

Andhra Pradesh High Court - Amravati

Khandavilli Rudraveni vs Khandavilli Annavaram Another on 11 May, 2023

HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

CIVIL REVISION PETITION NO.1800 OF 2015

Between:

Khandavilli Rudraveni, W/o. Rudrayya, 40 years, Housewife,
R/o.Kotilingalapeta, Rajahmundry, East Godavari District.

... Petitioner/Respondent No.1/Plaintiff

Versus

1. Khandavilli Annavaram, S/o. Bodiyya, 42 years,
Worker, R/o.Kotilingalapeta, Rajahmundry, East
Godavari District.

... Respondent No.1/Petitioner/Defendant No.2

2. Khandavilli Pattabhi, S/o. Bodiyya, 70 years, Worker,
R/o.Kotilingalapeta, Rajahmundry, East Godavari
District.

...Respondent No.2/Respondent No.2/Defendant No.1

DATE OF ORDER PRONOUNCED : 11.05.2023

SUBMITTED FOR APPROVAL:

HONOURABLE SRI JUSTICE B.V.L.N.CHAKRAVARTHI

- | | |
|--|--------|
| 1. Whether Reporters of Local Newspapers
may be allowed to see the Order? | Yes/No |
| 2. Whether the copy of Order may be
marked to Law Reporters/Journals? | Yes/No |
| 3. Whether His Lordship wish to see the
fair copy of the Order? | Yes/No |

B.V.L.N.CHAKRAVARTHI, J

* HONOURABLE SRI JUSTICE B.V.L.N.CHAKRAVARTHI
+ CIVIL REVISION PETITION NO.1800 OF 2015
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...Respondent No.2/Respondent No.2/Defendant No.1

! Counsel for the Revision
-petitioner

: Sri T.V.Jaggi Reddy

^ Counsel for the
Respondent No.1/
Petitioner/D.2

: Sri K.Neelakanteswara Rao

^ Counsel for the R.2
R.2/Defendant No.1

: Notice Served, none appeared

< Gist:

> Head Note:

? Cases referred:

1. (2) AIR 1995 SC 441.
2. 2012 (2) ALT 230 (S.B.).

This Court made the following:

Page 2 of 9

THE HONOURABLE SRI JUSTICE B.V.L.N.CHAKRAVARTI

CIVIL REVISION PETITION NO.1800 of 2015

O R D E R:

This revision-petition is directed against the Order, dated 19.01.2015 in I.A.No.130 of 2009 in O.S.No.262 of 1988 on the file of Principal Senior Civil Judge's Court, Rajahmundry filed under Section 144 of the Code of Civil Procedure, 1908 (for brevity „CPC), whereunder the Trial Court „Partly Allowed the application, for restitution of possession of „C schedule property to the defendant No.2.

2. The Respondent No.1/judgment-debtor No.2 filed I.A.No.130 of 2009 before the original Court for restitution of the impugned property i.e., „C schedule property covered by decree in the partition suit i.e., O.S.No.262 of 1988, and the Trial Court after considering the evidence of both sides placed before it „Allowed the application since the said property was delivered in execution of the decree in the partition suit, which was later set- aside in O.S.No.68 of 1993.

3. The contention of the revision-petitioner, who is the decree- holder in the Partition suit, is that the property ordered for restitution, is not a part of „C schedule property covered by the partition suit and that it was not delivered in execution of the decree of the partition suit. The contention of the respondent No.1, who is the defendant in the partition suit and decree-holder in subsequent suit i.e., O.S.No.68 of 1993 on the file of I Additional Junior Civil Judge s Court, Rajahmundry, whereunder the partition decree was set-aside, confirmed by the First Appellate Court and subsequently by this Court in second appeal is that the impugned property is part of „C schedule property of the partition suit and it was delivered to the revision-petitioner in execution of the decree of the partition decree.

4. The learned counsel for the revision-petitioner would submit that impugned property is property of the revision petitioner; plaint schedule of partition suit in respect of „C schedule property would disclose that the impugned property is not part of the decree covered by the partition suit and therefore, it was not delivered during the execution of the partition decree, but the Trial Court erroneously held that it is a part of the partition decree, and thereby committed material irregularity.

5. The learned counsel for respondent No.1, who is judgment- debtor No.2, would submit that the revision-petitioner was examined as a witness during the enquiry of the „Restitution Application as R.W.1 and in the cross-examination, it was admitted that the impugned property is covered by „C schedule property of the partition suit and later, in the Final Decree Petition proceedings, the Commissioner, in his Report identified the same as „C schedule property and subsequently in execution proceedings it was delivered to the revision-petitioner; and therefore, since the decree in the partition suit was set-aside subsequently in O.S.No.68 of 1993 filed by the respondent No.1, which was confirmed in the First Appellate Court and also in the Second Appel by this Court in the Second Appeal No.969 of 2005, it was delivered to the respondent No.1.

