

APHC010314432025



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

[3332]

THURSDAY, THE NINETEENTH DAY OF FEBRUARY
TWO THOUSAND AND TWENTY SIX

PRESENT

THE HONOURABLE SRI JUSTICE RAVI CHEEMALAPATI

CIVIL REVISION PETITION NO: 1497/2025

Between:

- 1.DAGUMATTI KRISHNA, SON OF LATE NARAYANA SETTI, AGED ABOUT 52 YEARS, RESIDENT OF D.NO. 1/808, NARUKUR MAIN ROAD, NAWAB PETA, NELLORE, SPSR NELLORE DISTRICT

...PETITIONER

AND

- 1.DAGUMATI ANANDA KRISHNAIAH, DAGUMATI ANANDA KRISHNAIAH, SON OF LATE PEDDANNA @ DORASWAMI RESIDENT OF D.NO.3/885, NAGARI STREET, VASAVI SUPPLIERS, SRIKALAHASTI POST AND MANDAL, TIRUPATI DISTRICT
- 2.DAGUMATI SURENDRA BABU, SON OF LATE PEDDANNA @ DORASWAMI RESIDENT OF D.NO.2/1/45, NARASIMHULU SETTI STREET, NAWAB PETA, NELLORE RESPONDENTS/RESPONDENTS/DHRS
- 3.DAGGUMATI NARAYAN SETTI, (DIED)
- 4.DAGGUMATI PUSHPALU, DAGGUMATI PUSHPALU
- 5.DAGGUMATI NAGARAJA, . DAGGUMATI NAGARAJA
- 6.DAGGUMATI JAYASREE, DAGGUMATI JAYASREE
- 7.DAGGUMATI BHARATHI, (RESPONDENTS 4 TO 7 ARE RESIDENT OF D.NO. 1/808, NARUKUR MAIN ROAD, NAWAB PETA, NELLORE, SPSR NELLORE DISTRICT)

...RESPONDENT(S):

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 begs to present this Memorandum of Civil Revision Petition to this Hon'ble Court, aggrieved by the order dt. 9.5.2025 passed in E.A.No.44 of

2025 in E.A.No.9 of 2025 in E.P.No.73/ 2020 in O.S.No.35 of 1997 on the file of the Principal Civil Judge (Senior Division), Nellore

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

Counsel for the Petitioner:

1.SRINIVAS BOBBILI

Counsel for the Respondent(S):

1.SIVAPRASAD REDDY VENATI

The Court made the following order:

The present civil revision petition is filed by the petitioner being aggrieved by orders dated 09.05.2025 in E.A.No.44 of 2025 in E.A.No.9 of 2025 in E.P.No.73/2020 in O.S.No.35/1997 on the file of the Court of the learned Principal Civil Judge (Senior Division), Nellore.

2. The petitioner herein is the 4th J.Dr., the respondent nos.1 & 2 are D.Hrs and the respondent nos.3 to 7 are the J.Dr Nos. 2,3, 5 & 6 respectively.

3. The D.Hrs (respondent nos.1 & 2) filed suit for partition of suit schedule property, which was decreed by the court below. The D.Hrs filed E.P.No.73/2020 praying the court to put them in separate possession over the schedule property. In the said E.P., the petitioner herein/4th J.Dr. filed E.A.No.9 of 2024 to recall P.W.1 for cross-examination, which was dismissed for non-representation on behalf of the petitioner. To restore the said E.A., the petitioner filed E.A.No.44/2025 which was again dismissed by the court below under its order dated 09.05.2025 holding that non-appearance of the learned

advocate is not a good ground to consider the restoration of the petition. Aggrieved by the said order, the present civil revision petition came to be filed.

3. Heard Ms S.Pranavi, learned counsel representing learned counsel for the petitioner and Sri Siva Prasad Reddy Venati, learned counsel for the respondents.

4. Learned counsel for the petitioner in elaboration to what has been stated in the grounds of the revision would contend that, unless the P.W.1 is cross-examined, the petitioner-JDr cannot prove his case and the court below has failed to consider the fact that, the counsel for the petitioner could not be present 09.04.2025 due to serious ill-health. He further submitted that, though sufficient explanation was submitted that the counsel of the petitioner was suffering from serious ill-health, without considering the same, the court below has erred in dismissing the restoration petition solely on the ground of non-appearance of petitioner's counsel, without examining whether the petitioner was at fault. He further submitted that the trial court ought not to have dismissed the application filed for recalling the P.W.1 for cross-examination, since the petitioner-JDr can establish his case only through the cross-examination of the P.W.1. He further submitted that, by dismissing the restoration petition, the court below has erroneously deprived the petitioner's right to defend effectively, particularly when substantive rights are at stake. Further, the court below has failed to see that no prejudice will be caused to the respondents, if the restoration application is allowed and has erroneously

dismissed the same under its order dated 09.05.2025. As such prayed to allow the civil revision petition.

5. Learned counsel for the respondents contended that, the court below has rightly dismissed the said application since the petitioner-J.Dr failed to appear before the court below, inspite of granting several adjournments with an intention to protract the proceedings. The petitioner has not raised any grounds warranting the interference of this Court and the civil revision petition is liable to be dismissed.

6. Perused the record and considered the submissions of both the learned counsel.

7. The petitioner-J.Dr had filed E.A.No.44/2025 under Order 21 Rule 106 for restoring the petition filed for recalling P.W1 for cross-examination and the said restoration petition were dismissed by the court below under its orders dated 09.05.2025 on the ground that, Non-appearance of learned advocate is not a good ground to consider the restoration petition, that too in a target matter as the EP is of the year 2020. The contention of the petitioner-Jdr is that, in order to prove his case, cross-examination of P.W.1 is essential and though it was explained that due to serious ill-health of the petitioner's advocate could not appear before the court below on the date of adjournment, the court below has not considered the same in a right perspective.

8. The Apex Court in ***Rafiq Vs, Munshila***¹ has held that the party should not suffer for the mistake of the advocate.

9. Cross-examination is considered as a crucial tool for uncovering the truth, testing witness credibility and exposing biases or inconsistencies in testimony. Courts have emphasized that the opportunity to cross-examine is not merely a formality but a substantive right. Denial of this opportunity is a serious flaw that can render a court's order a nullity. The court below while dismissing the restoration petition failed to consider the well-settled principle that a mere lapse of time cannot defeat a rightful claim, more so when no prejudice is caused to the opposite party. In view of the same, dismissal of the restoration petition filed for recall of P.W.1 for cross-examination, by the court below on the ground that, non-appearance of learned advocate is not a good ground to restore the petition, is untenable and the order is liable to be set aside.

10. Accordingly, the civil revision petition is ***allowed*** and the order dated 09.05.2025 passed in E.A.No.44/2025 are hereby set aside. Consequently, E.A.No.44/2025 is allowed and E.A.No.9 of 2025 is restored to its file, subject to payment of costs of Rs.1,500/- by the petitioner to the respondents/D.Hrs. The Trial court is directed to dispose of the said application on merits by fixing a particular date and the petitioner shall not seek any further adjournment. No costs.

¹ (1981)2 SCC 788

Miscellaneous applications, pending if any, shall stand closed.

BRS

JUSTICE RAVI CHEEMALAPATI