

**IN THE HIGH COURT OF ANDHRA PRADESH :: AMARAVATI**

**FRIDAY ,THE TWENTY FIRST DAY OF MARCH  
TWO THOUSAND AND TWENTY FIVE**



**PRESENT**

**THE HONOURABLE JUSTICE DR V R K KRUPA SAGAR**

**CIVIL REVISION PETITION NO: 1401 OF 2019**

Petition under section 115 of C.P.C, against the Order dated 27.11.2017 passed in. E.A.No.213/2017 in E.P.No.154/2007 in O.S.No.132/1991, in the court of the Principal civil (Senior Division) judge at kovvur.

**Between:**

Sri Tommedella Venkata Ratnam, S/o. Veera Bhadrayya, aged about 69 years, Swarnavarigudem Village, Jeelugumilli Mandal, West Godavari District.

**...PETITIONER/RESPONDENT/DHR**

**AND**

Sri Dakavarapu Krishnaji, S/o. Venkata Ramana, aged about 60 years, Vegavaram Village, Janagareddigudem Mandal, West Godavari District.

**(The Petitioner being lost total memory represented by wife Surya Ratna Kumari, W/o. Krishnaji, aged about 55 years, Vegavaram, Jangareddigudem, West Godavari District.)**

**...RESPONDENTS**

**IA NO: 2 OF 2019**

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 direct the respondent not to alienate the property in an extent of Ac 3.57 cents in R.S.No. 73/7 and patta No. 199 situated at Mysannagudem Village, Jangareddigudem Mandal, West Godavari District.

**Counsel for the Petitioner(s) : SRI S APPADHARA REDDY**

**Counsel for the Respondents : SRI O MANOHER REDDY**

**The Court made the following ORDER :**



**IN THE HIGH COURT OF ANDHRA PRADESH**

**AT AMARAVATI**

**[3365]**

**(Special Original Jurisdiction)**

**FRIDAY ,THE TWENTY FIRST DAY OF MARCH  
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**THE HONOURABLE JUSTICE DR V R K KRUPA SAGAR**

**CIVIL REVISION PETITION NO: 1401/2019**

**Between:**

Sri Tommedella Venkata Ratnam

**...PETITIONER**

**AND**

Sri Dakavarapu Krishnaji

**...RESPONDENT**

**Counsel for the Petitioner:**

1.S APPADHARA REDDY

**Counsel for the Respondent:**

1.O MANOHER REDDY

**The Court made the following:**

**THE HON'BLE JUSTICE Dr. V.R.K.KRUPA SAGAR****CIVIL REVISION PETITION No. 1401 of 2019****ORDER:**

1. Decree holder preferred this Civil Revision Petition under section 115 of CPC assailing the order dated 27.11.2017 of the execution court in E.A.No.213 of 2017 in E.P.No.154 of 2007 in O.S.No.132 of 1991 of the learned Principal Senior Civil Judge, Kovvur.
2. Respondent herein is one of the judgment debtors.
3. Sri S.Appadhara Reddy, the learned counsel for revision petitioner and Sri P.Sravan Kumar appearing on behalf of Sri O.Manohar Reddy, the learned counsel for respondent submitted arguments.
4. Learned counsel for petitioner cited
  - ***RPA Vallimmal V. R.Palanichami Nadar***<sup>1</sup>
  - ***Manickam alias Thandapani V. Vasantha***<sup>2</sup>
  - ***Sarverunnisa Begum V. Syed Rafeeq***<sup>3</sup>
  - ***K.Jayarajan V. Sambasivan***<sup>4</sup>
5. Learned counsel for respondent cited
  - ***B.V.Patankar V. C.G.Sastry***<sup>5</sup>

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<sup>1</sup> (1997) 10 SCC 209

<sup>2</sup> 2022 LawSuit (SC) 519

<sup>3</sup> 2015 (4) ALD 225

<sup>4</sup> Order dated 01.02.2022 of the High Court of Kerala at Ernakulam

• ***Adcon Electronics Private Limited V. Daulat***<sup>6</sup>

6. The following facts and legal events are required to be noticed: -

An immovable property in an extent of Ac.3.57 cents which is agricultural land situated in R.S/73/7 in Patta No.199 in Mysannagudem Village, Jangareddigudem Mandal of West Godavari District was subject matter of an agreement for sale dated 07.06.1984. The intending purchaser filed O.S.No.132 of 1991 praying for specific performance of the agreement for sale as against the vendors who executed the agreement for sale. Learned Senior Civil Judge, Kovvur by a judgment dated 12.02.1998 granted the reliefs and directed defendant Nos.1 and 2 therein to execute registered sale deed in favour of plaintiff and granted time of three months for that. It further directed that in the event, the judgment debtors failed to comply with the decree directions, the decree holder was entitled to have the sale deed executed through process of court. Since in the suit, the purchaser contended that he obtained possession of the subject matter property under the agreement for sale and contended that the vendors/ defendants were disturbing his possession, the judgment and decree of the trial court further granted permanent injunction restraining the defendants from interfering with the possession of the plaintiff over the plaint schedule property.

