

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

**THURSDAY, THE TWENTY FIRST DAY OF DECEMBER
TWO THOUSAND AND TWENTY THREE**

**PRESENT
THE HONOURABLE SRI JUSTICE P.SAM KOSHY**

CIVIL REVISION PETITION No: 3568 OF 2023

Petition under Article 227 of the Constitution of India, against the Order dated 28.08.2023 in I.A. No. 117 of 2023 in O.S. No. 4475 of 2022 on the file of the Court of the VII Additional Junior Civil Judge, City Civil Court at Hyderabad.

Between:

1. Smt. N. Maisamma, W/o. Late N. Yatrajam, aged about 81 years, Occ Household, R/o. H. No. 9-3-55/2, Company Bagh, MD Lines, Golconda, Hyderabad - 500008, Telangana.
2. N. Shyam Kumar, S/o. Late N. Yatrajam, aged about 50 years, Occ Private Service, R/o. Flat No. G4, Pleasant Pearl Apartments, Near Fort view, Hydershakote, Gandipet Mandal, Rangareddy District 500091.
3. Smt. D. Rajkumari Deshpande, D/o. Late N. Yatrajam, W/o. Hemanth Deshpande, Aged about 45 years, Occ Household, R/o. C/o. Shobha Gopal Deshpande, 02/47, Indralok Society, Tadiwala Road, Near Nandadeep Hotel, Pune, Maharashtra.

(Petitioner 1 and 3 are Represented by their SPA Holder Petitioner No.2 herein)

...Petitioners/Pettioners/Defendant No.1 to 3

AND

1. Smt. S. Vijayalaxmi, D/o. Late N. Yatrajam, W/o. S. Satyanarayana, Aged about 62 years, Occ Housewife, R/o. H. No. 9-1-34/14/57, Babu Nagar, Langar House, Hyderabad, TS

....Respondent/Respodent/Plantiff

2. Mr. Saleem, S/o. Not known, C/o. HKGN, Property Dealing Office, Near Shah Masjid Building, Ahmad Nagar, M.D. Lines, Behind Mazine Bakery, Company Bagh, Golconda Post Hyd 500008.

(Respondent No.2 is not necessary party)

...Respondent/Respondent/Defendant No.4

IA NO: 2 OF 2023

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to stay all further proceedings in O.S. No. 4475 of 2022 on the file of the VII Additional Junior Civil Judge, City Civil Court, Hyderabad. And pass

IA NO: 1 OF 2023

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to permit Petitioner No.2 as SPA holder to act on behalf of the Petitioners / Petitioners No. 1 AND 3 in the present matter in the interest of justice.

Counsel for the Petitioners: SRI NARAYANDAS SANJAY

Counsel for the Respondents: none appeared

The Court made the following: ORDER

THE HON'BLE SRI JUSTICE P.SAM KOSHY

CIVIL REVISION PETITION No.3568 of 2023

ORDER:

The present Civil Revision Petition has been filed by the petitioners assailing the order dated 28.08.2023 passed by the learned VII Junior Civil Judge, City Civil Court at Hyderabad, in I.A.No.117 of 2023 in O.S.No.4475 of 2022.

2. Heard Sri Narayandas Sanjay, learned counsel for the petitioners.

3. Vide the said impugned order, the Court below has dismissed the application filed by the petitioners under Order VII Rule 11(a) (b) and (d) of CPC who are the defendants before the Court below.

4. At the outset, this Court is of the firm view that the present being a Civil Revision Petition under Article 227 of the Constitution of India, it is only the jurisdictional error or perversity on the factual aspects which needs to be considered by this Court and the petitioner has not made out case of any jurisdictional error in the present case.

5. The contention of the learned counsel for the petitioners assailing the impugned order is that the finding given by the Court below does not match with the decision laid down by the Hon'ble Supreme Court in the case of ***Church of Christ Charitable Trust***

and Educational Charitable Society Versus Ponniamman Educational Trust¹. He further submits that the cause of action itself has not been specifically spelt out in the case and on account of non-disclosure of the cause of action, the same could not have been entertained by the Court below.

6. However, perusal of records would clearly indicate that the petitioners and respondent *inter se* are members of the same family and the present Original Suit is one which has been filed by the respondent/plaintiff seeking for partition and separate possession to the extent of share that would fall upon the plaintiff and also for declaring the registered gift settlement deed dated 15.03.2016 as null and void and binding on the plaintiff.

7. Considering the contents of the plaint and also taking into consideration the observations made by the Court below while dismissing the application under Order VII Rule 11(a) (b) and (d) of CPC, this Court is of the considered opinion that no strong case as such has been made out by the petitioners calling for interference to the said findings.

8. As regards the judgment of the Hon'ble Supreme Court relied upon by the petitioners in the case of **Church of Christ Charitable Trust and Educational Charitable Society** (1 supra), this Court is

¹ (2012) Supreme Court Cases 706

of the considered opinion that the said judgment is laid down under an entirely different contextual backdrop where the Original Suit was one under the provisions of Specific Relief Act and the Suit being for specific performance of an agreement. Unlike, in the present case where the Original Suit is for partition of the family property and where the plaintiff and the defendants both are members of the same family.

9. For all the aforesaid reasons, this Court does not find any strong case made out by the petitioners calling for interference with the impugned order.

10. The present Civil Revision Petition accordingly stands rejected.
No order as to costs.

Consequently, miscellaneous petitions pending if any, shall stand closed.

SD/-B. CHANDRA PRAKASH
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. The VII Additional Junior Civil Judge, City Civil Court at Hyderabad
2. One CC to SRI. NARAYANDAS SANJAY Advocate [OPUC]
3. ~~One CC to SRI. Advocate [OPUC]~~
3. Two CD Copies

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HIGH COURT

DATED:21/12/2023

ORDER

CRP.No.3568 of 2023



**REJECTING THE CRP
WITHOUT COSTS**

*5 copies
KJ
29/2/24*