IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

THURSDAY, THE THIRTEENTH DAY OF MARCH
TWO THOUSAND AND TWENTY FIVE

PRESENT

HONOURABLE SRI JUSTICE R RAGHUNANDAN RAO

CIVIL REVISION PETITION No.642 of 2025

Petition under Article 227 of the Constitution of India, against the common order passed in I.A.No.144 of 2021 in O.S.No.504 of 2011, dated 14.10.2024 on the File of the Hon'ble XI Additional District Judge, Visakhapatnam, Visakhapatnam District.

Between:

Kota Sahitya, S/o. Kota Mehar Kumar, Hindu, aged about 25 years, Occupation Student, R/at Plot No.10, Visakha 'A' colony, Srikakulam Town and District. (Amended as per orders in IA.557/2023 dated 25.06.2024). (Rep. by GPA Holder Kota Mehar Kumar)

...PETITIONER/ PETITIONER/DEFENDANT

AND

1. Dr. Balabolu Ramesh, S/o. late B.Vasudeva Rao, Occ: Doctor, Hindu, aged 54 years, Resident of Flat No.6, Sarojini Courts, Ramajogipeta, Visakhapatnam- 530 016.
2. Smt. Vishnumolakala Sailaja, D/o. late B.Vasudeva Rao, W/o. V.R.S.Venkateswara Rao, Occ: House Wife, Hindu, aged 52 years, Resident of 3-22/4, Road No.11, Venkateswara Colony, Saroornagar, Hyderabad-500 035.

3. Smt. Ijjapureddy Manjula, D/o. late B.Vasudeva Rao, W/o. I.Sai Prasad, Occ: House wife, aged 50 years, Resident of 50-50-37/6, Flat No.202, Jasmine Villa Apartments, B.S.Layout, Visakhapatnam- 530 013.

...RESPONDENTS/RESPONDENTS/PLAINTIFFS

4. Savvana Radharamanamma, W/o. late Krishna Kesava Rao (Died), Hindu, aged 78 years, House wife, Resident of 9-7-79, Gudiveedhi, Srikakulam Town and District- 532001.

5. Smt. Kesharapu Nalini, W/o. K.Prakash Rao, Hindu, aged 54 years, House wife, Resident of Flat No. 203, Sri Surya Apartments, Kullappa Colony, 1st cross Jeevan Bheemaa Nagar, Bangalore-560 017.

6. Koppula Nanda Kumar, S/o. late Krishna Rao, Hindu, aged 53 years, Occ: Agriculture, Resident of H.No.558, Chandramanipeta, Gate Bazaar, Berhampur, Ganjam District, Orissa- 760 001.

7. Koppula Naresh Kumar, S/o. late Krishna Rao, Hindu, aged 50 years, Occ: Service, Resident of H.No.558, Chandramanipeta, Gate Bazaar, Berhampur, Ganjam District, Orissa- 760 001.

8. Smt. Ganni Naveena, D/o. late K.Krishna Rao, Hindu, aged 47 years, Occ: House wife, Resident of Flat No.6, Godavari Apartments, H.No.2-1-494, 1st Floor, 7th lane, Near Sankaramatam, Nallakunta, Hyderabad-500 044.

9. Koppula Lakshmana Rao, S/o. late K.Krishna Rao, Hindu, aged 47 years, Occ: Advocate, Resident of H.No.558, Chandramanipeta, Gate Bazar, Verhampur, Ganjam District, Orissa -760 001.

10. Kota Rajani, W/o. Kota Mehar Kumar, Hindu, aged 49 years, Occ: Business, Residing at No. 160 Dolly Drive, Worcester M.A.26043575, USA.

11. Kota Mehar Kumar, S/o. Kota Ramachandra Rao, Hindu, aged 49 years, Occ: Business, Residing at D.No.49-34-24/A, N.G.Os Colony, Opp. Saibaba Temple, Akkayyapalem Post, Visakhapatnam.

12. Savanna Koteswara Rao, S/o. late Savvanna Krishna Kesava Rao, aged 62 years, Occ: Retired Bank Employee, R/o. Plot Nos. 15 and 16, Friends Colony, Behind LML Show-room, Pedapadu Road, Srikakulam-532 001.

13. Smt. Chettu Indiramma, W/o. Chettu Ramakrishna, aged 58 years, Occ: House wife, R/o. D.No.49-52-7, Shanthipuram, Visakhapatnam- 530 016.

14. Ijjapureddy Sagara Lakshmi, W/o: I.Sudhakar Rao, aged 48 years, Occ: House wife, R/o 53-2-21, Flat No. S-1, Rajarajeswari Residency, Raja Veedhi, Near Fish Market, Maddilapalem, Visakhapatnam- 530 016.

15. Savvana Ravi Kumar, S/o. late Savvana Krishna Kesava Rao, aged 45 years, Occ: Business, R/o. D.No.49-26-54, Madhuranagar, Visakhapatnam- 530 016.

(Respondents 12 to 15 are added in trail Court as per order in I.A.No. /2017 dated 17.10.2017)

(Respondent No.11 not necessary party in the CRP)

...RESPONDENTS/ RESPONDENTS/DEFENDANTS

IA NO: 1 OF 2025

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 the further proceedings in O.S. No. 504 of 2011 on the file of the Hon'ble XI Additional District Judge, Visakhapatnam.