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<sup>5</sup> AIR 1961 SC 272

<sup>6</sup> (2001) 7 SCC 698

7. The vendors did not comply with the decree directions and did not execute sale deed. In such circumstances, the decree holder filed E.P.No.14 of 2005 seeking execution of registered sale deed. The execution court called upon the judgment debtor and when they failed to turn up, it executed registered sale deed in favour of the decree holder. It is undisputed here that the sale deed which was pursuant to the decree did not advert to possession of the property though possession was asserted in the plaint by the purchaser. That had driven the decree holder to file E.P.No.154 of 2007 under Order 21 Rule 35 CPC praying for delivery of the possession of the property. Contest was raised by judgment debtors stating that the subject matter property was already sold under an agreement for sale dated 14.04.1980 and possession of the property was delivered to the agreement holder Sri P.Ramachandra Rao. Therefore, the decree was invalid and prayer for possession of the property could not be asked for. The rival submissions were fully considered and the learned Senior Civil Judge by an order dated 14.10.2008 negatived all the contentions raised by Judgment debtors and granted delivery of possession with a direction that the property should be delivered to decree holder by 30.10.2008. Despite such an order, the judgment debtors were raising all sorts of troubles and in such circumstances, decree holder filed E.A.No.547 of 2008 praying to grant police aid. The

Execution court allowed the said application and granted police aid by its order dated 14.07.2017. At about the same time, Sri Ramachandra Rao who was, according to the defendants in the suit was, in possession of the property as he had purchased the property under an agreement for sale represented by his legal representatives filed E.A.No.87 of 2009 under Order 21 Rule 97 CPC resisting delivery of possession. After due contest, the Execution court by its order dated 14.07.2017 dismissed the said claim petition.

8. All the above-mentioned facts are undisputed on both sides. The upshot of the above discussion is that the execution court ordered delivery of possession and granted police aid for effective implementation of its order. The present dispute has arisen after the above events. The judgment debtor filed a petition under section 47 CPC which the execution court registered as E.A.No.213 of 2017. They contended that the order of the execution court in E.P.No.154 of 2007 passed on 14.10.2008 is invalid since the decree did not grant the relief of delivery of possession of the property. Decree holder raised all possible contentions about the unjustified conduct of the judgment debtors and the attainment of finality of order in EP.154 of 2007 and non maintainability of section 47 CPC petition at that belated stage. However, the learned Execution court allowed that

petition. Paragraph Nos.15, 16, 17 and 18 of the said order read as below.

*"15. Certainly, the Order of this Court dated 14.10.2008, this Court had entertained all the issues in nut-shell and therefore, the Order dt.14.10.2008 should be taken in appeal if the 2nd J.Dr Krishnaji was aggrieved by it. However, when he had not taken the order of appeal, the Order becomes final in nature and any order reviewing such order would be res judicata. But, it should be noted that the present petition is filed under Sec.47 of CPC which is not analogical to the earlier petition. The scope of Sec.47 is distinct in nature. Further, it should be noted that the claim of the petitioner/J.Dr.No.2 is that the very execution petition is not maintainable as it is impracticable to order delivery of the property from the J.Dr, when the D.Hr claimed possession. Certainly, such argument had lot of force.*

*16. As seen from the record, this Court had passed Order dt.14.10.2008 while entertaining counter when it issued notice to the J.Drs under Order 21 Rule 35 of CPC. This Court did not consider the fact that the D.Hr had claimed possession of the suit property on the strength of the agreement of sale dt.7.6.1984 which is the foundation of the suit. At no point of time, he claimed that he lost possession of the suit property. As of now also he claimed possession. So, when he had possession of the EP schedule property, how come the Court direct the J.Drs to deliver possession of the same. It would be fanciful to note that the D.Hr had filed this EP for delivery of the EP schedule property merely because the Revenue Authorities desired that he should obtain possession through Court of law. How can the Revenue Authorities seek for obtaining possession of the suit properties through Court of law when the D.Hr claimed possession. It should be noted that the Court had declared the D.Hr held possession and the Revenue Authorities should accept it. It is not for the Revenue Authorities to suggest the way in which the D.Hr should obtain possession. Even if the Revenue Authorities did so, the D.Hr should ignore it and if the Revenue Authorities do not recognise his possession, he should initiate necessary proceedings against the Revenue Authorities. Instead of resorting for such an action, he cannot be permitted to file EP seeking delivery of the schedule property from the*

