

APHC010132172025



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

[3332]

**PRESENT;THE HONOURABLE SRI JUSTICE RAVI CHEEMALAPATI
CIVIL REVISION PETITION NO: 707/2025**

Between:

1.LAGGISETTI MURLIDHAR, S/O. SRI (LATE) ACHUTARAO, AGED ABOUT 64 YEARS, R/O. PLOT NO. 149, STREET NO. 11B, OPP . STATE SCHOOL, HANUMAN NAGAR, KARMANGHAT, MEERPET POST, HYDERABAD 500 097.

...PETITIONER

AND

1.MADDALA MANI, W/o. Sri (late) Govinda Rajulu, aged baout 76 years, R/o. D.No. 49-45-10, Akkayyapalem, Visakhapatnam 530016.

...RESPONDENT

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 20-11-2024 passed in I.A.No. 476/2022 in O.S.No. 683/2018 on the file of the Hon'ble VII Additional Civil Judge, (Senior Division), Visakhapatnam, by allowing the application and pass

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 O.S.No. 683/2018 on the file of the Hon'ble VII Additional Civil Judge, (Senior Division), Visakhapatnam pending disposal of the present Civil Revision Petition and pass

Counsel for the Petitioner:

1.K PALLAVI

Counsel for the Respondent:

1.KORIBILLI SANDEEP

RESERVED ON	17.03.2026
PRONOUNCED ON	29.04.2026
UPLOADED ON	29.04.2026

ORDER

This Civil Revision Petition is filed questioning the legality and correctness of the order dated 20.11.2024 passed in I.A.No.476 of 2022 in O.S.No.683 of 2018 by the learned VII Additional Civil Judge (Senior Division) Visakhapatnam.

2. The petitioner is the defendant and respondent is the plaintiff in O.S.No.683 of 2018 filed for eviction and for recovery of vacant possession.

3. The facts that led to filing of the Civil Revision petition, in brief, are that

(i) The respondent filed suit vide O.S.No.683 of 2018 for eviction. The petitioner was set ex parte in the said suit. In pursuance of the said ex parte decree, an execution petition vide E.P.No.8 of 2021 was filed Under Order-21, Rule-36 CPC for delivery of the petition schedule property and the said Execution Petition was disposed of on 15.03.2021 recording delivery of the property effected on 03.02.2021. Subsequently, the ex parte decree passed in the suit was set aside vide order 23.07.2021 passed in I.A.No.52 of 2021. Pursuantly, the defendant filed the application under Section 144, read with Section 151 of Code of Civil procedure to order restitution directing the plaintiff to restore possession of the property to the defendant.

(ii) The plaintiff resisted the relief contending that since the decree in the suit has not been varied or modified by way of appeal or revision and hence Section 144 of Code of Civil Procedure has no application to the facts of the case on hand and further under Section 144 of CPC the property is to be restored to the property owner and the defendant not being the owner cannot claim restitution.

(iii) The learned trial Judge upon considering the submissions made by learned counsel for the parties and upon perusing the material available on record, dismissed the petition.

(iv) The said dismissal order has been assailed in this Civil Revision Petition.

4. Heard Smt.K.Pallavi, learned counsel for the Revision Petitioner, and Sri K.Sandeep, learned counsel for respondent.

5. Smt.K.Pallavi, learned counsel for the petitioner, while reiterating the contents of the affidavit filed in support of the petition before the trial Court and grounds of Revision would contend that since possession of the property was taken from the petitioner in execution proceedings initiated based on ex parte decree, the possession of the property shall be restored back to the petitioner under Section 144 of CPC, as and when the said *ex parte* decree

was set aside. She would further contend that the learned trial Judge ought not to have dismissed the petition on the mere ground that suit schedule property and the property described in the restoration petition are different, instead the learned trial Judge ought to have ordered for restoration of the property that was taken delivery of in the execution petition. She would further contend that under the guise of ex parte decree, the petition schedule property was taken possession from the petitioner and the respondent/defendant is estopped from contending that petition schedule and plaint schedule are different and distinct. She would further contend that the learned trial Judge upon erroneous view that there is no consensus-ad-idem between the parties regarding the property to be restored dismissed the petition, instead of ordering restitution of the property taken actual delivery of from the petitioner. She would further contend that the order passed by the learned trial Judge is in ignorance of the mandatory provisions and the same has to be set aside. Accordingly, prayed to allow the Civil Revision Petition ordering restoration of the property.

6. On the other hand, Sri K.Sandeep, learned counsel for respondent, would contend that restoration of the property should only be in favour of the original owner of the property and the petitioner not being the original owner of the property is not entitled to seek restoration under Section 144 of the

CPC. He would further contend that since the decree has not been varied or modified, but simply the ex parte order was set aside, the doctrine of restoration cannot be made applicable to the facts of the case. He would further contend that the schedule property of the restoration petition and the suit schedule property are entirely distinct and different, the learned trial Judge rightly dismissed the petition observing that since there is no consensus-ad-idem between the parties, restoration cannot be ordered. He would further contend that the learned trial Judge upon meticulous analyzation of the facts and circumstances of the case, rightly dismissed the petition and the said order does not require interference of this Court. Accordingly, prayed to dismiss the Civil Revision Petition.

