

HIGH COURT OF ANDHRA PRADESH AT AMARAVATHI

MAIN CASE No. C.R.P.2134 of 2023

PROCEEDING SHEET

Sl. No	DATE	ORDER	Office Note
01.	31.08.2023	<u>GRKP, J</u> <u>I.A.No.1 of 2023</u> Sri Y. V. Anil Kumar, Learned Counsel for the Revision Petitioners would submit the facts of the case as under: i. The present Revision Petitioner No.1 is the owner of a parcel of land in plot Nos. 63, 64, 65, 66 and 67 admeasuring total extent of 10862.39 Sq. Mts. in Sy.No.327, in Nellimarla Village and Mandal, Vizianagaram District. The Revision Petitioners entered into an unregistered Agreement of Sale dated 01.03.2018 with Respondent; that since the Respondent herein could not complete the transaction due to inability to pay the total sale consideration, the Revision Petitioners have returned the entire amount of Rs.57,00,000/- to the Respondent on various dates (i.e., on 01.02.2019, 04.02.2019, 28.02.2019 and 02.04.2019);	(Contd..)

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		ii. That subsequently the Revision Petitioners and the Respondent have entered into a Registered agreement of Lease dated 01.05.2019 for a period of five years and the said Lease is still subsisting even till date; iii. While so, the Respondent herein, apprehending some danger, has filed O.S.No.34 of 2021 before the Principal District and Sessions Judge, Vizianagaram, for securing his lease hold rights and consequential relief of Injunction; and that upon the filing of Written Statement, the Suit was withdrawn by the Respondent, who is the Plaintiff in that Suit i.e., in O.S.No.34 of 2021; iv. The Revision Petitioners have filed a Suit bearing O.S.No.14 of 2022 before the Principal District Judge, Vizianagaram, for recovery of rents, eviction of the tenant (the Respondent herein), recovery of possession and for damages and the same is pending; v. It is also submitted that in the Written Statement filed by the	
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		Respondent in O.S.No.14 of 2022, the Respondent herein has admitted the subsistence of the Registered Lease dated 01.05.2019 and its status as a lessee; vi. While so, the Respondent herein has filed O.S.No.29 of 2022 for Specific Performance of unregistered contract of sale dated 01.03.2018; vii. The Revision Petitioners have filed the Interlocutory Application No.569 of 2022 under Order VII Rule 11 of the Code of Civil Procedure in O.S.No.29 of 2022 on the file of the IVth Additional District & Sessions Judge, Vizianagaram, for rejection of the Plaint on the ground of lack of cause of action and barred by limitation. 2. In this backdrop, Sri Y.V. Anil Kumar, Learned Counsel for the Revision Petitioners would submit that the Registered Lease Deed dated 01.05.2019 is currently subsisting and this fact is also admitted by the Respondent herein as the Defendant in O.S.No.14 of 2022 filed by the Revision Petitioner No.1 for recovery of Rents, Eviction, Recovery of Possession and	
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		Damages. 3. Learned Counsel for the Revision Petitioners would also submit that the Suit for Specific Performance is not maintainable inasmuch as the Revision Petitioner has returned the earnest money of Rs.57,00,000/- on various dates, which are mentioned above. Learned Counsel would also contend that the subsequent Registered Lease between the Parties would clinch the issue inasmuch as there cannot be a claim for specific performance of agreement for sale dated 01.03.2018. He would also submit that by the Registered Agreement of Lease dated 01.05.2019, the Doctrine of Novation would become applicable inasmuch as the unregistered agreement of sale dated 01.03.2018 does not subsist any more. In support of his submission, the Learned Counsel has cited a Judgment of the Hon'ble Supreme Court in <i>Sathish Chandra Jain Vs. National Small Industries Corpn. Ltd., and Ors. (AIR 2003 SC 623)</i>. Learned Counsel would rely on Para – 7 and 8 of this Judgment. 4. In this view of the matter, the Revision Petitioners have rightly filed an Interlocutory Application No.569 of 2022 under Order VII Rule 11 of the Code of Civil Procedure in O.S.No.29 of 2022 on the file of the IVth Additional District & Sessions Judge,	
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	Vizianagaram, for rejection of the Complaint. 5. By Order dated 10.05.2023, the Learned IVth Additional District & Sessions Judge, Vizianagaram, has dismissed the Application with Costs. This Order passed in I.A.569 of 2022 in O.S.No.29 of 2022, dated 10.05.2023, is impugned herein. 6. Having heard the Counsel for the Revision Petitioners, this Court is of the view that the balance of convenience is in favour of the Revision Petitioners. The Proceedings in O.S.No.29 of 2022 on the file of the IVth Additional District & Sessions Judge, Vizianagaram, shall stand suspended for ten weeks. _____ GRKP, J <u>C.R.P.No.2134 of 2023</u> 7. Registry is directed to issue Notice to the Respondent. 8. Learned Counsel for the Revision Petitioners is also directed to take out Personal Notice in respect of Respondent within one week from today and file proof of receipt of Notice within a week thereafter. 9. List the matter on 31.10.2023. _____ GRKP, J Vns	
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