

APHC010217502025



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

[3332]

FRIDAY, THE EIGHTH DAY OF MAY
TWO THOUSAND AND TWENTY SIX

PRESENT

THE HONOURABLE SRI JUSTICE RAVI CHEEMALAPATI

CIVIL REVISION PETITION NO: 1092/2025

Along with

CIVIL REVISION PETITION No.1094 of 2025

CIVIL REVISION PETITION No.1092 of 2025

Between:

1.AMUDALA VEERAMMA, W/O LATE YESU, AGED 54 YEARS,
D.NO.8-307, MALLAYYAPETA. RAJAMAHENDRAVARAM, EAST
GODAVARI DISTRICT.

...PETITIONER

AND

1.MORAMPUDI NAGAMANI, D/O LATE VEERA VENKANNA, AGED 36
YEARS, D.NO.8-307, MALLAYYAPETA, RAJ AMAHENDRAVARAM.
EAST GODAVARI DISTRICT.

2.MORAMPUDI SATHIBABU, S/O LATE VEERA VENKANNA, AGED 33
YEARS, D.NO.8-307, MALLAYYAPETA,NO.1 862 -
RAJARNAHENDRAVARAM. EAST GODAVARI 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 Memorandum of Grounds of Revision before this Hon'ble Court against the Common Orders dt.12-03-2025 by the Court of the VIII Addl. District and Sessions Judge cum SPL Court for Trial of Offences Against Women, East Godavari at Rajamahendravaram, passed in I.A.No.574 of 2024

in A.S.No.62 of 2023 in O.S.No.588 of 2009, filed by Respondents as Respondents in Appeal and seeking to Receive Additional Evidence on the Appeal side in I.A.No.575 of 2024 and also Petition to reopen the Plaintiffs' - Appellants' Evidence in I.A.No.574 of 2024. Now the present Revision is preferred against the Orders in I.A.No.574 of 2024. Aggrieved by allowing the Petition to Reopen the Plaintiffs' Evidence, the Petitioner prefers

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

IA NO: 2 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 may be pleased to Extend the Interim Orders Granted in IA. No. 1 of 2025 in CRP No. 1092 of 2025 dt.09-05-2025 and extended on 01- 08-2025, until further orders of this Hon'ble Court pending disposal of the CRP, and pass

Counsel for the Petitioner:

1.P RAJESH BABU

Counsel for the Respondent(S):

1.SATISH SANDU

CIVIL REVISION PETITION NO: 1094/2025

Between:

1.AMUDALA VEERAMMA, W/O LATE YESU, AGED 54 YEARS,
D.NO.8-307, MALLAYYAPETA. RAJAMAHENDRAVARAM, EAST
GODAVARI DISTRICT.

...PETITIONER

AND

1.MORAMPUDI NAGAMANI, D / O LATE VEERA VENKANNA, AGED 36
YEARS, D.NO.8-307, MALLAYYAPETA, RAJAMAHENDRAVARAM.
EAST GODAVARI DISTRICT.

2.MORAMPUDI SATHIBABU, S/O LATE VEERA VENKANNA, AGED 33
YEARS, D.NO.8-307, MALLAYYAPETA, RAJAMAHENDRAVARAM.
EAST GODAVARI 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 allow the Revision by setting-aside the Orders dt.12-03-2025 in I.A.No.575 of 2024 in A.S.No.62 of 2023 in O.S.No.588 of 2009 of the Court of the VIII Addl. District and Sessions Judge cum SPL Court for Trial of Offences Against Women East Godavari at Rajarnahendravaram, by calling for the records of the A.S.No.62 of 2023 and pass

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 order dispensing with the filing of certified copy of the order dt. 12.03.2025 in A.S.No.62 of 2023 pending on the file of the court of the VIII Addl. District and Sessions Judge-cum-Spl. Court for trial of offences against women, East Godavati at Rajamahendravaram, pending disposal of the CRP, and pass

IA NO: 2 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 grant interim stay of all further proceedings of the appeal in A.S.No.62 of 2023 pending on the file of the court of the VIII Addl. District and Sessions Judge-cum-Spl. Court for trial of offences against women, East Godavati at Rajamahendravaram, pending disposal of the CRP, and pass

Counsel for the Petitioner:

1.P RAJESH BABU

Counsel for the Respondent(S):

1.SATISH SANDU

COMMON ORDER

These Civil Revision Petitions are filed questioning the legality and correctness of the docket order dated 12.03.2025 passed in I.A.Nos.574 & 575 of 2024 in A.S.No.62 of 2023 by the learned VII Additional District Judge, Rajamahendravaram.

2. The Revisionist is the appellant while the respondents are the respondents in the Appeal, whereas defendant and plaintiffs respectively in the suit in O.S.No.588 of 2009.

