

IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

THURSDAY, THE TENTH DAY OF APRIL,

TWO THOUSAND AND TWENTY FIVE

:PRESENT:

HONOURABLE SRI JUSTICE NINALA JAYASURYA

AND

HONOURABLE SMT JUSTICE SUMATHI JAGADAM

IA No. 2 OF 2024

IN

AS NO: 580 OF 2024



Between:

Tadela Deepika, W/o Tadela Chandrasekhar, Aged about 33 years, Occ
Household duties, R/o Yellapuvari Colony, Gopalapatnam, Visakhapatnam
...Appellant/Claim Petitioner
(Petitioner in AS 580 OF 2024
on the file of High Court)

AND

1. Chintada Ravi, S/o Narayanaswami Aged about 50 years, R/o Reddi Veedhi, Parvathipuram Town and Municipality Parvathipuram Manyam District
2. Indupuri Venkatesh, S/o Gunneswararao, Aged about 41 years, Occ Gold Merchant, R/o Rajivmarg Road, Parvathipuram Town and Municipality Parvathipuram Manyam District.
3. Ragolu Sankara Rao, S/o Late Chandrudu, Aged about 58 years, R/o Jagannadhapuram, Parvathipuram Municipality, Parvathipuram Manyam District
4. Ragolu Balachandrudu, S/o Ragolu Sankara Rao, Aged about 25 years, R/o Jagannadhapuram, Parvathipuram Municipality, Parvathipuram Manyam District
5. Ragolu Swapna, D/o Ragolu Sankara Rao, Aged about 30 years, R/o Jagannadhapuram, Parvathipuram Municipality, Parvathipuram Manyam District
6. Ragolu Chandrakala, D/o Ragolu Sankara Rao, Aged about 29 years, R/o Jagannadhapuram, Parvathipuram Municipality, Parvathipuram Manyam District
7. Korada Hema, W/o Venkatarao, D/o Ragolu Sankara Rao, aged about 33 years, R/o Jagannadhapuram, Parvathipuram Municipality, Parvathipuram Manyam District

8. Vavilapalli Durga Prasad Rao, S/o Late Sambamurthy, Aged about 52 years, Occ Business, R/o Kanakam Street, Jagannadhapuram, Parvathipuram Municipality, Parvathipuram Manyam District ✓
9. Yejjupurapu Polinaidu, S/o Chinnamnaidu, Aged about 63 years, Occ Redt Municipal Employee, R/o Jagannadhapuram, Parvathipuram Municipality, Parvathipuram Manyam District ✓
10. Pudi Srinivasa Rao, S/o Late Simhachalam Aged about 52 years, R/o Behind Noble public School Sowndarya Road, Parvathipuram Town fit Municipality Parvathipuram Manyam District ✓
11. Padala Ravi Kumar, S/o Papa Rao, Aged about 53 years, Occ Business, R/o Pathapatnam Village and Mandal, Srikakulam District ✓
C/o Bavaji Business, Old Bus stand, Parvathipuram Town and Municipality, Parvathipuram Manyam District ✓

...Respondents/Respondents ✓
(Respondents in-do-)

Counsel for the Petitioners : SRI TADDI NAGESWARA RAO ✓

Counsel for the Respondent Nos.1 & 2: SRI VENKATESWARA RAO
GUDAPATI ✓

Counsel for the Respondent Nos.8 to 10: SRI T KOTESWARA
PRASAD ✓

Petition under Section 39 rule 1 is filed praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to grant stay of all further proceedings in E.P No.21/2022 in FDIA No.550/2018 on the file of the II Additional District Judge, Parvathipuram, pending disposal of AS No.580 of 2024, on the file of the High Court. ✓

The court while directing issue of notice to the Respondents herein to show cause as to why this application should not be complied with, made the following order.(The receipt of this order will be deemed to be the receipt of notice in the case).

ORDER: *(Per Hon'ble Smt. Justice Sumathi Jagadam)*

This application is filed, under Order 41, Rule 5 of CPC, seeking stay of all further proceedings in E.P.No.21 of 2022 in FDIA No. 550 of 2018 on the file of the Court of the Hon'ble II Addl. District Judge, Parvathipuram.

2. The petitioner states that the 3rd respondent is the petitioner's father, the 4th respondent is her brother, and respondents 5 to 7 are her sisters. The petitioner filed a suit in O.S.No.82 of 2010 on the file of the Court of the Senior Civil Judge, Parvathipuram, claiming her right in the ancestral properties. The petitioner is the absolute owner of the petition schedule property by virtue of the award passed by the Lok Adalat on 24.06.2014 in terms of a settlement, which is recorded as L.A.C.No.57/2014 in FDIA No.96/2013 in O.S.No. 82 of 2010.

3. The petitioner learnt that respondent Nos.1 and 2, in collusion with respondents Nos. 3 and 4, filed a mortgage suit in OS No. 44 of 2015 on the file of the Court of the II Additional District Judge, Parvathipuram, in respect of the same schedule house property which is the subject matter of the Lok Adalat award dated 24.06.2014 and obtained a collusive decree in FDIA No.550 of 2018, dated 16.12.2021.

4. The petitioner filed the claim petition in E.A.No.139 of 2022 to raise the attachment order dated 06.07.2022 passed in E.P.No.21 of 2022 in

O.S. No.44 of 2015, which is contrary to the award granted in Lok Adalat on 24.06.2014 in FDIA No.96/2013 in O.S. No.82 of 2010. The same came to be dismissed *vide* order dated 18.06.2024 against which the above appeal has been preferred.

