

APHC010602382023



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

[3332]

PRESENT:THE HONOURABLE SRI JUSTICE RAVI CHEEMALAPATI

CIVIL REVISION PETITION NO: 3308/2023

Between:

- 1.DARSI POLIRAJU, S/O. TIRUPATHIAH, AGED ABOUT 54 YEARS, HINDU, CULTIVATION, R/O. THUMALAPALLI VILLAGE, H/O. PARLI VILLAGE, KARLPALEM MANDAL.
- 2.DARSI SRINIVASA RAO,, S/O. POLIRAJU AGED ABOUT 40 YEARS, HINDU, CULTIVATION, R/O.OPP PARK STREET, RAILPET, BAPATLA.
- 3.DARSI VENKATA SWAMY,, S/O. POLIRAJU AGED ABOUT 31 YEARS, HINDU, CULTIVATION, F/O. THUMALAPALLI VILLAGE, H/O. PARLI VILLAG

...PETITIONER(S)

AND

- 1.SMT PENUMATCHA SRI LAKSHMI, W/O. RANGARAJU, AGED ABOUT 54 YEARS, HINDU, HOUSE WIFE, R/O. H.NO.1-1, KHAJIPALEM VILLAGE, PITTAVARIPALEM MANDAL, BAPATLA
- 2.PENUMATCHA SRI RANGA RAJU, S/O. LATE. SIVA RAMA RAJU AGED ABOUT 55 YEARS, HINDU, CULTIVATION, R/O. H.NO.1-1, KHAJIPALEM VILLAGE, PITTAVARIPALEM MANDAL, BAPATLA
- 3.THE APSPDCL, , TOWN (TRANSCO) BAPATLA, REPRESENTED BY ITS ASSISTANT ENGINEER

...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 allow the CRP and set aside the order impugned and dismiss the I.A. No. 100 of 2023 filed by the plaintiffs in the suit O.S.No. 314 OF 2014 on the file of the Court of the Additional Senior Civil Judge, Fast Track Court , Bapatla, in the interests of justice

IA NO: 1 OF 2023

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 may be pleased to stay all the further proceedings in O.S. No. 314 OF 2014 on the file of the Court of the Additional Senior Civil Judge, Fast Track Court Bapatla, pending final disposal of the present C.R.P and pass such

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 extend interim order dt. 22-12- 2023 passed by this Hon'ble Court in I.A. No.1 of 2023 in C.R.P No.3308 of 2023, in the interests of justice

Counsel for the Petitioner(S):

1.M SRI ATCHYUT

Counsel for the Respondent(S):

1.

The Court made the following:

RESERVED ON	18.03.2026
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 03.10.2023 passed in I.A.No.190 of 2023 in O.S.No.314 of 2014 by the learned Additional Senior Civil Judge, Bapatla.

2. The Revision Petitioners are the defendants and respondents are the plaintiffs in O.S.No.314 of 2014.

3. The facts that led to filing of the Civil Revision Petition, in brief, are that the plaintiffs filed the suit for declaration that 1st plaintiff is the absolute owner of the plaint schedule property under Registered Gift Deed dated 17.04.2006 and for consequential declaration that the gift deed executed by defendants 1 and 2 in favour of defendant no.3 for the plaint schedule property as illegal and invalid, for mandatory injunction directing the defendants 1 to 3 to remove the temporary super structure in the plaint schedule property and for mandatory injunction directing defendant no.4/ electricity department to disconnect service connection to the said temporary super structure. In the said suit, the petitioners filed I.A.No.190 of 2023 under Order VI Rule 17 and Section 151 of Code of Civil Procedure to amend the plaint for the relief of consequential recovery of possession. The respondents resisted the claim made in the petition by filing counter contending that the

proposed amendment is highly belated and would change the nature of the suit and moreover the same is time barred.

(ii) The learned trial Judge upon hearing the counsel for the parties and upon perusal of the material available on record, allowed the petition.

(iii) The said order has been challenged by the defendants in the suit by filing this Civil Revision Petition.

4. Heard Sri M.Sri Atchyut, learned counsel for the petitioners. Despite serviced with notice, none appeared for respondents.

5. Sri M.Sri Atchyut, learned counsel for the petitioners, while reiterating the contents of the counter filed before the Court below and the grounds of the Civil Revision Petition would contend that the proposed amendment is time barred and would change the nature of the suit and in view of the settled principles of law such an amendment cannot be permitted. He would further contend that if a fresh suit on the amended claims is barred by limitation on the date of the application, the court should decline amendment and since the suit on the amended claim is barred by limitation, the learned trial Judge ought to have dismissed the same. He would further contend that the plaintiffs at one breadth are claiming title through gift deed and on the other breadth are claiming perfection of title by adverse

possession, which are totally inconsistent and mutually destructive, which are impermissible in view of the settled principles of law, but the learned trial Judge did not consider those aspects while allowing the amendment application. He would further contend that since the relief sought by way of an amendment is barred by time if a fresh suit is filed based on the proposed pleadings and therefore the learned trial Judge erred in allowing the petition and hence the impugned order is liable to be set aside. Accordingly, prayed to allow the Civil Revision Petition.

