

APHC010242612025



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

**[3332]**

**PRESENT:THE HONOURABLE SRI JUSTICE RAVI CHEEMALAPATI**

**CIVIL REVISION PETITION NO: 1234/2025**

**Between:**

1.MATURU RAMA KRISHNA UMA SHANKAR, S/O. RAMA RAO AGED ABOUT 52 YEARS, OCC BUSINESS, R/O. D.NO. 17-28, MAIN ROAD, BHATTIPROLU VILLAGE AND MANDAL, BAPATIA DISTRICT.

**...PETITIONER**

**AND**

1.PENUGONDA NAGA RAJA KUMARI, W/O . PENUGONDA SRINIVASA RAO, AGED AOBUT 45 YEARS, OCC HOUSEWIFE, R/O. D.NO. 14-61, PURAMVARI STREET, BHATTIPROLU VILLAGE AND MANDAL, BAPATLA DISTRICT

2.PENUGONDA SRINIVASA RAO, S/O. VENKATESWARLU AGED ABOUT 48 YEARS, OCC BUSINESS, R/O. D.NO. 17-28, PURAMVARI STREET, BHATTIPROLU VILLAGE AND MANDAL, BAPATLA 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 set aside the Judgment and Decree passed in CMA No. 6 / 2022 dated 29.10.2024 on the file of the Court of the Civil Judge (Senior Division), Repalle, Guntur District, subsequently to uphold the Order and Decree passed in I.A No. 152 / 2022 in OS No. 62 / 2022 on the file of the Court of the Principal Junior Civil Judge, Repalle, Guntur District 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 stay of Judgment and Decree passed in CMA No. 6 / 2022 dated 29.10.2024 on the file of the Court of the Civil Judge (Senior Division), Repalle, Guntur District pending disposal of the Civil Revision Petition and pass such

**Counsel for the Petitioner:**

1.K RAMA KOTESWARA RAO

**Counsel for the Respondent(S):**

1.KRISHNA RAO PARITALA

**The Court made the following:**

<b>RESERVED ON</b>	<b>09.03.2026</b>
<b>PRONOUNCED ON</b>	<b>28.04.2026</b>
<b>UPLOADED ON</b>	<b>28.04.2026</b>

**ORDER**

This Civil Revision Petition is filed questioning the legality and correctness of the order dated 29.10.2024 passed in Civil Miscellaneous Appeal vide CMA No. 6 of 2022 by the learned Civil Judge (Senior Division), Repalle.

2. The petitioner is the plaintiff while the respondents are the defendants in the suit vide O.S.No.62 of 2022.

3. The petitioner filed O.S.No.62 of 2022 for permanent injunction and in the said suit he filed petition vide I.A.No.152 of 2022 seeking the relief of permanent and mandatory injunction against the respondents and their men restraining them in any way from making further construction on F, F1, F2, F3, F4, F5, F6 and F7 on the plaint schedule land, pending disposal of the suit. The respondents resisted the relief by filing counter contending that they never trespassed into the site of the petitioner and in fact the petitioner got his house measured and stated that his place was secured and the petitioner who himself had encroached the site of the respondents on the northern side of their house at about three (03) feet width and 30 feet length, filed the suit with false averments and that the petition filed seeking two reliefs is not maintainable. The learned trial Judge, upon hearing the counsel on record and considering the material on record, allowed the petition. Aggrieved

thereby, the defendants preferred CMA and the learned Appellate Judge allowed the Civil Miscellaneous Appeal thereby setting aside the temporary injunction granted by the learned trial Judge. The order passed in the CMA has been challenged in this Civil Revision Petition.

4. Heard Sri Naganjaneyulu Borra, learned counsel for petitioner/ plaintiff and Sri Krishna Rao Paritala, learned counsel for respondents/ defendants.

5. Sri Naganjaneyulu Borra, learned counsel for petitioner while reiterating the contents of the affidavit filed in support of the petition before the trial Court and grounds of Civil Revision petition would contend that though the documents were not marked, the learned trial Judge made elaborate discussion of the contents of the documents in the order and had rightly come to the conclusion in granting temporary injunction. He would further contend that the interlocutory petition was filed under order-XXXIX, Rules-1 and 2 CPC through which except the relief for interim injunction, no other reliefs could either be sought or granted and the learned trial Judge having considered the submission that instead of temporary injunction, the permanent and mandatory injunction was mentioned in copy and paste process and the learned trial Judge, upon appreciation of the facts and the law under which the petition was filed and prosecuted, upon ignoring the

typographical error, had rightly come to the conclusion that the petitioner is entitled for grant of temporary injunction. He would further contend that the appellate Judge upon irrelevant and hyper technicalities rather than on merits of the matter and material available on record allowed the Civil Miscellaneous Appeal, completely ignoring the fundamental principle of law that technicalities should never be allowed to impede the advancement of substantial justice. He would further contend that the order of the appellate Judge is perverse and the same has to be set aside. Accordingly, prayed to allow the Civil Revision Petition.

