

APHC010443952023



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

[3460]

MONDAY ,THE TENTH DAY OF MARCH
TWO THOUSAND AND TWENTY FIVE

PRESENT

THE HONOURABLE SRI JUSTICE NYAPATHY VIJAY

CIVIL REVISION PETITION NO: 2636/2023

Between:

Musunuri Satyanarayana

...PETITIONER

AND

Dr Tummala Indira Devi and Others

...RESPONDENT(S)

Counsel for the Petitioner:

1.PARTY IN PERSON

Counsel for the Respondent(S):

1.ARRABOLU SAI NAVEEN

2.

The Court made the following:

HON'BLE SRI JUSTICE NYAPATHY VIJAY**C.R.P.No.2636 of 2023****ORDER:-**

This Civil Revision Petition is filed questioning the order dated 19.07.2023 in E.P.No.19 of 2021 in A.T.C.No.2 of 2003 passed by the Principal Junior Civil Judge, Ponnur, whereunder an application filed under Order XXI Rule 35(1), r/w Section 144 and 151 C.P.C., by the Petitioner seeking for restoration of possession of the scheduled property through Court Amin was dismissed.

2. **The introductory facts:** The Petitioner filed A.T.C.No.2 of 2003 under Sections 16 and 15 of the Andhra Pradesh (Andhra Area) Tenancy Act, 1956 (for short 'the Act') against Respondent No.1 alone seeking to declare that the price of the scheduled land i.e. Rs.1,25,000/- per acre is reasonable and the same is accepted by the Respondent and for other consequential reliefs. As per the petition, the husband of Respondent No.1 late Dr.T.Veeraiah, Dr.T.Suryanarayana, Dr.T.Sashagiri Rao and T.Satya Narayana (Retired Engineer) were brothers.

3. The 1st Respondent was given General Power of Attorney by Dr.T.Suryanarayana to manage the properties, while Dr.T.Veeraiah died testate on 04.02.2002. Pursuant to a Will said to have been executed by Dr.T.Veeraiah, the Respondent No.1 succeeded to her husband's share of family properties situated at Mulukuduru and other places and became the absolute owner of the scheduled property. The Respondent No.1, on her behalf and on behalf of Dr.T.Suryanarayana had filed A.T.C.No.5 of 2002 before the Special Officer under the Act, Ponnur against the Petitioner, PamidiKoteswara Rao, V.Ramakrishna, C.Paparaju and others regarding existing lease among them. The Petitioner was said to be cultivating Ac.13.65 cents and as there was threat of dispossession, at the instance of brother-in-law of Respondent No.1 i.e. T.Satyanarayana, a suit O.S.No.174 of 2002 was filed seeking permanent injunction. The Petitioner also filed A.T.C.No.3 of 2002 against Respondent No.1 and her brother-in-law, Dr.T.Suryanarayana, T.Satyanarayana and T.Seshagiri Rao to declare him as cultivating tenant of Ac.13.65 cents.

4. A compromise was said to have been entered in O.S.No.174 of 2002, A.T.C.No.5 of 2002 and A.T.C.No.3 of 2002 jointly between the parties and as per the compromise, the

Respondent No.1 and her brother-in-law, Dr.T.Suryanarayana, got Ac.10.76 cents, which comprises of Ac.7.04 cents in Sy.No.56/2. Ac.0.10 cents in Sy.No.56/3, Ac.0.36 cents in Sy.No.65/5B, Ac.1.89 cents in Sy.No.473/3 and Ac.1.37 cents in Sy.No.25 and the remaining extents of lands situated in other survey numbers fell to the share of T.Satyanarayana and another brother Dr.T.Seshagiri Rao. As per the compromise, Respondent No.1 and Dr.T.Suryanarayana had agreed to permit the Petitioner to continue cultivating the land in Ac.10.76 cents as tenant and pay maktha to Respondent No.1.

5. As per the Petitioner, an extent of Ac.3.37 cents out of Ac.5.39 cents belonging to Dr.T.Suryanarayana was purchased by him and his wife and entire sale consideration was paid to Respondent No.1. The Respondent No.1, out of her share of land to an extent of Ac.5.37 cents, sold away Ac.0.76 cents in Sy.No.473/3 to one Jasti Sree Vani and Ac.0.68 cents in Sy.No.25 to Venendla Ramakrishna and retained the balance extent of Ac.3.93 cents, which is in possession of the Petitioner as tenant. The Petitioner pleaded that Respondent No.1 had offered to sell the scheduled property and he agreed to purchase the same at the rate of Rs.1,25,000/- per acre. Pursuant to the

determination of sale consideration, it was pleaded that the Petitioner was entitled to pay the sale consideration in 10 equal installments of Rs.49,125/- and accordingly the said amount was paid by Demand Draft No.053831, dated 26.09.2003 drawn in the name of Respondent No.1 as per the provisions of the Act and the sale was deemed to be effective.