6. The learned counsel for respondent No.1 would further submit that the revision is not maintainable since Order passed under Section 144 of CPC is a decree under Order II Rule 2 of CPC and therefore, only appeal lies as per Section 96 of CPC. In support of his arguments, he relied on a Judgment of this Court in Kavita Trehan vs. Balsra Hygiene Products Limited¹.

7. In the light of above rival contentions, the point that would arise in the revision-petition is as under: -

"Whether a revision is maintainable against the Order and Decree passed under Section 144 of the Code of Civil Procedure, 1908?"

¹ (2) AIR 1995 SC 441.

8. P O I N T: -

It is an admitted fact that the revision-petitioner filed Partition suit in O.S.No.262 of 1988 on the file of Principal Senior Civil Judge s Court, Rajahmundry; it was preliminarily decreed on 14.02.1989

and later final decree was passed; in execution of the said decree, „C schedule property was delivered to the revision-petitioner as per the decree.

9. It is also an admitted fact that the respondent No.1 filed O.S.No.68 of 1993 on the file of I Additional Junior Civil Judge s Court, Rajahmundry to set-aside the decree in the partition suit on the ground of fraud: and the Trial Court decreed the said suit on 06.09.1999. The revision-petitioner filed appeal in A.S.No.173 of 1999 on the file of V Additional District Judge (Fast Track Court), Rajahmundry of East Godavari District and it was „Dismissed on 04.06.2003. The revision-petitioner also filed second appeal in S.A.No.969 of 2005 on the file of this Court and it was also „Dismissed on 18.03.2006. Consequently, the respondent No.1 filed I.A.No.130 of 2009 in O.S.No.262 of 1988 under Section 144 of CPC for restitution of C schedule property and the Trial Court passed the impugned Order, dated 19.01.2015, under section 144 CPC ordering restitution of the C schedule property to the respondent No.1.

10. The revision-petitioner filed the present revision challenging the said restitution Order, dated 19.01.2015 passed under Section 144 of CPC.

11. An application for the relief of restitution is not an application for execution of the appellate decree or order. It is an application praying the Court to re-determine the rights of parties to the application and to grant a decree to the applicant that he is entitled to property under the decree or order already executed. It amounts to a decree within the meaning of Section 2 (2) CPC.

12. A scrutiny of Section 144 of CPC would show as under:

(i) There should be a variation/reversal of a decree or an order under which a party has got the property/ benefit.

(ii) Such variation/reversal should result in entitling a party to a benefit by way of restitution or otherwise.

(iii) The effect of the order or restitution shall be such as to place the parties in the position which they would have occupied but for such decree or order which has been varied/reversed wholly or partially.

(iv) In so restoring the parties to their original position, the power of the Court extends to passing an order including an order for refund of costs, payment of interest, damages, compensation, or mesne profits; and;

(v) The order for refund or payment must be passed consequential on such variation or reversal

13. It would appear from the above that what must be restituted is the benefit taken by a party in execution of a decree which has subsequently been varied or reversed. In fact, in proceedings under Section 144 of CPC a new decree or order would be passed on adjudication of the rights of the

parties and the necessary relief is given in that decree or order, unless the appellate decree itself decided the point and directed restitution.

14. Section 2 (2) of CPC defines a "decree" that it is a formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties about all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint and the determination of any question within Section 47 or Section 144 of CPC.

15. This Court in Mohammed Abdul Sattar vs. Mrs. Shahzad Tahera and another² held that "an Order under Section 144 of CPC is a decree, in view of the definition of decree under Section 2 (2) of CPC." It was further held that "revision under Section 115 of CPC does not lie and it is not appropriate to entertain petition under Article 227 of Indian Constitution also, where the 2 2012 (2) ALT 230 (S.B.) petitioner has a chance of making exhaustive submissions before the Appellate Court.

16. Admittedly, the impugned order in the case was passed under Section 144 of CPC.

17. The revision is not maintainable in view of the above legal position that appeal only lies from the decision of the Trial Court passed under Section 144 of CPC.

18. In the result, the Civil Revision Petition is „Dismissed . The revision-petitioner is at liberty to file appeal as per law. There shall be no order as to costs.

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

B.V.L.N.CHAKRAVARTHI, J 11th May, 2023.

Note:

LR Copy is to be marked.

B/o.

DNB