Date of reserved for orders :19.09.2026
Date of pronouncement :16.10.2026
Date of uploading :16.10.2026

APHC010748742016

IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI [3520]
(Special Original Jurisdiction)

FRIDAY, THE 16th DAY OF OCTOBER 2026

PRESENT

THE HONOURABLE SRI JUSTICE A. HARI HARANADHA SARMA

CIVIL REVISION PETITION NO: 1748/2016

Between:

1. S BULLEBBAYI, E.G.DIST & 3 OTHERS, S/O. LATE SRI SUBBA RAO, HINDU, AGE 47 YEARS, OCC: CULTIVATION, R/O. SOMESWARAM, RAYAVARAM MANDAL, EAST GODAVARI DISTRICT.
2. SAAKA GANDHI,, S/O. LATE SRI SUBBA RAO, HINDU, AGE 44 YEARS, OCC: CULTIVATION, R/O. SOMESWARAM, RAYAVARAM MANDAL, EAST GODAVARI DISTRICT.
3. SAAKA KOTESWARA RAO, S/O. LATE SRI SUBBA RAO, HINDU, AGE 53 YEARS, OCC: CULTIVATION, R/O. SOMESWARAM, RAYAVARAM MANDAL, EAST GODAVARI DISTRICT.
4. SAAKA SATYAPRASAD,, S/O. LATE SRI SUBBA RAO, HINDU, AGE 51 YEARS, OCC: CULTIVATION, R/O. SOMESWARAM, RAYAVARAM MANDAL, EAST GODAVARI DISTRICT.

...PETITIONER(S)

AND

1. VEERA VEERABHADRA RAO E G DIST 5 OTHERS, S/O. SRI SURYANARAYANA MURTHY, R/O. SOMESWARAM - 533 261, RAYAVARAM MANDAL, EAST GODAVARI DISTRICT.

2. SAAKA SUBBA RAO DIED, -
3. GANGULA RAJESWARI, -
4. SAVARALA SEETHAMMA, -
5. POTHIGEDDA KRISHNAVENI, -
6. SAAKA BAPIRAJU DIED, (RESPONDENTS 3 TO 5 ARE NOT NECESSARY PARTIES TO THIS CRP)

...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 toagainst the Order made in EP.No.17 of 2015 in OS.No.21 of 2009 on the file of the Court of the Junior Civil Judge, Anaparthi dated 29.02.2016

IA NO: 1 OF 2016(CRPMP 2213 OF 2016

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 suspend the operation of the order made in EP NO.17 of 2015 in OS No.21 of 2009 on the file of the Court of the Junior civil Judge, Anaparthi, dated 29.02.2016, pending disposal of the present CRP and to pass

Counsel for the Petitioner(S):

1. N SIVA REDDY

Counsel for the Respondent(S):

1. SIVA BHAMI REDDY S

The Court made the following:

THE HONOURABLE SRI JUSTICE A. HARI HARANADHA SARMA

CIVIL REVISION PETITION No.1748 OF 2016

ORDER:

1. The revision petitioners herein are the Judgment Debtors and defendant Nos.2 to 5 in the suit in O.S.No.21 of 2009 on the file of the learned Junior Civil Judge, Anaparthi. The said suit was decreed on 02.02.2011 with the following reliefs:

> *(i) that the suit be and the same is hereby allowed by declaring that the ABCD marked passage is a joint passage by granting consequential mandatory injunction.*
>
> *(ii) that the defendants are directed to remove the constructions made therein with in three months and in case the defendants failed to remove the constructions therein, the plaintiff is at liberty to proceed with through process of law.*
>
> *(iii) That the defendants do also pay a sum of Rs.188/- to the plaintiff towards institutional costs and the defendants do bear their own costs.*

2. For execution of the decree, E.P.No.17 of 2015 was filed invoking the relief in terms of Order XXI rule 35 (1) of the CPC and the same was allowed. The relief is prayed for is as follows:

> "*For the reasons stated in the accompanying affidavit and Decree copy the Honorable Court may be pleased to pass an order to issue notice to JDR's 2 to 5 under Order 21 Rule 35(1) CPC and the JDR's 2 to 5 are fails to implement the conditions under the decree in Mandatory*

Injunction to remove the constructions in ABCD way. Later the Honorable Court may arrest the JDR's under Order 21 Rule 35(1) of CPC and send to civil prison for violation of the terms of the decree passed by the Honorable Court. It is just and necessary in the interest of justice and equity otherwise else much prejudice is caused to the DHR."