6. On the other hand, Sri Krishna Rao Paritala, learned counsel for respondents, while reiterating the contents of the counter filed before the trial Court and grounds of Civil Miscellaneous Appeal filed before the Appellate Court would contend that the learned trial Judge upon erroneous view of the matter in disregard to the fact that the petitioner did not even seek the relief of temporary injunction and even without marking the documents and evaluating their evidentiary value, allowed the petitioner granting temporary injunction, which was never sought. He would further contend that the learned Appellate Judge upon meticulous analysis of the facts and circumstances of the case that the petition filed for two reliefs is not maintainable and that there was no appreciation of the documents in proper

perspective rightly allowed the Civil Miscellaneous Appeal and the said well considered order does not require interference of this Court. Accordingly, prayed to dismiss the Civil Revision Petition.

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

8. The learned Appellate Judge in the impugned order mainly focused on technical aspects, such as the documents relied on by both sides in the suit were not marked as exhibits in the order, that the petition containing two reliefs is not maintainable.

9. The principle that "technicalities shall never be allowed to impede the advancement of substantial justice" is a cornerstone of Indian jurisprudence, frequently invoked by the Supreme Court to prioritize fair outcomes over strict procedural adherence. Procedural rules are considered "handmaids of justice," meant to assist in reaching a fair decision, not to serve as obstacles that thwart it.

10. Rule-55 of Civil Rules of Practice provides that separate applications are necessary for each distinct relief prayed for. The core requirement is that "distinct" reliefs require separate applications, while ancillary, consequential, or "incidental" reliefs can be coupled. The rule ensures that each separate

claim is handled, numbered, and adjudicated on its own merits, rather than bundling unrelated matters, which would cause procedural confusion.

11. Whenever the court come across a petition containing two distinct reliefs not being neither ancillary, consequential or incident, the court will require the applicant to choose one relief, split the petition, or allow the amendment of the application to remove the additional prayer.

12. In the instant case, the issue does not fall within the ambit of Rule-55 of the Civil Rules of Practice, but for labelling incorrect relief under correct provision of law. The petitioner in a petition filed under Order-XXXIX, Rules 1 & 2 of Code of Civil Procedure sought the relief of permanent and mandatory injunction, pending disposal of the suit.

13. Order 39, Rules 1 and 2 of the Code of Civil Procedure (CPC), 1908, empowers civil courts to grant temporary injunctions to restrain a party from wasting/alienating property, breaching a contract, or causing injury, ensuring the status quo until the lawsuit's final disposal. Admittedly, permanent and mandatory injunctions could not be granted under this provision of law that too pending disposal of the suit.

14. A court can grant a temporary injunction under Order XXXIX, Rules 1 and 2 of the Code of Civil Procedure (CPC) even if the petitioner incorrectly

labels the relief as "permanent" or "mandatory" within an interim application. The court focuses on the substance of the relief sought (temporary relief) rather than the nomenclature. Therefore, the observations made by the learned appellate Judge in this regard are not at all tenable and the learned trial Judge had correctly ignored the typographical error occurred in seeking the relief in proceeding with the petition.

15. The other technical issue considered by the learned appellate Judge is not marking the documents filed along with pleadings as exhibits while deciding the temporary injunction application on merits.

16. Documents filed by parties along with pleadings in an injunction suit do not necessarily need to be formally marked as exhibits in the same strict manner as during a final trial, but they must be formally considered and referred to by the court when deciding a temporary injunction petition (Order 39, Rule 1 & 2 of CPC) on merits.

17. While interlocutory proceedings (temporary injunction) rely primarily on affidavits, courts are required to examine the documents filed to determine the existence of a *prima facie* case, balance of convenience, and irreparable loss. Strict formal proof (calling the author/witnesses) required under the Evidence Act is not necessary while considering a temporary injunction. The

court is obligated to look into the documents filed with the plaint or written statement to satisfy itself on the three core principles (prima facie case, balance of convenience, irreparable injury).