In support of his contentions, the learned counsel for the petitioner relied on ***M/s. Modi Spinning & Weaving Mills Co.Ltd. and antoher vs. M/s. Ladha Ram & Company***¹ and ***Narasamma and others vs. A.Krishnappa (Dead) through Legal Representatives***².

6. Perused the material available on record and considered the submissions made by learned counsel for the petitioners.

7. The suit is filed for declaration and mandatory injunction. By way of amendment, the plaintiffs sought to seek consequential recovery of possession of the plaint schedule property.

¹. (1976) 4 Supreme Court Cases 320

². (2020) 15 Supreme Court Cases 218

8. The original plaint itself states that about a week ago the defendants highhandedly and illegally got into illegal possession of vacant site of the plaint schedule property and raised a small super structure with hallow bricks and ACC sheets and also obtained some electricity connection.

9. While dealing with amendment of plaint, the court must see that the amendment should not change the fundamental nature or character of the suit and a completely new cause of action that is foreign to the original suit should not be introduced, particularly if it was available at the time of filing.

10. Further, while defendants can raise inconsistent pleas, plaintiffs are restricted from completely substituting their original case. An amendment that seeks to withdraw a clear admission made in the original plaint should generally be refused.

11. In the instant case, the original plaint itself states that the defendants by force came into possession of the plaint schedule property and raised a super structure in the property and in fact the relief of mandatory injunction was sought for removal of the super structure and for disconnection of electricity supply connection. However, the relief for recovery of possession was not sought in the original plaint. Now, by way of amendment the only change that is being made to the original plaint is

inclusion of consequential relief of recovery of possession of the property and nothing more than that.

12. Therefore, the proposed amendment would not change either the nature of the suit or the basic structure of the pleadings as sought to be contended by the learned counsel for the petitioners. The other contentions raised by the learned counsel for the petitioner that the pleadings are inconsistent and mutually destructive do not relate to the issue on hand and the defendants are at liberty to contest on those issues during trial.

13. Further, according to Section 34 of the Specific Relief Act, 1963, a court cannot grant a declaration of title if the plaintiff, being able to seek further relief (such as possession), fails to do so. When a superstructure exists and the defendant is in possession, the proper remedy is to file a suit for declaration of title and recovery of possession. A mandatory injunction alone is not sufficient if the defendant claims hostile title. Therefore, the amendment is necessary to advance substantial justice.

14. Regarding the aspect that the relief sought for possession is barred by limitation is concerned, while an amendment to add a relief of possession can be allowed even at a later stage to avoid a multiplicity of proceedings, it is generally barred by time if the relief of possession was already available at the time of filing the suit and the limitation period of 12 years (for recovery of

possession based on title) has not expired. The suit is of the year 2014 the contents of which say that a week prior thereto the defendants got into possession, whereas the amendment application was filed in the year 2023 i.e. to say nine (09) years after filing of the suit and since the relief for recovery of possession was available to the plaintiff as on the date of filing of the suit itself, since the amendment was sought within twelve (12) years therefrom the same is within the period of limitation.

15. In the decisions relied on by the learned counsel for the petitioners the Hon'ble Supreme Court observed that amendments that are having the effect of taking away valuable right accrued to the other side and an entirely different and new case cannot be permitted to substitute by way of amendment and that claiming independent title and adverse possession simultaneously from the same date cannot be permitted to remain which are mutually inconsistent and destructive. The said observations cannot be made applicable to the case on hand, since the facts of the case on hand are entirely different and what all was sought to be amended is inclusion of relief for recovery of possession only. The contention regarding inconsistent and destructive pleas is in relation to the pleadings of the plaint originally filed before the Court but not in the instant amendment petition. The defendant can as well raise the said contentions in the suit during trial.

16. In view of the above, since none of the contingencies for disallowing the plaintiffs from carrying out amendments to the plaint are present, the learned trial Judge had rightly allowed the petition permitting the plaintiffs to seek amendment of the plaint. The said order does not suffer from any legal infirmity so as to require interference of this Court. The Civil Revision Petition being meritless deserves dismissal.

17. Accordingly, the Civil Revision Petition is dismissed. 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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