6. As the Respondent No.1 was not coming forward to execute sale deed, the Petitioner filed A.T.C.No.2 of 2003 under Section 16 of the Act to declare that the price of the scheduled property at the rate of Rs.1,25,000/- per acre as reasonable and to declare that the Petitioner was entitled to pay balance consideration of Rs.4,42,125/- to Respondent No.1 in 9 equal installments. During the pendency of the A.T.C., an order of *status quo* was passed in I.A.No.1004 of 2003. During the pendency of the *status quo* order, Respondent No.1 executed registered sale deed regarding Ac.3.47 cents in Sy.No.56/2 and Ac.0.10 cents in Sy.No.56/3 i.e. items 1 and 2 of the scheduled property in favour of Respondent Nos.2 and 3 respectively vide registered sale Document No.139/06 dated 03.02.2006. Hence, the relief to declare the registered sale deed in favour of

Respondent Nos.2 and 3 as both null and void was also included in the relief of A.T.C.

7. Respondent No.1 filed counter denying the landlord-tenancy relationship and that the Court had no jurisdiction to entertain the application. It was pleaded that after the settlement of dispute between the Respondent No.1 and her brother-in-law, the Petitioner had given up tenancy in April, 2003 and ever since she was in possession and enjoyment of the scheduled property. Thereafter, it was pleaded that the Petitioner had failed to pay Maktha amount for the year 2002-2003 and apart from that, the Petitioner being a retired Mandal Revenue Officer/Tahsildar, took the initiative on behalf of Respondent No.1 to execute the sale deeds in favour of Jasti Sree Vani and V. Ramakrishna as mentioned in the petition.

8. It was further pleaded that though the Petitioner proposed to purchase the scheduled lands and pay the balance Maktha within a short period, the Petitioner was avoiding payment. The Respondent No.1 was said to have been insisting the Petitioner to pay Maktha for the year 2002-2003 and it was in that context, A.T.C.No.2 of 2003 was filed with false allegations. It was contended that at no point of time Respondent No.1 agreed to

sell the scheduled land to the Petitioner at the rate of Rs.1,25,000/- as there was no negotiation of sale consideration. The amount of Rs.49,125/- paid by the Petitioner by way of a Demand Draft was admitted and it was pleaded that the said amount was adjusted towards the arrears of Maktha payable for the year 2002-2003.

9. The Respondent Nos.2 and 3 also filed their counter denying the allegations and contended that Respondent No.1 cultivated the land in the year 2005-2006 and raised a crop and after execution of the registered sale deed on 03.02.2006, the property was in their possession.

10. The Special Officer under the Act framed the following issues for consideration:

- 1. Whether the petitioner is entitled to the declaration that the price of the scheduled lands ie. Rs.1,25,000/- per acre is reasonable, and the 1st respondent received the 1st Installment of Rs.49,125/- by way of Demand Draft No.053831, dated 26-9-03 and thereby the sale of the scheduled land has become effective or not?*
- 2. Whether the registered sale deed document No.139/06 dated 3-2-06 and the registered sale deed document No.140/06 dated 3-2-06 are null and void?*
- 3. Whether the petitioner is entitled for grant of suitable injunction as prayed for?*

11. On behalf of the Petitioner, P.Ws.1 and 2 were examined and Exs.P.1 to P.20 were marked. On behalf of the Respondents, R.Ws.1 to 8 were examined and Exs.B.1 to B.11 were marked. The Special Officer under the Act allowed the A.T.C on 30.11.2009 declaring the price of the scheduled land at the rate of Rs.1,25,000/- per acre as reasonable and that the sale was effective from the date of payment of the first installment of Rs.49,125/- to Respondent No.1 by the Petitioner and that the balance consideration to be paid in 9 installments. The sale deed in favour of Respondent Nos.2 and 3 dated 03.02.2006 was held to be null and void.

12. Questioning the same, appeals were filed by Respondents herein. Respondent Nos.2 and 3 filed A.T.A.No.2 of 2010, while Respondent No.1 filed A.T.A.No.8 of 2010 before the Principal District Judge-cum-Tenancy Appellate Special Officer under the Act, Guntur. The District Appellate Court after considering the rival submissions allowed the appeals on the ground that the Petitioner had surrendered the tenancy vide orders dated 20.12.2010 and 06.07.2011 respectively.