18. Though marking of documents would avoid ambiguity and it would be a good practice to mark the documents with the consent of parties in an interlocutory application, even if not marked, the court cannot ignore relevant documents filed with the pleadings, and must refer to them to determine the merits of the injunction.

19. Thus, the technical and procedural grounds relied on by the learned Appellate Judge are insufficient to overturn the temporary injunction order granted by the learned trial Judge.

20. Now coming to the merits of the matter, the learned trial Judge upon perusal of the settlement deed relied on by the plaintiff claiming to the document of conveyance of plaint schedule property wherein it was mentioned that 252.50 sq.yards of site was settled in his favour by his mother, the Building Permit Order which shows that the plaintiffs had left set back on all the four sides of the building, and the photographs filed by the petitioner which show that extended centring for slab is almost touching his building, came to the conclusion that the plaintiffs could make out prima facie

case in his favour. The learned trial Judge further observed that if the respondents are allowed to lay slab and make further constructions thereon in the encroached site of the petitioner, it would cause irreparable loss to the petitioner and ultimately if injunction is not granted it would cause prejudice to the petitioner whereas makes no difference for the respondents.

21. The learned Appellate Judge in the impugned orders held that whenever a person intends to make construction the APCRDA authorities would grant Building Permit Order, however based on the said Building Permit Order it cannot be said that the grantee had made the construction according to the said Permit Order and unless the approved building plan issued by the authorities is filed, it cannot be presumed that the grantee had made the construction in accordance with the building permit order.

22. The learned trial Judge upon perusal of the photographs filed by the petitioners held that the extended centring for slab is almost touching their building. Therefore, when the building permit order shows that the petitioner had left set backs on all the four sides, extended centring for the slab since touches the building of petitioners, is a clear indication that the respondents sought to make construction by encroaching upon the site left as set back by the petitioners. It also relevant here to note that the learned trial Judge further observed that the photographs filed by respondents do not exhibit any

centring work and since they do not contain any date when they were taken, declined to take them into consideration.

23. Whereas the learned Appellate Judge observed that the photographs filed by the petitioner show that the extended slab of the respondents encroaches upon the site of the petitioner, whereas the photographs filed by the defendants dated 07.07.2022 show that the defendants did not extend the construction upto the slab from F2 to F1 and F7 to F3.

24. If that was the case, the learned appellate Judge if finds that there was no encroachment upon the site marked as F1 to F7, he would have confirmed the orders of temporary injunction to that extent even.

25. In the instant case, the respondents did not file any documentary proof to show their entitlement to the site over which they are making construction at least to show the total extent of site over which they have right and the extent within which they are making constructions, except stating that the documents are not available with them for the present and they would file them during trial. It is also relevant here to mention that in the counter they are claiming right over the property by adverse possession by being in possession of the property over a period of thirty (30) years. Further,

the respondents did not get any approved plan or permission as per the admissions made by their learned counsel before the trial Court.

26. A court can consider the absence of documentation or a response from the defendant as part of the overall conduct when deciding on an interim injunction (Order 39, CPC). While a plaintiff must establish a *prima facie case* (triad of tests: prima facie case, balance of convenience, and irreparable injury), the defendant's silence or failure to file documents to counter the allegations may be taken as a circumstance against them in proving *balance of convenience*.

27. Therefore, the plaintiff able to make out prima facie case by production of deed of conveyance for the plaint schedule property and Building Permit Order regarding leaving of set backs on all four sides and also balance of convenience and as rightly held by the learned trial Judge the plaintiff would be put to irreparable loss and if injunction is not granted. Therefore, the learned trial Judge had rightly allowed the petition, ignoring technicalities, granting temporary injunction. The order of the learned Appellate Judge, as discussed supra suffers from legal infirmities, misapplication of laws and misconception of facts and hence the same is liable to be set aside.

28. In the above view of the matter, the Civil Revision Petition is allowed, setting aside the order dated 29.10.2024 passed in CMA No.6 of 2022 by the learned Civil Judge (Senior Division), Repalle. Consequently, the order dated 19.05.2022 passed in I.A.No.152 of 2022 in O.S.No.62 of 2022 by the learned Principal Junior Civil Judge, Repalle, is confirmed. There shall be no order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.

28<sup>th</sup> April, 2026.

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**JUSTICE RAVI CHEEMALAPATI**

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