3. The facts that led to filing of these Civil Revision Petitions, in brief, are that one Amudala Mangamma filed the suit vide O.S.No.588 of 2009 for declaration of her right and title over the plaint schedule property and for other reliefs, contending that she along with her husband purchased the plaint schedule property and that her husband executed a Will in her favour bequeathing his half share in the plaint schedule property. She died pending suit. The respondents herein came on record as plaintiff nos. 2 and 3 as Legal Representatives of the deceased sole plaintiffs contending that the sole plaintiff executed Will dated 30.11.2009 in their favour bequeathing the plaint schedule property. The suit was decreed the suit upholding the Will propounded by the sole plaintiff further observing that since the deceased plaintiff herself admitted in her evidence about execution of Will in favour of

plaintiffs 2 and 3, which is not in dispute. The Revisionist preferred appeal vide A.S.No.62 of 2023. In that appeal, the respondents/plaintiff nos. 2 and 3 filed petitions vide I.A.No.574 of 2024 to reopen the plaintiffs' evidence and permit them to adduce additional evidence on their behalf for the purpose of marking the registered Will dated 30.11.2009 already available on record. The Revisionist resisted the relief sought in the petitions by filing counter contending that no proper and sufficient reasons were assigned as to why the plaintiffs did not mark the Will during trial before the Trial Court and none of the grounds required to entertain application under Order XLI, Rule-27 CPC are made out and even if such conditions are available, the appellate Court has to set aside the decree and remand the matter to trial Court to take evidence by marking the documents. The learned appellate Court, upon hearing the counsel on record and upon perusing the material available, allowed the petitions. The said orders have been assailed in these Civil Revision Petitions.

4. Inasmuch as both the Civil Revision Petitions stems out of a common order, they are heard together and are being disposed of by this common order.

5. Heard Sri P.Rajesh Babu, learned counsel for the Civil Revision Petitioner and Sri P.S.P.Suresh Kumar, learned counsel for respondents.

6. Sri P.Rajesh Babu, learned counsel for the petitioner, while reiterating the contents of the counters filed before the trial Court, would contend that the respondents did not satisfy any of the conditions envisaged in Clauses (a), (aa) & (b) of Sub Section (1) of Order XLI, Rule 27 of Code of Civil Procedure and though the grounds sought in the applications to reopen and receive additional evidence do not fall within the purview of Order XLI, Rule-27 CPC, the learned appellate Judge, even without assigning any reasons, erroneously allowed the petitions and thus there is improper exercise of jurisdiction and hence the orders impugned are liable to be set aside. He would further contend that even if the learned Appellate Judge satisfies that conditions mentioned in Order-XLI, Rule-27 CPC did exist, he has to set aside the decree and remand the matter to the trial Court for marking the document, taking the evidence and return a finding based on the said document, however, the Appellate Judge instead of following the established procedure, allowed the petitions for recording evidence by appellate Court itself. He would further contend that the applications filed under Order-XLI, Rule-27 should have to be decided along with the appeal in a more satisfactory manner, however the learned Appellate Judge committed grave error in prematurely deciding the petition. He would further contend that the appellate Court should accept additional evidence only if it is satisfied that the evidence was relevant and could not have been produced in the lower court

despite due diligence, hence the appellate Judge though the respondents did not even plead due diligence, erroneously allowed the petition. He would further contend that parties do not have a vested right to produce additional evidence in the appellate Court and unless the specific conditions under Order XLI, Rule-27 are met, additional evidence cannot be allowed. He would further contend that there is not even a pleading regarding due diligence and that none of the specific conditions under Order XLI, Rule-27 are met, however, the learned Appellate Judge had erroneously allowed the petition and the said orders since suffer from improper exercise of jurisdiction are to be set aside. Accordingly, prayed to allow the Civil Revision Petitions.

In support of his contentions, the learned counsel relied on ***State of Rajasthan vs. T.N.Sahani and others***¹, ***Gobind Singh and others vs. Union of India and others***² and ***Union of India vs. Ibrahim Uddain and another***³

7. On the other hand, Sri P.S.P.Suresh Kumar, learned counsel for respondents/plaintiff nos.2 and 3, while reiterating the contents of the affidavits filed in support of the petitions in the appellate Court, would contend that upon allowing a petition for additional evidence under Order XLI, Rule 27 of the Code of Civil Procedure (CPC), an Appellate Court holds the