13. The Petitioner thereafter filed two revisions i.e. C.R.P.No.3591 and 816 of 2011 before this Court questioning the orders passed in the appeals. After consideration, this Court passed a common order on 12.06.2015 upholding the order of the Appellate Authority.

14. The Petitioner thereafter filed SLP(C).Nos.28696-28697 of 2015 before the Hon'ble Supreme Court. The Hon'ble Supreme Court vide its order dated 27.10.2021 granted leave and after hearing the appeals on merits and after considering the provisions under Sections 14 and 15 of the Act, which deal with the procedure for surrender, right of pre-emption and scope of adjudication of dispute under Section 16 of the Act, set aside the common order in Civil Revision Petitions referred above as well as the orders of the District Court in the appeals and the order of the Special Officer under the Act in A.T.C.No.2 of 2003 dated 30.11.2009 was restored.

15. In view of the judgment of the Hon'ble Supreme Court, the Petitioner filed E.P.No.19 of 2021 under Order XXI Rule 35(1) r/w Sections 144 and 151 CPC. The Petitioner sought for re-delivery of the scheduled property which was in possession of Respondent Nos.2 and 3. The E.P. was filed against Respondent

No.2 only and Respondent Nos.1 and 3 were said to be not necessary parties to the execution petition. In the affidavit filed in support of the execution petition, it was pleaded that when the order of *status quo* was in force, the Respondent No.1 executed a sale deed in favour of Respondent Nos.2 and 3 and immediately after execution of the sale deed, Respondent No.2 and his brother by name Rajendra Prasad trespassed into the scheduled property with tractor and took away about 110 bags of Paddy after thrashing his two paddy heaps stacked in Sy.No.56/2 on the intervening night of 05.02.2006 and 06.02.2006 without any legal right.

16. The Respondent No.2 filed counter opposing the claim on the ground that he is the absolute owner of the scheduled property and he has been in possession from the date of sale. In the counter, a reference was made to E.P.No.82 of 2010 in A.T.C.No.2 of 2003 filed by the Petitioner for disobedience of permanent injunction and that the same was dismissed on merits on 29.11.2003. It was also pleaded that the application seeking re-delivery of property is not maintainable under law as the same would amount to modifying or altering the decree granted by the Special Officer under the Act since no such relief was sought for.

It was also pleaded that if the Petitioner seeks for restoration of petition, the same can be obtained only by filing a fresh suit even though the same is barred by limitation.

17. In the enquiry conducted by the Special Officer under the Act in E.P.No.19 of 2021, the Petitioner was examined as P.W.1 and Exs.P.1 to P.7 were marked through him. The Respondent No.2 was also examined as R.W.1 and in the cross-examination, no documentary evidence was marked on his behalf. The Special Officer under the Act framed a solitary issue for consideration, which reads as under:

“Whether the Petitioner/D.Hr is entitled to the relief as claimed”?

18. The Special Officer under the Act noted the objections of the Respondent No.2 and held that the Respondent No.2 is in possession of the scheduled property from 05.02.2006 and that the relief in A.T.C.No.2 of 2003 is for declaration and permanent injunction and as the decree holder was dispossessed pending A.T.C, no relief was sought seeking for restoration of possession and therefore the E.P. for restoration of the scheduled property cannot be maintained. It was also held that the Petitioner would have to file a suit for recovery of possession against Respondent No.2. Questioning the same, the present revision petition is filed.

19. Initially, the counsel for the Respondents on 20.11.2024 through virtual mode submitted that an affidavit would be filed by the party-respondent withdrawing his plea regarding possession of the plaint scheduled property and sought time till 28.11.2024 to enable him to file such affidavit. Subsequently, there was a change in the counsel and appeal was argued on merits.

20. Heard Sri Musunuri Satyanarayana (party-in-person) and Sri A.Sai Naveen, learned counsel for Respondent No.2 and Sri Koutilya, learned counsel for Respondent No.5.

21.**Contentions:** The Party in person contended that as the sale in favour of the Respondents during the pendency of the A.T.C was brought to the notice of the Court and the prayer in the A.T.C was subsequently amended to declare the said sale as nullity, the Special Officer had allowed the same and sale in favour of the Respondents was declared as null and void. The order of the Special Officer having been restored by the Hon'ble Supreme Court, the Executing Court should have allowed the application for restoration of possession. Written arguments were also filed referring to case law.