*J.Drs while it should in his possession. The EP itself is a misconceived one.*

*17. Considering the above and the Sec.47 of CPC, it can be said that the J.Dr-Krishna can certainly invoke the provisions of Sec.47 of the CPC. The D.Hr is not entitled in seeking delivery of property based on the decree in the above suit. The earlier orders of this Court ordering delivery of the property are not tenable under law and the same are required to be recalled. Hence, both the points framed from consideration are required to be held against the D.Hr.*

*18. In the result, the petition is allowed holding that the Execution Proceedings are not maintainable and the EP is liable to be dismissed."*

9. It is that order in EA.No.213 of 2017 that is assailed by decree holder in this revision.

10. Thus, 40 years after the agreement for sale and nearly 27 years after the decree for specific performance of agreement for sale, decree holder is still struggling to enjoy the fruits of the decree. By the advertence or inadvertence of parties and the court, the possession of the property is still in limbo.

11. Learned counsel for respondent/ Judgment debtor contended that the subject matter property is not in possession of judgment debtors and is not in possession of decree holder and it is in possession of legal representatives of Sri P.Ramachandra Rao. Therefore, the impugned order is right in recalling order of delivery of possession passed against the judgment debtors. This submission has

no merit. The legal representatives of Sri P.Ramachandra Rao lost their claim in E.A.No.87 of 2009 filed under order 21 rule 97 CPC as long as back on 14.07.2017. That order became final according to both sides. Therefore, it must be stated that the subject matter property is not in possession of the legal representatives of Sri P.Rama Chandra Rao.

12. The next submission of the learned counsel for respondent/Judgment debtor is that the subject matter property, as per the plaint averments and as per the relief of permanent injunction granted is with decree holder and therefore, the order of the execution court directing Judgment debtors to deliver possession was incorrect on facts and therefore it was rightly recalled by the very execution court in the impugned order.

13. The submission of the learned counsel for revision petitioner/decreed holder is that the decree has not recorded possession of the purchaser. The sale deed executed by the execution court has not recorded possession of property in favour of decree holder. Thus, for all practical purposes, the possession is with judgment debtors and they have been playing all tricks to hang on to the property. The executing court while preparing registered sale deed was obliged to record necessary facts with reference to possession of the property. It failed to record anything with reference to that and

simply executed sale deed. As contended by decree holder, the revenue authorities failed to act upon the sale deed and failed to mutate entries in revenue records since the sale deed did not disclose possession and the execution court did not record delivery of possession. That forced the decree holder to look at the execution court. The learned execution court properly assessed those facts and contentions and passed order of delivery of possession in EP.154 of 2007. That should have put the matter to rest. While that order was pronounced on 14.10.2008, Judgment debtors sought recalling of that order putting forth their purported rights under section 47 CPC filed in the year 2017 in E.A.No.213 of 2017. Therefore, the contention of JDrs is negatived.

14. The next submission by the learned counsel for respondent/ Judgment debtor is that the decree for specific performance has not granted delivery of possession and therefore executing court ordering delivery of possession was incorrect in law and the same was validly recalled by the execution court by its impugned order and therefore no interference is called for. There is no merit in this contention for the following reasons.

In the absence of contract to the contrary, the seller of an immovable property shall deliver possession of the property on sale of the property vide Section 55(1)(f) of the Transfer of the Property Act,

1882. The court on execution of proper conveyance of sale in favour of the purchaser has to grant delivery of possession to the purchaser vide section 28(3)(b) of the Specific Relief Act, 1963. At this juncture, learned counsel for respondent/ Judgment debtor cited ***Adcon Electronics Private Limited***<sup>7</sup>. That was a case where the question involved was whether the suit that was filed before the Bombay High Court was a “suit for land” or not. Under clause 12 of the Letters Patent of Bombay High Court, it could exercise its original jurisdiction only if the immovable property is within the local limits of the original jurisdiction of the High Court or if the cause of action has arisen wholly within its ordinary original jurisdiction or if the defendant dwells or carries on business or personally works for gain within such territorial limits. It was in that context that the suit that was filed for mere specific performance of contract for sale without a specific plea for delivery of possession fell for consideration. In such circumstances, their Lordships took the view that it was not a “suit for land” since in a suit for specific performance, the title to the property was not in question. In the process of reasoning, their Lordships had to refer to section 22 of Specific Relief Act, 1963 and were to state that by the terms of that provision, court could not grant relief of possession of land when there was no prayer for that in the suit. It is at this juncture, one has to notice

