

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

**FRIDAY, THE TWENTY EIGHTH DAY OF FEBRUARY
TWO THOUSAND AND TWENTY FIVE**

PRESENT

THE HONOURABLE SRI JUSTICE N.TUKARAMJI

CIVIL REVISION PETITION NO: 639 OF 2025

Petition under Article 227 of the Constitution of India, aggrieved by the order dated 13-2-2025 passed in I.A.No.330 of 2023 in O.S.No.56/2022 on the file of the Court of the Principal District Judge, Narayanpet.

Between:

Konda Satyanarayana, S/o K.Nagappa, aged 42 years Occ Business, R/o House No 4-6-40/41, Gopalpet Street, Narayanpet town, Narayanpet District.

...PETITIONER/PLAINTIFF

AND

1. M.Radhika, W/o MekalaSuryanarayana Aged 50 years Oocc Housewife, R/o House No 5-55, Hanuman Temple road, Marikal village and Mandal, Naryanapet District
2. Y.Santhosh Kumar, S/o Baburao, aged 49 years, Occ Business, R/o House No 4-3-53, Ram Nagar, Mahabubnagar
3. Venkoba, S/o Ramulu, aged 57 years, Occ.Agriculture, R/o House No 3-1-50, Pati Bazar, Narayanpet town and District.

...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 further proceedings in suit OS No 56/2022 on the file of the Court of the Principal District Judge, Narayanpet, pending disposal of Civil Revision Petition.

Counsel for the Petitioner: SRI. RAJAGOPALLAVAN TAYI

Counsel for the Respondents: NONE APPEARED

The Court made the following: ORDER

THE HONOURABLE SRI JUSTICE N.TUKARAMJI

CIVIL REVISION PETITION No. 639 OF 2025

ORDER

I have heard Mr.Raja Gopallavan Tayi, learned counsel for the revision petitioner.

2. This Civil Revision Petition is filed by the petitioner/plaintiff aggrieved by the order dated 13.02.2025 passed in I.A.No.330 of 2023 in O.S.No.56 of 2022 on the file of the learned Principal District Judge, Narayanpet.

3. The revision petitioner/plaintiff (hereinafter 'the petitioner') had filed suit *vide* O.S.No.56 of 2022 seeking specific relief of performance of agreement of sale dated 27.07.2020 by respondent No.1/defendant No.1 (hereinafter 'the respondent No.1').

4. (a). In the suit, the petitioner asserts that respondent No.1 offered to sell the suit schedule property, comprising Ac.10-00 guntas in Sy.No.229/AA, located in Vallampally Village Shivar, Utkoor Mandal, Narayanpet District, for a total consideration of Rs.1,50,00,000/-. Pursuant to an agreement of sale, the petitioner paid an earnest sum of Rs.10,00,000/- on the execution date, with the balance to be paid on or before 31.12.2020.

(b). Subsequently, the petitioner, the respondent No.1, and a private surveyor jointly visited the property to demarcate boundaries. During this exercise, it was discovered that only Ac.6-20 guntas of the agreed land was physically available, the remaining portion having been encroached upon by third parties. Despite this, the respondent No.1 executed registered sale deeds, transferring Ac.6-20 guntas to respondent No.2 and Ac.3-20 guntas to respondent No.3, thereby alienating the entire extent of the land in question.

(c). In this context, the petitioner filed the present application under Order XXVI Rule 9 of the Code of Civil Procedure, 1908, seeking the appointment of an Advocate Commissioner. The petitioner requested that the Commissioner, with assistance from the Additional Director, Survey and Settlement Department, Narayanpet, conduct a survey to demarcate the suit schedule land, document its physical features, and particularly identify the characteristics of the Ac.3-20 guntas.

5. In counter, the respondent No.1 contested the petition while acknowledging ownership of the property and the execution of the agreement of sale. She contended that time was of the essence and, upon the petitioner's failure to pay the remaining consideration by

the stipulated deadline, got issued a legal notice dated 07.12.2022, calling for payment by 31.12.2020. Upon the petitioner's default, she lawfully alienated the property to respondents No.2 and No.3 for valuable consideration and delivered possession. Respondent No.1 argued that the present petition was filed at the argument stage solely to gather evidence and therefore sought its dismissal.

6. Upon evaluating the petition and the material available on record, the trial Court dismissed the application. Aggrieved by said dismissal, the petitioner has filed this revision.