22. Learned counsel for the Respondents raised an objection that an appeal would have to be maintained and not a revision as

per the judgment of this Court in ***Khandavilli Rudraveni v. Khandavilli Annavaram***¹. Apart from that, it was contended that since there is no relief of possession in the order of the A.T.C, the application filed by the Petitioner seeking for restitution of the property would not arise and that the same would amount to going beyond the scope of the executable decree. It was contended that the Petitioner would have to file an independent suit for recovery of possession.

23. Having considered the rival submissions, the following issue arises for consideration:

a. Whether the Petitioner is entitled for restitution of the scheduled property?

24. **Reasoning:** Ordinarily the rights of the parties crystallized as on the date of the institution of the case. The relief that was granted to the Petitioner was with reference to his right as on the date of institution of the suit. The fact that the Respondent Nos.2 and 3 in the A.T.C had purchased the scheduled property and had disrupted the possession of the Petitioner was also brought to the notice of the Special Officer under the Act in A.T.C.No.2 of 2003 itself. This fact was also referred to by the Hon'ble Supreme

¹2023 4 ALD 289

Court in its judgment in SLP.(C).Nos.28696-28697 of 2015 at Paras 7 and 9. Conscious of the subsequent developments, the Hon'ble Supreme Court restored the order in A.T.C.No.2 of 2003 after setting aside the common order of this Court in C.R.P.Nos.3591 and 816 of 2011 and of the District Court in A.T.A.Nos.2 and 8 of 2010.

25. Once the order of the Special Officer under the Act is restored, the enforcement should be with reference to the right recognised in the order as it existed as on the date of the institution of the A.T.C. Since the possession of the Petitioner as a tenant/purchaser of the property was upheld as on the date of the institution of the A.T.C, the forcible dispossession in violation of that right by a subsequent act of the parties should be undone in proceedings under Section 151 C.P.C as a logical consequence and as an institutional obligation towards the Petitioner.

26. By virtue of the impugned order, the Special Officer under the Act had virtually undone the entire process of litigation and relief granted by the Hon'ble Supreme Court on the ground that there is no relief of possession and committed a grave error in not allowing the application. The other way of looking at it is that the

illegal act of encroachment by Respondent No.2 in disrupting the possession of the Petitioner pursuant to the registered sale deed dated 03.02.2006, which was declared to be a nullity and in violation of the provisions of the Act was validated. The order of the Special Officer under the Act has made the entire process of litigation a farce by placing premium on acts of the wrongdoer.

27. The contention of the Respondents that an appeal should be filed by the Petitioner as per the judgment of this Court in ***Khandavilli Rudraveni***(1 supra) may not be correct as there are distinguishable aspects. The said issue arises in execution proceedings in a civil suit where there was dispute regarding possession. The present case is neither a proceeding under a civil suit nor there is any controversy regarding possession.

28. The power of restoration of possession is inherent in every Court and can be exercised even in cases which do not fall under Section 144 C.P.C as held by the Hon'ble Supreme Court in ***Kavita Trehan v. Balsara Hygiene Products Ltd.***, ²at paragraph 21 and 22;

“21. Section 144 CPC incorporates only a part of the general law of restitution. It is not exhaustive. (See

²(1994) 5 SCC 380

Gangadhar v. Raghubar Dayal⁶ and State Govt. of A.P. v. Manickchand Jeevraj & Co.⁷

“22. The jurisdiction to make restitution is inherent in every court and will be exercised whenever the justice of the case demands. It will be exercised under inherent powers where the case did not strictly fall within the ambit of Section 144. Section 144 opens with the words : “Where and insofar as a decree or an order is varied or reversed in any appeal, revision or other proceeding or is set aside or modified in any suit instituted for the purpose,” The instant case may not strictly fall within the terms of Section 144; but the aggrieved party in such a case can appeal to the larger and general powers of restitution inherent in every court.”

29. Therefore, this Court is of the opinion that the impugned order is crystally wrong as it ignores the fundamental obligation of the Court towards a successful litigant.

30. **Result :** Therefore, the order of the lower Court dated 19.07.2023 is set aside and the civil revision petition is allowed.

31. The Special Officer under the Act shall ensure possession of the scheduled property is delivered to the Petitioner within one month from the date of receipt of certified copy of this order without further extension of time. In case of requirement, the Special Officer shall take the aid of police *suo motu* to ensure the delivery of the scheduled property to the Petitioner within the time prescribed. No order as to costs.

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

NYAPATHY VIJAY, J

Date:10.03.2025

KLP