

THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No. 17626 of 2012

ORDER:-

Heard learned counsel for the petitioner, learned Government Pleader for revenue appearing for the 1st respondent and learned counsel for the 3rd respondent. With the consent of the parties, the writ petition is heard and disposed of at the admission stage itself.

Briefly, the case of the petitioner is that land to an extent of 484 square yards in Survey No.87 situated at Garimella Village, Mancherial Mandal, Adilabad District, was regularized in favour of his mother vide proceedings No.B/750/87 dated 20.08.1987 issued by the then Mandal Revenue Officer, Mancherial, after paying the nominal value of the said land. It is stated that the petitioner's father and his elder paternal uncle constructed a house in a part of the land and thereafter the petitioner's paternal uncle relinquished his rights over the house property in favour of the petitioner's father, and as such, the petitioner's father became absolute owner and possessor of the house property. On 28.05.1994, the petitioner's father died leaving behind him his first wife (the 3rd respondent herein) and her two sons, the petitioner, his brother and mother. In view of regularization of the land in the name of the petitioner's mother, she succeeded to the property. After the death of petitioner's father and mother, the petitioner and his brother approached the 1st respondent seeking issuance of a Family Member Certificate, who issued the said certificate vide certificate No.C/1013/2010 dated 12.08.2010. Basing on the same, the 2nd respondent mutated the property in favour of the petitioner and his brother. Subsequently, the petitioner's brother relinquished his rights over the property in favour of the petitioner under a registered Joint Relinquishment Deed, and since then, the petitioner is in possession and enjoyment of the same. While things stood thus, on 21.08.2010 the 1st respondent cancelled the Family Member Certificate without giving any notice to the petitioner, pursuant to which, the 2nd respondent issued a show cause notice on 04.05.2012 calling upon the petitioner to show cause as to why the mutation proceedings issued in his favour in respect of the subject

property shall not be cancelled. In response, the petitioner addressed a letter dated 21.05.2012 to the 2nd respondent demanding him to supply copies of proceedings issued by the 1st respondent and application of the 3rd respondent so as to enable him to give proper explanation to the show cause notice dated 04.05.2012. But, till date no material is supplied, and on the other hand, the 2nd is trying to dispossess the petitioner. Questioning the proceedings issued by respondents 1 and 2 and apprehending dispossession from the property, the present writ petition is filed.

The 3rd respondent filed her counter denying all the allegations made in the writ petition. It is stated that the petitioner is not the owner of the house No.5-65 (old No.5-71), and as such, the orders under challenge came to be passed after giving notice to the petitioner.

A perusal of the material placed before the Court would show that the petitioner filed O.S.No.160 of 2012 on the file of the Principal Junior Civil Judge at Mancherial, Adilabad District, seeking injunction restraining the 3rd respondent from interfering with his possession over the subject property. Along with the said suit, the petitioner also filed an application seeking temporary injunction which was dismissed on 04.02.2013 holding that the petitioner has not come to the Court with clean hands and that both the petitioner and the 3rd respondent are in joint possession over the property. Further, a reading of the order dated 21.08.2010 passed by the 1st respondent would show that one V. Mohan, who is son of the 3rd respondent herein, submitted an objection petition seeking cancellation of the Family Member Certificate issued in favour of the petitioner on the ground that his mother is the first wife of the petitioner's father. Basing on the said petition, the 1st respondent conducted an enquiry which revealed that the petitioner's mother is the second wife of his father, and by making a false claim, the petitioner obtained the Family Member Certificate. Since the issue involves disputed questions of fact, the same cannot be adjudicated in the writ petition.

Hence, the Writ Petition is dismissed. However, it is left open to the petitioner to avail the remedies available under law. There shall be no order as to costs.

Consequently, miscellaneous petitions, if any, pending in the writ petition shall stand dismissed.

C. PRAVEEN KUMAR, J

23rd September, 2015

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