5. Heard learned counsel for the petitioner / appellant. Also heard learned counsel for the respondents.

6. The learned counsel for the petitioner states that the petitioner has filed the claim petition, being E.A.No.139 of 2022 in E.P.No.21 of 2022 in FDIA No.550 of 2018, under Order XXI Rule 58 and Section 151 of CPC to adjudicate her rights. He also points out that along with the claim petition, she has filed documents viz., 1) Lok Adalat Award dated 24.06.2014 in LAC NO. 57 of 2014 on the file of the Court of the Senior Civil Judge, Parvathipuram and 2) A bunch of electricity bills and receipts in the name of the petitioner.

i) The learned counsel for the petitioner contends that the dismissal of the claim petition is contrary to law. The petitioner is the absolute owner of the petition schedule property under the Lok Adalat Award. The trial Court rejected the claim petition stating that the petitioner did not make respondent Nos. 1 and 2 as parties to the partition suit in O.S. No.82 of 2010, which is not legal or valid.

7. The respondents opposed the application stating that the claim petition has been heard and disposed of like a suit in the trial Court. Hence, the impugned order cannot be interfered with.

8. The counsel for respondent Nos. 1 and 2 states that the petitioner's father executed a registered mortgage deed and borrowed Rs.13.00 lakhs for family needs. The claimant and family members collusively filed a partition suit after the registered mortgage deed was executed in favour of the respondents 1 and 2. It is his contention that any suit filed without joining the necessary parties must be dismissed, and if a decree is passed, it will have no effect.

9. Further that the subject property is the ancestral property. Since the father of the petitioner herein is the Karta of the family, he has the right to settle the property against the debts incurred for the joint family. Consequently, the mortgage is binding on all family members. There is no attachment of the subject property in execution proceedings; thus, the question of invoking the provisions under Order 21, Rule 58 of the CPC to raise the attachment over the E.P. schedule property does not arise. As such, the trial Court has rightly dismissed the claim petition.

10. In support of the contentions, reliance is placed on ***T. Nabi Sab vs. G. Venkatesulu***¹ and ***Indian Bank, Nidadavole, Kovvur vs. Nallam***

¹ 2008 (4) ALD 770

Veera Swamy² etc., , wherein it is held that Order 21 Rule 58 of the CPC indicates that this provision applies only when a claim is made or an objection is raised regarding the attachment of any property that was attached in execution of a decree.

11. In the case on hand, the petitioner, who acquired the property through a partition suit based on the Lok Adalat decree, filed the application under Order 21 Rule 58 of the CPC after the property had been mortgaged, the mortgage suit had been decreed, and execution proceedings had been initiated. The Court must determine whether the claim petition is valid in the light of a fair mortgage decree and whether the execution application was rightly dismissed, considering that the property is ancestral and other family members are parties to the suit, though the petitioner was not made a party in the case filed by the respondents.

12. The respondents specifically stated in the counter that when there is no attachment of the subject property, the question of invoking provisions under Order 21 Rule 58 of CPC seeking to raise the attachment over the EP schedule property does not arise. As a joint owner of the schedule house property which is acknowledged by the respondents 1 and 2 that it is ancestral property and that the property was mortgaged by the father and the brother of the petitioner and respondent

² 2015 (1) ALD 278

Nos.5 to 7. Respondent Nos. 5 to 7 are also parties to the suit; thus, *prima facie*, this Court is of the view that the petitioner is also a necessary party, and her claim in the ancestral property, with equities in the light of mortgage decree, needs to be looked into in detail.

13. This Court is of the opinion that the matter requires further consideration by reviewing the entire record. The delay in filing the appeal is condoned and it is already admitted. In the circumstances, there shall be an interim stay of all further proceedings in E.P.No.21 of 2022 in FDIA No. 550 of 2018 on the file of the Court of the Hon'ble II Addl. District Judge, Parvathipuram, for a period of twelve (12) weeks from today.

Sd/- M.Prabakar Rao
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. The II Additional District Judge, Parvathipuram
2. Chintada Ravi, S/o Narayanaswami, R/o Reddi Veedhi, Parvathipuram Town and Municipality Parvathipuram Manyam District
3. Indupuri Venkatesh, S/o Gunneswararao, Occ Gold Merchant, R/o Rajivmarg Road, Parvathipuram Town and Municipality Parvathipuram Manyam District.
4. Ragolu Sankara Rao, S/o Late Chandrudu, R/o Jagannadhapuram, Parvathipuram Municipality, Parvathipuram Manyam District
5. Ragolu Balachandrudu, S/o Ragolu Sankara Rao, R/o Jagannadhapuram, Parvathipuram Municipality, Parvathipuram Manyam District
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8. Korada Hema, W/o Venkatarao, D/o Ragolu Sankara Rao, R/o Jagannadhapuram, Parvathipuram Municipality, Parvathipuram Manyam District ✓
9. Vavilapalli Durga Prasad Rao, S/o Late Sambamurthy, Occ Business, R/o Kanakam Street, Jagannadhapuram, Parvathipuram Municipality, Parvathipuram Manyam District ✓
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12. Padala Ravi Kumar, S/o Papa Rao, R/o Pathapatnam Village and Mandal, Srikakulam District C/o Bavaji Business, Old Bus stand, Parvathipuram Town and Municipality, Parvathipuram Manyam District (Addressee Nos.2 to 12 By **RPAD**) ✓
13. One CC to Sri. Taddi Nageswara Rao, Advocate [OPUC] ✓
14. One CC to Sri. Venkateswara Rao Gudapati, Advocate [OPUC] ✓
15. Two spare copies

HIGH COURT

NJS,J

&

JS,J

DATED:10/04/2025

POST BEFORE THE DIVISION BENCH, HAVING THE ROSTER

ORDER

IA.No.2 OF 2024

IN

AS.No.580 of 2024

INTERIM STAY

