitioner in E.A.No.336/1998 and thus the documents are relevant to dispose the matter on merits. Defendant No.1 is auction purchaser in E.P.50/1997 and the deceased was the claim petitioner in the E.P. but the claim petition in E.A.No.336/1998 was dismissed on 08.03.1999. Defendant No.1 did not step into witness box. The petitioner is negligent in pursuing the documents though she is having knowledge about the claim petition. As documents are already available in the file and relevant to decide the matter on merits both the applications are allowed on costs.

8. No doubt the documents were filed at the fag end of the case after adducing the evidence of the parties, when the matter is posted for Judgment. But the Trial Court considering the arguments on both sides observed that the

said documents are relevant for disposal of the suit on merits and moreover, they are available in the file. As Defendant No.1 was absent, they could not be marked. Therefore, I do not find any infirmity in the Order of the trial Court.

9. In the result, Civil Revision Petitions are dismissed, confirming the Common Order dated 15.03.2022 passed in L.A.Nos.41/2022 and 42/2022 in O.S.No.826/2010 on the file of the I Additional Senior Civil Judge, Warangal. There is no Order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

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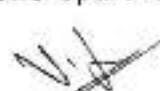
SD/-I.NAGA LAKSHMI
DEPUTY REGISTRAR


SECTION OFFICER

To,

1. The I Additional Senior Civil Judge at Warangal.
2. One CC to Sri S. Surender Reddy, Advocate [OPUC]
3. One CC to Sri S. Ganesh Rao, Advocate [OPUC]
4. Two CD Copies
5. One Spare Copy

gbr



HIGH COURT

DATED: 21/09/2022

COMMON ORDER

CRP.Nos.748 and 750 of 2022



DISMISSING THE BOTH CRP'S

⑥ $\frac{VW}{26/10/22}$