Counsel for the Petitioner : SRI K S MURTHY SENIOR COUNSEL APPEARING ON BEHALF OF SRI PONNADA SREE VYAS

Counsel for Respondent Nos.1 to 3 : SMT T V SRI DEVI

Counsel for Respondent Nos.4 to 15 : NONE APPEARED

The Court made the following ORDER :

APHC010103492025

IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI **[3206]**
(Special Original Jurisdiction)

THURSDAY, THE THIRTEENTH DAY OF MARCH
TWO THOUSAND AND TWENTY FIVE

PRESENT

THE HONOURABLE SRI JUSTICE R RAGHUNANDAN RAO

CIVIL REVISION PETITION NO: 642/2025

Between:

Kota Sahitya **...PETITIONER**

AND

Dr Balabolu Ramesh and Others **...RESPONDENT(S)**

Counsel for the Petitioner:

1.PONNADA SREE VYAS

Counsel for the Respondent(S):

1.T V SRI DEVI

The Court made the following order:

O.S.No.504 of 2011 has been filed before the Learned XI Additional District Judge, Visakhapatnam, for partition of the suit schedule property. The 9th defendant, who appears to be the main defendant in the suit, had filed I.A.No.144 of 2021, for rejection of the plaint under Order VII Rule 11 of CPC. This application came to be dismissed on 14.10.2024. Against this order of dismissal, the 9th defendant in the suit has filed the present Civil Revision Petition.

2. The case of the petitioner, before the Trial Court, without going into the details of the claim, is that similar suits had been filed earlier by some of the defendants and other family members, which came to be dismissed and such orders of dismissal would amount to *res judicata*. The petitioner also took the plea that the suit is barred by limitation. However, no details of how the suit is barred by limitation seem to have been set out in the application.

3. The Trial Court took the view that the principle of *res judicata* would not be applicable as the earlier suits, cited by the petitioner, do not relate to identical property and also on the ground that there were certain variations in the facts as well as the issues which arose in the earlier suits as opposed to the present suit. The Trial Court has also taken the view that the pleadings in the plaint do not make out any case for limitation to be cited as a ground for rejection of plaint.

4. Sri K. S. Murthy, learned Senior Counsel appearing for Sri Ponnada Sree Vyas, learned counsel for the petitioner herein, would contend that the orders passed in the earlier rounds and more specifically, the Judgment in O.S.No.236 of 2009, that the said suit was barred by *res judicata,* on account of earlier litigation between the same parties, would apply in the present case also. He would submit that in such circumstances, the order of the Trial Court is clearly incorrect and requires to be set aside.

5. Smt. T. V. Sri Devi, learned counsel for the caveator/respondent would submit that the question of *res judicata* had been raised before the Trial

Court, in the very same case, by way of I.A.No.436 of 2017, for framing a preliminary issue of *res judicata* in the present suit. This application came to be dismissed. Thereupon, C.R.P.No.2033 of 2018 was filed before this Court. A learned Single Judge of this Court disposed of the Revision Petition, by way of order, dated 19.01.2023. The Learned Single Judge took the view that the finding of the Trial Court that *res judicata* is not attracted, should not have been given as the application before the Trial Court was only for framing *res judicata* as a preliminary issue. The Learned Single Judge had further directed the Trial Court to frame *res judicata* as one of the issues as it cannot be decided as a preliminary issue within the parameters of Order XIV Rule 2 of CPC.

6. The consequence of this order would be that the issue of *res judicata* can only be taken up after a full trial in the matter is completed and thereupon arguments can be advanced on the question of whether the suit is barred by *res judicata* or not.

7. In the circumstances, I.A.No.144 of 2021 was not maintainable and should have been dismissed by the Trial Court on the ground that the orders of this Court in C.R.P.No.2033 of 2018 preclude non-consideration of the issue of *res judicata* before the completion of the trial.

8. On the question of limitation, the issue of limitation is a mixed question of fact and law, which can only be taken up after trial had been completed.

9. In the circumstances, this Civil Revision Petition is disposed of, by holding that the principle of *res judicata* remains to be decided in the main suit, in accordance with the directions of this Court, dated 19.01.2023 in C.R.P.No.2033 of 2018. On the question of limitation, the Trial Court had held that the case of limitation has not been made out by the petitioner on the basis of the statements in the plaint. This would leave it open to the petitioners to make out such a case in the course of trial.

10. In view of the fact that the suits are of the year 2011, it would be appropriate to also direct the Trial Court to dispose of the suits, within a period of four (04) months from the date of receipt of this order. There shall be no order as to costs.

As a sequel, pending miscellaneous petitions, if any, shall stand closed.

SD/- N.NAGAMMA

ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To

1. The XI Additional District Judge, Visakhapatnam, Visakhapatnam District.
2. One CC to Sri Ponnada Sree Vyas, Advocate [OPUC]
3. One CC to Smt T V Sri Devi, Advocate [OPUC]
4. The Section Officer, VR Section, High Court of Andhra Pradesh at Amaravathi
5. Three CD Copies

TK

TAC

HIGH COURT

DATED:13/03/2025

ORDER

CRP.No.642 of 2025



DISPOSING OF THE CIVIL REVISION PETITION