IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

MONDAY, THE TWENTY SEVENTH DAY OF JANUARY

TWO THOUSAND AND TWENTY FIVE

PRESENT

THE HONOURABLE SRI JUSTICE NYAPATHY VIJAY

CIVIL REVISION PETITION No.182 OF 2021

Petition under Article 227 of the Constitution of India, praying that in the circumstances stated in the grounds filed herein, the High Court may be pleased to set aside the Order dated 11.03.2020 passed in I.A No.783 of 2019 in O.S.No.381 of 2015 on the file of the Principal Senior Civil Judge, at Gajuwaka.

Between:

1. Noonela Chinnaji, S/o Late Appala Swamy, aged 65 years, R/o.Flat No. D1, D.No.24-220/7, Brindavan Gardens, Simhapuri Layout, Vepagunta Post, Visakhapatnam.
2. Smt. Noonela Krishna Kumari, W/o Chinnaji, aged 58 years, R/o. Flat No.D1, D.No.24-220/7, Brindavan Gardens, Simhapuri Layout, Vepagunta Post, Visakhapatnam.

...Petitioners/Petitioners/Defendants 1 & 2

AND

1. Noonela Saroja, W/o. Late Krishna Rao, Hindu, Aged 78 years, Residing at D.No.2-2-90/36, Amberpet, Thurabnagar, Hyderabad.
2. Noonela Amar, S/o late Krishna Rao, Hindu, aged 48 years, Residing at D.No.2-2-90/36, Amberpet, Thurabnagar, Hyderabad.

.....Respondents 1 & 2/Respondents/Plaintiffs

3. M/s Bharat Petroleum Corporation Limited, Rep by its Territory Manager (Retail), P.B No.1402, Naval Base Post, Tisakhapatnam.

.....3rd Respondent/3rd Respondent/3rd Defendant

Counsel for the Petitioners: SRI. S.V.S.S.SIVA RAM

Counsel for the Respondents:–

The Court made the following:ORDER

APHC010043602021

IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI [3460]
(Special Original Jurisdiction)

MONDAY, THE TWENTY SEVENTH DAY OF JANUARY
TWO THOUSAND AND TWENTY FIVE

PRESENT

THE HONOURABLE SRI JUSTICE NYAPATHY VIJAY

CIVIL REVISION PETITION NO: 182/2021

Between:

Noonela Chinaji and Others ...PETITIONER(S)

AND

Noonela Saroja and Others ...RESPONDENT(S)

Counsel for the Petitioner(S):

1.S.V.S.S.SIVA RAM

Counsel for the Respondent(S):

1.

The Court made the following:

THE HONOURABLE SRI JUSTICE NYAPATHY VIJAY

CIVIL REVISION PETITION NO.182 of 2021

ORDER:

1. The present Civil Revision Petition is filed against the Order dated 11.03.2020 in I.A.No.783 of 2019 in O.S.No.381 of 2015 passed by the Principal Senior Civil Judge, Gajuwaka, Visakhapatnam District.

2. The Petitioners are the Defendants. The suit was filed by the Respondent Nos.1 & 2/Plaintiffs for declaration that the Sale Deed dated 29.09.2003 registered *vide* document No.3718/2003 executed by the Defendant No.1 in favour of the Defendant No.2, as null and void, and for consequential permanent injunction.

3. It was pleaded in the plaint that one Noonela Appalaswami was the father of the Defendant No.1 and father-in-law of Defendant No.2 and the Plaintiff No.1. The said Appalaswami had purchased an extent of Ac.1.41 cents covered by Sy.Nos.75/1b, 71/2, 75/a, 129/7 and 133/7 of Chinagantyada Village, Visakhapatnam under two registered Sale Deeds dated 17.07.1948 and 05.08.1957. After the demise of Appalaswami, the said property was succeeded by his wife Noonela Gangamma as per Will dated 22.01.1969. Subsequently, Nonnela Gangamma executed a Will dated 26.02.1988 bequeathing the schedule property in favour of her four sons.