3. The EP was allowed under orders dated 29.02.2016 and the relevant / operative portion of the order reads as follows:

12. The present execution petition was filed by the decree holder for to declare the joint way in the plaint in ABCD marked share and to remove the construction there in within three months as the present execution petition was filed after lapse of 2 years, order 21 rule 22 was issued to the judgment debtors. Though the judgment debtors has in detailed filed their counter and denied the allegations made by the decree holder and taken plea but it is not sustainable. The EP is coming for order 21 rule 22 stage. Hence if an execution petition is filed after lapse of two years from the date of decree, the notice to the judgment debtor under order 21 rule 22 CPC is mandatory and decree holder had issued the same. Hence in the above circumstances, this petition is allowed.

13. In the result, this petition is allowed. Issue order 21 rule 35 (1) Hukum to the J.Dr's 2 to 5 on payment of process for removal of unauthorized constructions made in petition schedule property, call on 01.04.2016.

4. Questioning the orders of the Executing Court, the present Civil Revision Petition is filed. The grounds urged in the revision petition are:

i) EP for removal of the constructions is contrary to the statutory provisions.

ii) The Executing Court failed to see that the limitation stipulated for execution of the declaratory and mandatory injunction is three years, but the EP is filed beyond three years. Hence, barred by Article 135 of the Limitation Act.

iii) The provision of law invoked is not applicable.

5. Heard both sides. Perused the material available on record.

6. The arguments are submitted for the revision petitioners / JDRs, reiterating the grounds urged, which are mentioned above.

7. The learned counsel for the Decree Holder submitted that in the decree, three (03) months' time was granted for removal of the obstruction. Therefore, after expiry of three (03) months time, the time starts to run after expiry of three (03) months.

8. Now the points that arise for consideration in this Civil Revision Petition are:

1) Whether the execution proceedings are properly initiated and whether the impugned orders are sustainable in law and on facts?

2) What is the result of the Civil Revision Petition?

Point No.1:

9. Order XXI Rule 32 and Order XXI Rule 35 of the CPC reads as follows:

ORDER XXI

Execution of Decrees and Orders

Payment under Decree

32. Decree for specific performance for restitution of conjugal rights, or for an injunction.—

(1) Where the party against whom a decree for the specific performance of a contract, or for restitution of conjugal rights, or for an injunction, has been passed, has had an opportunity of obeying the decree and has wilfully failed to obey it, the decree may be enforced 2 [in the case of a decree for restitution of conjugal rights by the attachment of his property or, in the case of a decree for the specific performance of a contract or for an injunction] by his detention in the civil prison, or by the attachment of his property, or by both.

(2) Where the party against whom a decree for specific performance or for an injunction has been passed is a corporation, the decree may be enforced by the attachment of the property of the corporation or, with the leave of the Court, by the detention in the civil prison of the directors or other principal officers thereof, or by both attachment and detention.

(3) Where any attachment under sub-rule (1) or sub-rule (2) has remained in force for 3 [six months,] if the judgment-debtor has not obeyed the decree and the decree-holder has applied to have the attached property sold, such property may be sold; and out of the proceeds the Court may award to the decree-holder such compensation as it thinks fit, and shall pay the balance (if any) to the judgment debtor on his application.

(4) Where the judgment-debtor has obeyed the decree and paid all costs of executing the same which he is bound to pay, or where, at the end of 3

[six months] from the date of the attachment no application to have the property sold has been made, or if made has been refused, the attachment shall cease.

(5) Where a decree for the specific performance of a contract or for an injunction has not been obeyed, the Court may, in lieu of or in addition to all or any of the processes aforesaid, direct that the act required to be done may be done so far as practicable by the decree-holder or some other person appointed by the Court, at the cost of the judgment-debtor, and upon the act being done the expenses incurred may be ascertained in such manner as the Court may direct and may be recovered as if they were included in the decree.

35. Decree for immovable property.—

(1) Where a decree is for the delivery of any immovable property, possession thereof shall be delivered to the party to whom it has been adjudged, or to such person as he may appoint to receive delivery on his behalf, and, if necessary, by removing any person bound by the decree who refuses to vacate the property.

(2) Where a decree is for the joint possession of immovable property, such possession shall be delivered by affixing a copy of the warrant in some conspicuous place on the property and proclaiming by beat of drum, or other customary mode, at some convenient place, the substance of the decree.

(3) Where possession of any building on enclosure is to be delivered and the person in possession, being bound by the decree, does not afford free access, the Court, through its officers, may, after giving reasonable warning and facility to any woman not appearing in public according to the customs of the country to withdraw, remove or open any lock or bolt or break open any door or do any other act necessary for putting the decree-holder in possession.

10. On reading the above provisions, the objection that the wrong provision is quoted is found to be not sustainable. Even otherwise, quoting a wrong provision alone is not a bar to granting relief, if a party is otherwise entitled for the same.

11. The next objection requires an answer is that for implementation of the relief of mandatory injunction, three years is the period of limitation and the EP is filed after three years.

