

HIGH COURT OF ANDHRA PRADESH :: AMARAVATI**MAIN CASE No: CRP No. 480 of 2023 & CMA No.44 of 2023****PROCEEDING SHEET**

SL. NO.	DATE	ORDER	OFFICE NOTE
	21.11.2024	<u>VN.J</u> CRP No.480 of 2023 is filed questioning the Order dated 28.11.2022 in I.A.No.839 of 2022 in I.A.No.217 of 2021 in O.S.No.166 of 2015 passed by the Family Judge-cum-XII Additional District Judge, Guntur. 2. The Petitioner is the Plaintiff. A suit was filed for declaration that the Defendant No.1 is only a life estate holder of the Plaintiff Schedule Property and for consequential permanent injunction restraining the Defendant No.1 from alienating the Plaintiff Schedule Property or claiming any other rights sought in view of the Registered Will dated 10.10.1984 executed by late Ponnur Krishna Murthy. While the suit was pending, O.S.No.166 of 2017 was filed by K. Dinesh Babu seeking for specific performance of an agreement of sale against the respondent No.1 herein. The said suit was decreed <i>ex parte</i> on 22.09.2017 by the I Additional District Judge, Guntur. In the execution petition filed therein vide E.P.No.150 of 2018, the petitioner filed E.A.No.8 of 2021 reiterating the plaint averments in O.S.No.166 of 2015 and that the respondent	

	No.1 is only a limited estate holder under the Registered Will dated 10.10.1984. On the said basis, the Petitioner sought to declare the <i>ex parte</i> decree in O.S.No.166 of 2017 as collusive and fraudulent. 3. The Executing Court conducted enquiry and in the process of enquiry, the Petitioner was examined as PW.1 along with another as PW.2. The Respondent No.6 and Respondent No.1 were examined as RWs. 1 and 2. The Executing Court after considering the oral and documentary evidence and the contentions of the respective parties rejected the claim petition of the petitioner vide Order dated 16.08.2023. It is submitted by the Petitioner that Civil Revision Petition No.276 of 2024 is filed before this Court questioning the said Order. 4. In the interregnum, the suit filed by the Petitioner i.e., O.S.No.166 of 2015 was dismissed for default along with I.A.No.217 of 2021 on 24.08.2022. On 25.08.2022, the Petitioner filed the present Applications I.A.Nos. 838 and 839 of 2022 to restore the same. The said applications were dismissed and hence, the present Civil Revision Petition is filed.	
--	---	--

	5. In the course of arguments, the learned counsel for the Respondents contended that in view of the adjudication in the claim petition filed by the Petitioner, there is nothing to be adjudicated in the suit and therefore, the question of restoration of the suit may not be required. Learned counsel for the Petitioner contended that the claim petition was dismissed on two counts, i.e., one is on merits and second one is on the issue of maintainability of the application filed by the Petitioner. If the application is to be dismissed on maintainability, then the findings recorded by the Executing Court will not operate as res judicata and therefore, the suit can be proceeded with. 6. As the issue with regard to the claim of the Petitioner and the issue with regard to the maintainability of the claim petition filed by the Petitioner are seized by this Court in CRP No. 276 of 2024, this Court is of the opinion that the present CRP and CMA be posted and heard along with CRP No. 276 of 2024 after taking necessary permission from the Hon'ble Chief Justice. _____ VN,J eha	
--	--	--