

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No. 10763 of 2011

ORDER:

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Assailing the order, dated 07.01.2011 passed by the first respondent in Case No.D1/63/2010 in File No.D1/3692/2010 as illegal and arbitrary, the present writ petition came to be filed.

The facts which lead to filing of the present writ petition are as under:

At the time of marriage of the writ petitioner with one Surya Prakash Reddy in the year 1970, her father by name Kallem Chenna Reddy is said to have gifted her land admeasuring Ac.1.38 gts., in Sy.No.135 popularly known as "Malloini Bavi" and also land admeasuring Ac.2.16 gts., in Sy.No.88 popularly known as "Gadi Bavi Polam" situated at Kodicherla Village, Shadnagar Taluq, Mahaboobnagar District. It may be apt to mention here that the father of the petitioner has one daughter, who is the petitioner herein and one son by name Kallem Malla Reddy, who is none other than the father of respondent Nos.4 and 5 herein.

It is the case of the petitioner that the said property was gifted to her towards "Pasupu Kumkuma" under a gift deed dated 10.09.1970. The said gift deed was validated in the office of District Registrar, Mahabubnagar vide No.1380/2005, dated 15.12.2006 duly enclosing a copy of Boodan Patram dated 10.09.1970 executed by the father of the writ petitioner in respect of the agricultural lands referred to above. On 05.01.2007, the petitioner made an application before the third respondent by

enclosing necessary documents for mutation of such lands in her favour, but the third respondent refused to mutate the said lands in favour of the petitioner on the ground that the gift deed is 36 years old and executed during the life time of her father K.Chenna Reddy apart from holding that it is an un-registered document. Challenging the same, the petitioner filed an appeal under Section 5 (5) of the Record of Rights Act, 1971 before the second respondent. By an order dated 30.11.2009 passed in Case No.B/ROR/3534/2007, the second respondent set-aside the order passed by the third respondent on the ground that the property given to the petitioner towards "Pasupu Kumkuma" through a gift deed is valid and binding on the parties though it was not registered, in view of the judgment of the Apex Court in **Smt.**

Kamala Devi and another vs. Bachulal Gupta^[1]. Challenging the said order, respondent Nos.4 to 6 herein preferred a revision before the first respondent under Section 9 of the Andhra Pradesh Record of Rights in Lands and Pattadar Pass Books Act, 1971 vide Case No.D1/63/2010 file No.D1/3692/2010. After analyzing the entire material available on record and also authorities on the subject, the first respondent allowed the revision and advised the respondent therein to approach the Civil Court seeking redressal of the matter as there is a dispute over title and as the revenue records show mutation of land in the name of respondent Nos.4 and 5 herein. Relying upon the judgment of this Court in

K.Siddiah Naidu v. District Collector and others^[2] and ***Yanala Malleshwari and others v. Ananthula Sayamma and others***^[3] the first respondent observed that the powers of Revenue Courts while disposing of the matters between the parties are very limited and they are not supposed to decide the

Civil Right between the parties which is vested in Civil Court. In view of the pendency of civil suit vide O.S.No.315 of 2007 on the file of the I Additional Senior Civil Judge, Mahaboobnagar, the first respondent directed the parties to approach the Civil Court for redressal of their grievance. Challenging the same, the present writ petition is filed.

Learned counsel for the petitioner mainly submits that the finding of the third respondent which was confirmed by the first respondent in holding that the gift deed requires registration is incorrect in view of the judgment of the Apex Court in Smt. Kamaladevi Case (1 supra). He further submits that since a civil suit is already pending between the parties, it is advisable to maintain status-quo till disposal of the suit. He submits that the third respondent affected mutation in favour of respondent Nos.4 and 5 without issuing notice to the petitioner herein and that any order passed by the authority without issuing any notice is liable to be set-aside as violative of principles of natural justice.

Learned counsel for the respondents submits that the very execution of gift deed itself is in dispute since the same has seen the light of the day 36 years after its execution. Since the very execution of gift deed is in dispute he submits that the question of validity of the un-registered gift deed need not be gone into. Further, he placed reliance on the Full Bench Judgment of this Court in ***Gandevalla Jayaram Reddy v. Mokkala Padmavathamma and others***^[4] to show that transfer of immovable property towards “pasupu kumkuma” would not be a gift within the meaning of Section 122 of the Transfer of Property Act and the same needs to be registered in terms of Section 17 (1) of the Registration Act. Insofar as the other arguments that

no opportunity was given to the petitioner at the time of mutation is concerned, he submits that the same is incorrect.

There is no dispute that the petitioner is none other than the paternal aunt of respondent Nos.4 and 5. The case of the petitioner is that her father is alleged to have gifted certain properties by way of a gift deed on 10.09.1970 towards "pasupu kumkuma" and the same was got validated in the office of District Registrar in the year 2006. From the above, it is clear that the said document which is alleged to have been executed by the father of the petitioner did not see the light for a period of 36 years.