¹. (2001) 10 Supreme Court Cases 619

². 2026 INSC 211

³. (2012) 8 Supreme Court Cases 148

discretion to either record the evidence directly, direct a subordinate court to take the evidence, or remand the case to the trial court for retrial if necessary and taking into consideration the purpose for which the parties want to adduce additional evidence, the learned Appellate Judge had rightly chosen to record the evidence directly instead remanding the case to trial Court, since no retrial is found necessary and therefore, there is proper exercise of jurisdiction empowered by Order-XLI, Rule-27 CPC. He would further contend that the Will though was marked in the application filed by them to come on record as Legal Representatives of the sole plaintiff, due to oversight and inadvertency the same could not be marked in the suit and therefore, there is no lack of due diligence on the part of the respondents and that marking of the Will is very much essential for reaching an effective conclusion. He would further contend that the testatrix of the Will herself admitted in her evidence regarding execution of the Will in favour of the respondents and the learned Trial Judge had also observed in the judgment and there is no dispute regarding the Will in favour of the respondents. He would further contend that the learned appellate Judge upon meticulous analysis of the facts and circumstances of the case had rightly allowed the petitions deciding to mark the document, record the evidence by the appellate Court itself and the same is considered to be the best efficient method to avoid remanding the case, since recording additional evidence is necessary to clear up the ambiguity in

the Judgment and that too the execution of the Will was admitted by the testatrix herself. He would further contend that the learned Appellate Judge upon proper analysis of the facts and upon application of relevant law had chosen to record the evidence to decide the matter upon such additional evidence and there is neither procedural unfairness nor impropriety in the impugned orders and hence does not require interference of this Court. He would further contend that documents marked in interlocutory applications cannot be treated as evidence except to enable the Court to prima facie come to a conclusion about the merits or demerits of the contentions advance and therefore, the learned Appellate Judge had allowed both the petitions. Accordingly, prayed to dismiss the Civil Revision Petitions.

In support of his contentions, the learned counsel for respondents relied ***upon T.Bhopal Reddy and another vs. K.R.Lakshmi Bai and another***⁴ , ***H.P.Vedavyasachar vs. Shivashankara and another***⁵ , ***Corporation of Madras an another vs. M.Parthasarathy and others***⁶ ***Uttaradi Matt vs. Raghavendra Swamy Mutt***⁷ , ***Kevasa Reddy vs.***

⁴ . 1998(1) ALD 779 (DB)

⁵ . (2009) 8 Supreme Court Cases 231

⁶ . (2018)9 Supreme Court cases 445

⁷ . (2018) 10 Supreme Court Cases 484

***A.Visupaksha Reddy (died) and 7 others*⁸ and *Palla Aruna vs. Botta Seetharamma (died)*⁹.**

8. Perused the material available on record and considered the submissions made by learned counsel for the parties.

9. In the appeal, the respondents/plaintiffs filed the petitions to reopen the record additional documentary evidence on their behalf on the ground that though the Will was marked in the petition filed by them to come on record as Legal Representatives of the sole plaintiff, unfortunately, the said Will was not marked in the suit. The said petitions were allowed by the learned Appellate Judge vide impugned orders observing that fair hearing is essential prior to conclusion of hearing and even though the parties approached at the fag-end of the stage, reliable reasons are found in the petitions.

10. A perusal of the judgment delivered by the learned trial Judge would indicate that the sole plaintiff, who is testatrix of the Will, now sought to be marked by way of additional evidence, in her evidence admitted execution of the Will in favour of the respondents/ plaintiffs 2 and 3. In fact, on the strength of the said Will, the plaintiffs 2 and 3 came on record after demise of the sole plaintiff. It is also evident from the submissions that the

⁸. 2015 LawSuit(Hyd) 372

⁹, orders dated 10.06.2019 passed in CMA No.1359 of 2018 by coordinate bench of this Court

said Will was marked in the application filed by the plaintiff nos.2 and 3 to come on record as Legal Representatives of the deceased sole plaintiff.

11. In ***State of Rajasthan*** (supra 1) relied on by the learned counsel for the Revision Petitioner, the Hon'ble Supreme Court held that the application under Order 41, Rule 27 should have been decided along with the appeal. Had the Court found the documents necessary to pronounce the judgment in the appeal in a more satisfactory manner it would have allowed the same; if not, the same would have been dismissed at that stage. But taking a view on the application before hearing of the appeal, would be inappropriate.

12. In the instant case, arguments in the appeal have been heard and at that stage these petitions came to be filed and the learned Appellate Judge having found that this is a fit case to reopen the case on behalf of the plaintiffs for producing proposed additional evidence. Therefore, the decision relied on by the learned counsel for the petitioner also comes to aid of the respondents regarding the stage at which the additional evidence petition has to be decided.