7. Learned counsel for the petitioner contends that the trial Court erred in properly appreciating the purpose and necessity of the application. The petitioner filed the application solely to establish that the portion of land measuring Ac.3-20 guntas was not in the possession of respondent No.1 at the relevant time. This fact, it is submitted, was crucial in explaining the petitioner's inability to pay the balance sale consideration by the stipulated date.

The alleged failure on the part of respondent No.1 to fulfill her contractual obligation, namely, to deliver possession of the entire agreed extent of land is a material issue. Learned counsel argues that this failure can be substantiated only through a proper survey and demarcation of the suit schedule property, which would reveal

the actual physical status of the land and confirm that a portion was under third-party occupation. Such evidence, the petitioner submits, would also support his contention that he was ready and willing to perform his part of the agreement, including payment of the remaining consideration, had the land been fully available as agreed. It is further submitted that the trial Court failed to exercise its jurisdiction judiciously by dismissing the application at the argument stage, thereby depriving the petitioner of an opportunity to bring relevant facts on record through a lawful procedural mechanism. Hence, learned counsel prays that this Court may interfere in revision.

8. I have perused the materials on record.

9. As per the averments in the plaint, it is not in dispute that the suit has been filed seeking specific performance of the agreement of sale dated 27.07.2020. The petitioner specifically pleaded that subsequent to the execution of the said agreement, he, along with the respondent No.1 and a private surveyor, visited the suit schedule land and discovered that an extent of Ac.3-20 guntas was under the occupation of third parties. However, it is significant to note that no specific date or detailed particulars regarding this alleged discovery have been pleaded.

10. Furthermore, the contents of both the plaint and the petitioner's reply notice dated 16.12.2022 clearly reveal that the petitioner's primary contention was that respondent No.1 was responsible for fixing the boundaries, setting a date and time for registration of the sale deed, and duly informing the petitioner. The petitioner also asserted in both documents that he was aware of the non-availability of the entire extent of land, specifically Ac.3-20 guntas, and maintained that respondent No.1 had assured him she would resolve the issues, fix the boundaries, and notify the date for execution of the regular sale deed. It was also pleaded that no further documentation was necessary to extend the time for performance of the agreement.

11. Be that as it may, the plaint further reveals that, by the time the suit was instituted, respondent No.1 had already alienated the entire extent of Ac.10-00 guntas to respondent Nos.2 and 3. The sale transactions, on their face, reflect the availability of the entire suit schedule property. In this context, and in light of the clear pleading by respondent No.1 that possession of the land had been delivered to the respective vendees, it is evident that respondent Nos.2 and 3 are now in possession of the property.

12. Even assuming the petitioner's version is taken at face value, a survey to demarcate boundaries and identify physical features at this stage would merely confirm that as of 27.07.2020, third-party occupation existed with respect to Ac.3-20 guntas. However, the petitioner has not explained his prolonged inaction, specifically, his failure to seek such relief from the date of suit until the matter had progressed to the stage of final arguments.

13. Given these circumstances, the appointment of an Advocate Commissioner for the purpose of conducting a survey and demarcation in a suit for specific performance appears misdirected. The critical issue in such a suit is the enforceability of the agreement itself, rather than the present physical condition of the land. Therefore, the petitioner's attempt to secure the appointment of a Commissioner at this advanced stage amounts to an impermissible effort to reopen enquiry and procure favourable evidence regarding a factual situation that allegedly existed in 2020.

14. For these reasons, this Court finds no error or impropriety in the trial Court's exercise of its discretion in rejecting the petition. Accordingly, in the absence of any merit or substantial grounds for interference, the impugned order is confirmed. This Civil Revision

Petition is, therefore, devoid of tenable grounds for admission and is accordingly dismissed. No order as to costs.

Pending miscellaneous applications, if any, shall stand closed.

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Sd/- A. PRATHIMA
DEPUTY REGISTRAR

SECTION OFFICER

To,

1. The Principal District Judge, Narayanapet District.
2. One CC to SRI. RAJAGOPALLAVAN TAYI Advocate [OPUC]
3. Two CD Copies

MKN/gh



HIGH COURT

DATED:28/02/2025

ORDER

CRP.No.639 of 2025



CIVIL REVISION PETITION IS DISMISSED

ENT
18/10/25