7. Perused the material available on record and considered the submissions made by learned counsel for the parties.

8. If an ex parte decree is set aside, the defendant (tenant) can file a petition under Section 144 of the Code of Civil Procedure 1908, for restitution of possession. Once an ex parte decree is set aside under Order 9 Rule 13, the court is empowered to reverse the actions taken during execution, restoring the party to their original position. In the instant case, since the defendant was dispossessed from the property in execution proceedings

initiated pursuant to ex parte decree, he is entitled to be restored back into possession, since the said ex parte was set aside.

9. There is dispute regarding the property from which the defendant was dispossessed. According to the petitioner, under the guise of the ex parte decree obtained by stage management, he was forcibly dispossessed from the petition schedule property comprising two items but not from the plaint schedule property and hence possession of the petition schedule property has to be restored back to him by way of restitution. In support of his contention that he is absolute owner of the property annexed to the petition, he relied upon the judgment passed in A.S.No.92 of 2003 filed by him against husband of the respondent/plaintiff in the instant case.

10. The plaint schedule property of the subject suit is described as under:

An extent of 190 square yards vacant site situated within the limits of Visakhapatnam District, Dwarakanagar Sub Registrar, Dondaparthi, GVMC area, Survey No.40/6, Patta No.882, Akkayyapalem, Godavari Manyam, Ramachandra Nagar, bounded by:

East: 30 feet Road

South: The property belongs to family of M.Govinda Rajulu

West: Remaining landed property belongs to M.Govinda Rajulu

North: The property sold by M.Govinda Rajulu to Tata Reddy.

11. According to the respondent/plaintiff the said property was let out to the petitioner/defendant and as the petitioner committed default in payment of rent since 2015, she filed the suit for eviction and in the execution petition vide E.P.No.8 of 2021, possession of the plaint schedule property was given to her.

11. The property mentioned in the schedule appended to the restitution petition is as follows:

Schedule property-1: 188 Square yards or 157.19 square meters, covered by S.No.40/6C4(Part) in Dondaparthi Village, Visakhapatnam Municipal Corporation in the Registration Sub District of Dwarakanagar in the Registration district of Visakhapatnam District and bounded by:

East: 30 ft. Municipal Road

West: Vacant site of Sri Boddeti Lokanatham

North: Vacant site of Sri Karanam Satya Rao

South: Vacant site of Sri Lagiseti Girish Kumar @ Sri Suriseti Papa Rao

Schedule of property-II

150.45 Square yards or 125.79 square meters consisting of ACC Roofed shed having Door No.45-2-60/60/1/3, Ramachandra Nagar, Akkayyapalem, Greater Visakhapatnam Municipal Corporation under Survey No.40/6C4 (Part), Dondaparthi Village and falling under Dwaraka Nagar Sub-Registry and Visakhapatnam District Registry having following boundaries:

East : 30 Ft. Municipal Road

West : Property of K.Satyanarayana under Door No.45-2-60/58/2,

North: Property belongs to T.Tata Reddy under Door No.45-2-60/58/3

South: Property belongs to L.Annapoorna under Door No.45-2-60/60/1.

12. According to the petitioner under the guise of the ex parte decree obtained by showing the incorrect address particulars of the petitioner/defendant in the suit and by playing fraud on the court, the petitioner was evicted from the above mentioned property. According to the petitioner, the plaint schedule property does not exist.

13. The plaint schedule property and the property shown in the restitution petition is entirely different. Therefore, as rightly held by the learned trial Judge there is no consensus ad idem between the parties regarding the property possession of which is to be restored back by way of restitution.

13. A perusal of the order dated 15.03.2021 passed in E.P.No.8 of 2021 in O.S.No.683 of 2018 would indicate that the bailiff of the Court delivered the property to the decree holder on 03.02.2021 and the said E.P. was disposed of recording the delivery effected on 03.02.2021.

14. Since the property was delivered to the decree holder pursuant to the ex parte decree, which was later set aside, it would have been appropriate to order restoring back possession of the property that was delivered to the decree holder by the bailiff under delivery warrant on 03.02.2021. However, the learned trial instead of doing so erroneously dismissed the petition filed for restitution. The impugned order nowhere

specifies that the learned trial Judge had taken into consideration the warrant, bailiff's report and the panchanama recorded at the time of delivery, which would aid the Court in coming to the right conclusion regarding the property that is to be restored back by way of restitution. Therefore, the order passed by the learned trial Judge is liable to be set aside and the matter has to be remitted back to the learned trial Judge for passing orders afresh after taking into consideration the documents referred supra and if necessary by permitting the parties to lead evidence.

15. In view of the above, the Civil Revision Petition is allowed setting aside the order dated 20.11.2024 passed in I.A.No.476 of 2022 in O.S.No.683 of 2018. The matter is remitted back to the learned trial Judge for passing orders afresh as indicated above and put back the petitioner into possession of the property from which he was dispossessed by the bailiff on 03.02.2021 under delivery warrant issued in E.P.No.8/2021 in O.S.No.683 of 2018. There shall be no order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.

29th April, 2026.

JUSTICE RAVI CHEEMALAPATI
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