Respondent Nos.4 and 5 pleaded that they are the exclusive owners of land in Sy.No.88 admeasuring Ac.2.16 gts., situated within the limits of Kodicherla village and that respondent No.6 had purchased the said land through a registered sale deed No. 9928 of 2007 dated 11.06.2007. It is stated that she is in possession of the said property since 2007 and her name was also mutated in the revenue records vide Ref. No.F/1584/2007. Learned counsel for the respondents is disputing the very execution of gift deed executed by the father of the writ petitioner. According to him, there is any amount of doubt as to the execution of the said gift deed. He submits that if really the gift deed was executed in the year 1970, no reasons are forthcoming as to why it has not seen the day light till 2006. It is thus alleged that the gift deed alleged to have been executed by the father of the petitioner is a rank forgery and that the petitioner cannot claim any right over the said property through the said gift deed. In view of the above, he submits that the genuinity or authenticity of the gift deed has to be decided by a civil Court.

The pleadings placed before the Court would show that there is a dispute with regard to the very execution of the gift deed. Therefore the question of going into the validity of the gift deed would not arise in these proceedings. It is for the Civil Court to decide as to whether the gift deed is genuine or forged. The counsel for the petitioner proceeded as if it was a genuine document and relied upon a judgment of Apex Court in Kamala Devi Case (1 supra) in support of his argument. As stated earlier the consistent plea of the respondent was that the gift deed was a forged document brought into existence for the purpose of this case. However, he relied upon a Full Bench judgment of this Court in Gandevala Jayaram Reddy case (4 supra) to show that gift deed also requires registration to make it admissible in evidence. Since there is a dispute with regard to the very execution of gift deed, it is for the Civil Court to decide as to whether the gift deed is genuine or not.

The second ground urged by the learned counsel for the petitioner that no notice was given to the petitioner at the time of effecting mutation. It is to be noted that respondent No.6 is alleged to have purchased the property in the year 2007 through registered sale deed No. 9928 of 2007 dated 11.06.2007. Thereafter, she got her name mutated in the revenue records and since then she is alleged to have been in possession of the property. If really, there was a gift deed said to have been executed by the father of petitioner in her favour, no reasons are forthcoming as to why she kept quiet for such a long time in not getting her name mutated in the revenue records. It appears to be a case where the said document saw the light of the day only on coming to know about the purchase of property by respondent

No.6 and when she got her name mutated in the revenue records.

In ***Kuthuru Narasimha Reddy v. Pusala Venkataiah and others***^[5] a learned Single Judge of this Court held as under:

“The authorities under A.P. Rights in Land and Pattadar Pass Books Act, 1971 are not competent to adjudicate upon the rights or title of contending parties. The proceedings before them are limited purpose of making/amending/ maintaining true and consistent entries in the revenue records basing on the enquiry conducted under the provisions of 1971 Act. Thus they are Court of limited jurisdiction. The entry in Record of Rights is only a piece of evidence in proof of title or possession before the civil Court. Although it cannot be said that during the pendency of a civil suit, the authorities under the Act shall not make any entries in the record of Rights by making enquiry under the provisions of the Act, such entries are certainly subject to scrutiny by the civil Court. The civil Court while deciding the rights, title or possession of the parties apart from considering the entries in revenue records, will take into consideration several other aspects such as documents of title, oral evidence and pleadings of parties. In the adjudicatory process, the civil Court may hold that an entry is made incorrectly or improperly or without notice to the party having rights in the subject matter of dispute. The civil Court is also competent to declare the proceedings before the authorities under the Act as void.”

As stated earlier, the petitioner filed O.S.No.315 of 2007 seeking declaration of her title over the property as well as for grant of injunction and the same is still pending. Since the dispute now boils down to the issue as to whether the father of the writ petitioner executed the gift deed or not, it may not be proper for this Court to go into the said aspect in the writ petition. In view of the serious dispute with regard to the execution of the gift deed, I am of the considered view that it is neither possible nor desirable for the first respondent to pass any order otherthan

one which is impugned in this writ petition. Therefore, I find no illegality or irregularity in the order passed by the first respondent directing the petitioner to approach the civil Court. Hence, it is expedient for the petitioner to approach the competent Civil Court, get the title dispute settled in her favour and then approach the authorities under the Act for an appropriate relief.

It is made clear that the findings arrived at by this Court in disposing of this petition are only for deciding the case on hand and shall not in any way influence the Additional Senior Civil Judge, Mahabubnagar in deciding O.S.No.315 of 2007 or any other suit to be instituted by the petitioner in respect of the lands which are subject matter of dispute in this writ petition.

In view of the above, the writ petition is devoid of merits and the order passed by the first respondent does not warrant any interference. Accordingly, the writ petition is dismissed. No order as to costs.

Consequently, miscellaneous petitions, if any, pending in this Writ Petition shall stand closed.

**JUSTICE C. PRAVEEN
KUMAR**

23.07.2015
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[\[1\]](#) AIR 1957 SC 434

[\[2\]](#) 1999 (5) ALT 480

[\[3\]](#) 2006 (6) ALT 523

[\[4\]](#) 2001 (5) ALT 130 (F.B.)

[\[5\]](#) 2011 (5) ALT 564