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<sup>7</sup> Supra 6

the ratio of the Hon'ble Supreme Court of India in ***Rohit Kochhar V. Vipul Infrastructure Developers Limited***<sup>8</sup>. While referring to precedent of their Lordships in ***Babu Lal V. Hazari Lal Kishori Lal***<sup>9</sup>, their Lordships stated that the said ruling was not brought to the attention of their Lordships in ***Adcon Electronics Private Limited's case***<sup>10</sup> (referred to by Judgment debtors in the case at hand) laid down the law stating that transfer of possession is implicit in contracts for sale of immovable property. Even if possession is not explicitly sought, a suit for specific performance inherently invokes elements that affect the properties making it a suit for land. It was not necessary in a suit for specific performance of agreement for sale as to separately claim for possession nor was it necessary for the court to pass a decree for possession. A decree for specific performance of a contract includes everything incidental to be done by one party or another to complete the sale transaction and the rights and obligations of the parties in such matter are governed by section 55 of the Transfer of the Property Act. A suit for land is a suit in which the relief claimed relates to the title and it takes within itself the relief of delivery of possession. A learned Judge of this Court in ***Sarverunnisa Begum V. Syed***

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<sup>8</sup> 2024 LiveLaw (SC) 1951

<sup>9</sup> AIR 1982 SC 818

<sup>10</sup> Supra 6

**Rafeeq's case**<sup>11</sup> took the same view after referring to the precedent. Similar view was taken by their Lordships in **Manickam's case** <sup>12</sup>. Thus, the contention raised on behalf of the respondent/ Judgment debtor based on **Adcon Electronics private limited's** case does not help the respondent/ Judgment debtor.

15. The contention of the learned counsel for respondent/Judgment debtor based on **B.V.Patankar's** case does not come to the rescue since in that case, the property sought to be delivered was a property governed by rent control orders and in such circumstances, delivery of possession as ordered by the civil court in a suit could be validly objected under section 47 CPC. In the case at hand, the contention raised before the court below under section 47 CPC does not relate to subject matter jurisdiction of the original court or the execution court. The property in dispute is an agricultural land and was not subjected to rent control laws.

16. The contention of learned counsel for revision petitioner/ decree holder based on **RPA Valliammal's case**<sup>13</sup> governs the dispute. Their Lordships had stated that Judgment debtors were entitled to raise objections about the executability of the decree only once and under the guise of section 47 CPC, they cannot piecemeal raise their

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<sup>11</sup> Supra 3

<sup>12</sup> Supra 2

<sup>13</sup> Supra 1

objections before the execution court. In the case at hand, initially when decree holder prayed for delivery of possession JDr objected raising certain contentions about giving away property to Sri P.Ramachandra Rao. JDr did not raise the contention about delivery of possession without there being any provision made in the decree. Law expects all questions to be raised at once. Raising them piecemeal is precisely disapproved in the above referred ruling. Learned court below thus committed legal error in recalling the well considered order of delivery of possession passed by the very same court. Therefore, the order impugned is illegal and cannot be sustained.

17. In the result, this Civil Revision Petition is allowed. Order dated 27.11.2017 in E.A.No.213 of 2017 in E.P.No.154 of 2007 in O.S.No.132 of 1991 of learned Principal Senior Civil Judge, Kovvur is set aside. The executing court is directed to issue warrant for delivery of possession and effect delivery expeditiously. Respondent/ Judgment debtor shall pay costs of this revision to the revision petitioner.

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

**SD/- G.HELNA NAIDU**  
**ASSISTANT REGISTRAR**

**//TRUE COPY//**

  
**SECTION OFFICER**

**To,**

1. The Principal Civil (Senior Division) Judge at Kovvur, **(with records)**

2. One CC to SRI. S APPADHARA REDDY Advocate [OPUC]
3. One CC to SRI. O MANOHER REDDY Advocate [OPUC]
4. The Section Officer, VR Section, High Court of Andhra Pradesh at Amaravathi
5. Three CD Copies

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TAC

**HIGH COURT**

**DATED:21/03/2025**

**ORDER**

**CRP.No.1401 of 2019**



**ALLOWING THE CRP**