13. In ***Gobind Singh and others*** (supra 2) relied on by the learned counsel for the petitioner, the Hon'ble Supreme Court held that an appellate court can accept additional evidence under Order XLI Rule 27 of the Code of

Civil Procedure (CPC) only if it is satisfied that the evidence was relevant and could not have been produced in the lower court despite due diligence.

14. In ***Union of India*** (supra 3), the Hon'ble Supreme Court held that parties do not have a vested right to produce additional evidence in the appellate court. Additional evidence can only be allowed if specific conditions under Order XLI Rule 27 are met, such as: the trial court improperly refused to accept evidence, the evidence could not have been produced earlier despite due diligence and the appellate court requires the evidence to deliver a judgment. The appellate court should not use this rule to fill gaps in a case or cure deficiencies in evidence that should have been produced during the original trial. If the existing record is sufficient to pronounce a judgment, the appellate court should refuse the production of additional evidence.

15. As stated supra, the Will was filed along with application to come on record as Legal Representatives and the same was marked in that petition and due to inadvertency the same could not be marked in the suit. The suit was filed by sole plaintiff for declaration of her right by propounding a Will said to have been executed by her husband and the learned trial Judge came to the conclusion that the Will propounded by the sole plaintiff was proved and accordingly declared the right and title of the sole plaintiff over the plaint schedule property and directed the defendant to deliver vacant possession of the property to the plaintiff nos.2 and 3, who succeeded the property after

demise of plaintiff no.1. Therefore, none of the contingencies that are required to reject production of additional evidence as held by the Hon'ble Apex Court in the above referred decisions are present in the case. Therefore, the learned Appellate Judge had exercised the discretion provided under 41, Rule 27 CPC in a right perspective in allowing the petition.

16. In the decision in ***H.P.Vedavyasachar*** (supra 5) relied on by learned counsel for respondents, the Hon'ble Supreme Court held that when an application for adducing additional evidence is allowed the appellate court has two options open to it. It may record the evidence itself or it may direct the trial Court to do so.

17. In ***Corporation of Madras and another*** (supra 6) relied on by learned counsel for respondents, the Hon'ble Supreme Court held that, in our opinion rightly, the first appellate court had two options, first it could have either set aside the entire judgment/decreed of the trial Court by taking recourse to the provisions of Order 41, Rule 23-A of the Code and remanded the case to the trial court for retrial in the suits so as to enable the parties to adduce oral evidence to prove the additional evidence in accordance with law or second, it had an option to invoke the powers under Order 41 Rule 25 of the Code by retaining the appeals to itself and remitting the case to the trial court for limited trial on particular issues arising in the case in the light of

additional evidence which was taken on record and invite findings of the trial Court on such limited issues to enable the first appellate Court to decide the appeals on merits.

18. In ***Uttaradi Mutt*** (supra 7) relied on by learned counsel for respondents, the Hon'ble Supreme Court by following H.P.Vedavyasachar (supra 6) gave directions to the first appellate Court to record additional evidence and also consider the question of genuineness and authenticity of the additional evidence, including as to whether the contents thereof have been proved by the party relying thereon, and thereafter, to return the evidence to the High Court together with its findings thereon and reasons therefor.

19. In ***Kesava Reddy*** (supra 8) relied on by the learned counsel for the respondents, a coordinate Bench of unified High Court held that the lower appellate Court has committed a serious procedural illegality in remitting the case to the trial Court and consequently the lower appellate Court is directed to decide as to whether it will itself record the evidence or direct the trial Court to record the evidence and forward the same to it. After recording of the evidence either by itself or by the trial Court, the lower appellate Court shall dispose of the appeal on merits.

20. In ***Palla Aruna*** (supra 9) relied on by the learned counsel for respondents, a coordinate bench of this Court, found fault with the appellate court in allowing the entire appeal and remanding the matter for fresh evidence after allowing the applications filed by the parties for receiving additional evidence and further observed that the appellate court had an option of deciding to record the evidence by itself or directing the lower court to take such evidence and send back the findings to the appellate Court.

21. The observations made in the above decisions relied on by the learned counsel for the respondents would unequivocally suggest that whenever additional evidence applications are allowed the appellate Judge can opt to record evidence by itself or direct the trial Court to record the evidence and forward the same to it. Simply because additional evidence application is allowed, the decree appealed against need not be set aside. Therefore, the contentions advanced by the learned counsel for the petitioner in this regard are untenable and hence they are rejected.

22. The learned Appellate Judge upon allowing the additional evidence applications had chosen to record evidence by itself and decide the matter, which is one of the options available and therefore, there is no procedural irregularity in doing so. The Civil Revision Petitions lack merit and they are liable to be dismissed.

23. Accordingly, the Civil Revision Petitions are dismissed. There shall be no order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.

8th MAY, 2026.

JUSTICE RAVI CHEEMALAPATI
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