4. Thereafter, after demise of Noonela Gangamma, the schedule property was succeeded by the four sons and the property was partitioned pursuant to an un-registered Partition Deed dated 11.12.1993. One of the sons i.e. Noonela Krishna Rao had executed a General Power of Attorney on 07.02.1992 appointing his brother Noonela Chinnaji i.e. Defendant No.1 as his attorney and authorized him to execute the Sale Deeds. Subsequently, the said Noonela

Krishna Rao had executed a General Power of Attorney *vide* document No.41/2003 on 08.09.2003. The paper publication was also said to have been published to that effect. On the same date i.e. on 08.09.2003, Noonela Krishna Rao executed a registered Will in favour of his wife Noonela Saroja. As Noonela Saroja as also an executant of the General Power of Attorney in favour of the Defendant No.1 dated 07.02.1992, the Defendant No.1 executed a Sale Deed on 29.09.2023 in favour of his wife for an extent of 300 Sq. yards of site in Sy.No.129/7 part of Chinagantyada Village. Hence, the suit was filed.

5. As the schedule property was leased to the Defendant No.3, they were arrayed as party-defendant.

6. In the course of trial, the Defendants sought to mark two documents i.e. (a) Photostat copy of the plan showing the building measurements of M/s Bharat Petroleum Corporation Ltd., dated 08.02.2008 and (b) Certified copy of Letter dated 04.08.2006 given by the Plaintiff No.1 and the Defendant Nos.1 & 2 agreeing to sell the schedule property to one Balireddy Govardhana Rao.

7. As regards the document (a), it was pleaded that Order XII Rule 8 CPC notice was issued to the Defendant No.3 to produce the originals, failing which the Honourable Court may be pleased to mark the document. This application was opposed by the Plaintiffs as well as the Defendant No.3. Thereafter, the trail Court dismissed the application on the ground that the proposed document (a) is a Photostat copy and as regards document (b), it was opined that that there was no mention of the same in their pleadings. Hence, the present Civil Revision Petition is filed.

8. Heard Sri S.V.S.S. Siva Ram, learned counsel for the Petitioners and no representation on behalf of the Respondents.

9. The counsel for the Petitioners contended that the Petitioners having issued notice under Order XII Rule 8 CPC should be permitted to mark the document (a) as Ex.B.1 and as regards document (b) i.e. Letter dated 04.08.2006 it was contended that the evidence need not be part of the pleadings and the trial Court had erred in rejecting this application.

10. This Court having heard the learned counsel for the Petitioners is of the opinion that the Petitioners having issued notice under Order XII Rule 8 CPC and the Respondent No.3 having not denied the receipt of the same and possession of the original copy can *prima facie* be permitted to mark the document as evidence subject to the proof of establishing the existence of the original document. The existence of the original document and requirements of Section 65 of Evidence Act could be decided in trial as held by this Court in C.R.P.No.4042 of 2016 dated 22.03.2024.

11. As regards the document (b), this Court is of the opinion that the trial Court had erred in rejecting this document as the same being certified copy of the letter. The rejection on the ground that the document was marked before filing the written statement is of no consequence as the pleadings need not mention the evidence.

12. Therefore, the order of the trial Court is set-aside. Accordingly, the Civil Revision Petition is allowed. There shall be no order as to costs. As a sequel, pending applications, if any, shall stand closed.

Sd/-M.SRINIVAS
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

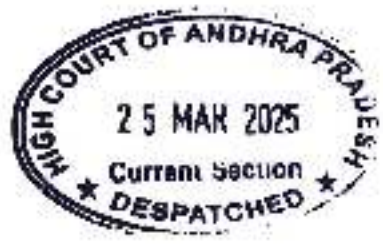
1. The Principal Senior Civil Judge, (Senior Division) at Gajuwaka, Visakhapatnam District.
2. One CC to Sri. S.V.S.S.Siva Ram, Advocate [OPUC]
3. Three CD Copies.

HIGH COURT

DATED:27/01/2025

ORDER

CRP.No.182 of 2021



ALLOWING THE CIVIL REVISION PETITION