12. The date of judgment is 09.02.2011 as per the judgment. A close reading of the preamble to the judgment would suggest that the suit came for final hearing before the learned Judge on 19.01.2011. The date mentioned in the decree and judgment above the signature of the Judge is indicating 09.02.2011. Therefore, it can be taken that the date of judgment is 09.02.2011. Three months' time is granted for removal of the constructions and in the event of default by the defendants to remove the construction, the decree holder is given liberty to proceed as per law. Therefore, the limitation starts running approximately from 09.05.2011.

13. The DHR's contention is that the period of three years is to be calculated from 09.02.2011. It is an admitted fact that the execution petition was filed on 07.03.2014. If the time is calculated from the expiry of the three months granted under the decree, the execution petition is within time. If the time is calculated from the date of decree, the E.P. is beyond three years. The learned Executing Court has clearly mentioned that the period of limitation is required to be

computed from 09.05.2011. Paragraph 10 of the impugned order reads as follows:

> 10. *The decree was for mandatory injunction and possession in as such as it permitted the defendant to remove the illegal constructions from the schedule property within three months and in case of their failure to so within three months, the decree holder entitled to remove the same by the due process of law and obtained possession of the land. In this time allowed for compliance was three months from the date of the decree. The limitation was required to be computed from 09.05.2011. Under articles 135 of the Limitation Act for the decree for mandatory injunction the date of the decree or where a date is fixed for performance, such date. In the present case in hand limitation ends by 08.05.2014. The present EP filed on 07.03.2014. Hence this petition is within the period of limitation.*

14. The reasoning of the learned Executing Court is found convincing. The EP was at the Order XXI Rule 22 stage.

15. In this context, it is relevant to note the observations of the Hon'ble Apex Court made in ***Babu Singh vs. Jalandhar Improvement Trust and others***[1]***.*** It was a case where the EP was filed beyond three years from the date of decree and the question was whether the limitation commenced from the date of decree or, where the date is fixed for performance, from such date. The Hon'ble Apex Court found that when the decree passed by the First Appellate Court did not specify any date for specific performance, the limitation would commence from the date of decree.

[1] 2026 Live Law (SC) 175; MANU/SCOR/8600/2026

16. In the present case, time for performance is fixed. Therefore, a close reading of the judgment of the Hon'ble Apex Court would drive one to understand that the time can be calculated from the date fixed for performance.

17. Further, it is also relevant and useful to refer observations of the Hon'ble High Court for the State of Telangana made in C.R.P.No.4172 of 2009 in a case between ***Nagubandi Pullaiah and others vs. Madhuri Srinivas Rao***[2], wherein paragraphs 7 to 9 read as follows:

> *7. A reading of Article 135 shows that for enforcement of decree of mandatory injunction, three years limitation is contemplated. That three years limitation commences from the date of decree where no time is fixed for performance and if the time is fixed from the date of fixed time, the limitation commences.*
>
> *8. Insofar as Article 136 is concerned, it is a residuary provision for other decrees other than mandatory injunction and the time stipulation is 12 years. The limitation commences when decree or order is enforceable. However, when time is contemplated for payment of money, delivery of any property on any particular date or where recurring periods are contemplated when the default in making the payment or delivery in respect of which execution is sought, is the starting point.*
>
> *9. In the present case, the decree granted was for comprehensive. That means, it included mandatory injunction as well as the recovery of vacant possession. For executing the larger relief of recovery of vacant possession, the relief of mandatory injunction is necessarily to be executed. If mandatory injunction cannot be executed, the main relief which is granted for recovery of vacant possession becomes futile and inexecutable. For the main relief, the limitation contemplated is twelve years, whereas the relief of mandatory injunction was only three years. When the relief granted covers two distinct limitations, the larger limitation contemplated for the relief has to be taken into consideration while determining whether the execution petition was within time or not. Further, when the two reliefs granted in the decree, if they are inseparable, the larger time prescribed has to be taken.*

[2] MANU/TL/2009/2022: 2023 (3) ALD 158; 2022(6) ALT 677

18. Like one in the present case, it was also a decree of two reliefs. Now, in the present case, the relief of perpetual injunction and relief of mandatory injunction are prayed for. For implementation of the relief of the mandatory injunction, the EP is filed within three years from the date of expiry of the time fixed for performance. Therefore, the objection of JDRs/revision petitioners is found not tenable. Consequently the revision petition fails.

Point No.2

19. In the result, the Civil Revision Petition is dismissed and the Executing Court may proceed with the further process of execution as per law. There shall be no order as to costs.

20. Consequently, pending miscellaneous applications, if any, shall stand closed.

A. HARI HARANADHA SARMA, J

Date:16.10.2026
Note:L.R. copy to be marked.
(B/o).
Knr

Whether the order is:

Speaking		Reasoned	✓
Reportable	✓	Non-reportable	

HON'BLE SRI JUSTICE A. HARI HARANADHA SARMA

C.R.P.No.1748 of 2016

16.10.2026

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