

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA
RAO

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WRIT PETITION No.11685 of 2005

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ORDER:

Heard learned Counsel for the petitioners and learned Government Pleader for respondent Nos.1 to 3. None appeared for respondent Nos.4 and 5.

The case of the petitioners is that their grandfather and the father of respondent Nos.4 and 5 jointly purchased the land of an extent of Acs.6.09 cents in five Survey numbers i.e., i) Survey No.1093/2 (Ac.0.86 cents), ii) Survey No.1092/P (Acs.2.62 cents), iii) Survey No.345/2 (P) (Acs.1.11 cents), iv) Survey No.345/4 (Acs.0.56 cents) and v) Survey No.343/1 (Ac.0.94 cents) from one Lavanuru Obanna and others of B.T.Pally Village, Kadapa District, in the year 1935 under a registered sale deed dated 06.11.1935. Thereafter, there was an oral partition between the petitioners' father and father of respondent Nos.4 and 5 dividing the said property into two equal shares. After partition, the petitioners have been in possession of the following extent i.e., i) Survey No.1093/2 consisting of Ac.0.86 cents, out of which the petitioners are enjoying

Ac.0.43 cents each equally, ii) Survey No.1092/P consisting of Acs.2.62 cents and each is enjoying equally, iii) Survey No. 345/2 (P) consisting of Acs.1.11 cents, and each is enjoying equally, iv) Survey No.345/4 consisting of Acs.0.56 cents and v) Survey No.343/1 consisting of Ac.0.94 cents. The share of the petitioners to an extent of Ac.0.28 cents was gifted by the respondents 4 and 5 along with their share in the year 1975 to the Zilla Parishad School without the consent of the petitioners. It is their further case though their share in the said extent of Ac.0.56 cents of land in Survey No.345/4 was gifted to Zilla Parishad High School by respondent Nos.4 and 5 without their consent, since it was for a public purpose, they did not question the same.

While so, after the death of the father of the petitioners in the year 1995, the property, which fell to the share of the petitioners, was partitioned and in the said partition, the land of an extent of Ac.0.47 cents in Survey No.343/1 fell to the share of the first petitioner under a family arrangement dated 31.03.1998. Thereafter, the first petitioner approached the third respondent for issuance of pattadar pass books and title deeds in respect of the land allotted to him. The third respondent, after issuing notice to all the parties, including respondent Nos.4 and 5, and after conducting thorough

enquiry, issued pattadar pass books and title deeds to the petitioners in the month of June 1998, including the land of an extent of Ac.0.47 cents in Survey No.343/1. Based on the said documents, the first petitioner obtained bank loans from Rayalaseema Grameena Bank and DCC Bank, B.T.Pally. While so, the petitioners were surprised to receive a notice from the office of the second respondent in proceedings ROR.No.1755/2002 in the year 2003. When they approached the second respondent they came to know about the petition filed by respondent Nos.4 and 5 for cancellation of pattadar pass books and title deeds in favour of the first petitioner in respect of land in Survey No.343/1, which was entertained by the first respondent, and remitted to the second respondent. Though the petitioners produced all the documents before the second respondent, the second respondent without conducting an enquiry, disposed of the petition directing the third respondent to cancel the pattadar pass books and title deeds granted in favour of the first petitioner in respect of land of an extent of Ac.0.47 cents in Survey No.343/1 on the ground that the competent Civil Court has granted decree in O.S.No.139 of 1991 in favour of respondent Nos.4 and 5 and the same is binding upon the petitioners. Challenging the said orders of the second respondent, the petitioners preferred a revision

before the first respondent along with a stay application and when the said proceedings were pending before the first respondent, the third respondent issued an order of cancellation by proceedings dated 10.06.2004. When the petitioners filed W.P.No.14380 of 2004 before this Court challenging the action of the first respondent in not disposing of the stay application in the revision petition, this Court disposed of the said Writ Petition on 16.08.2004 directing the first respondent to dispose of the said application within a period of one week. However, the first respondent dismissed the revision petition and confirmed the orders of the second respondent by his order dated 09.05.2005. Challenging the orders of the second respondent dated 30.04.2003, as confirmed by the first respondent by order dated 09.05.2005, the present Writ Petition was filed.

No counter affidavit is filed by the respondents.

Learned Counsel for the petitioners submitted that the Revenue Divisional Officer, who is the second respondent herein, cannot straightaway entertain any representation/petition as an appeal and it is the Mandal Revenue Officer, who is competent to decide the disputes under Section 5(5) of the Andhra Pradesh Rights in Land

and Pattadar Pass Books Act, 1971. Learned Counsel relied on the decision of Division Bench of this Court in **Sannepalli Nageswar Rao v. District Collector, Khammam**^[1].

A perusal of the order dated 30.04.2003 passed by the second respondent shows that he has taken up the matter on remand by the first respondent by the order dated 19.06.2001 at the instance of respondent Nos.4 and 5 challenging issuance of pattadar pass books to three different persons for the same land in Survey No.343/1 in an extent of Ac.0.47 cents each of Surabhi Village. The second respondent passed the following order on 30.04.2003.

“On perusal of record the M.R.O.Chakrayapet has issued PPBs/TDs to three persons i.e., 1. Sri Bonagiri Balaiah 2. Sri B.Ramalingaiah and 3. Sri Bayanaboina Sreenivasulu @ 0.47 cents acres to each in S.No.343/1. The total extent of the above S.No. is 0.94 cents only. Thus the M.R.O created confusion by issuing PPBs/TDs. As stated by oral partition 0.94 acres in S.No.343/1, 0.17 Acres in S.No.345/2 went to the share of Bonagiri Chinna Lingaiah father of the petitioner and the remaining 1.00 Acre in S.No.345/2 went to the share of Sri B.Chinna Gangaiah and got equal half share in the remaining Sy.Nos. After thorough enquiry and hearing the case in O.S.No.139/91 the Sub-Ordinate Judge, Rayachoty has passed decree and judgment in favour of Sri Bonagiri Balaiah and Ramalingaiah. Sri Bayanaboina Sreenivasulu has not contested the

above case and there was oral partition between the purchasers.

The Mandal Revenue Officer, Chakrayapet is requested to follow the orders issued in Judgment of Sub-Ordinate Judge, Rayachoty in O.S.No.139/91, Dated:-25.08.1993 and order cancellation of the entries in P.P.B and T.D in respect of the Survey Number under enjoyment of the petitioners issued to the respondent.”

Challenging the same, the petitioners preferred a revision before the first respondent, who passed the following order on 09.05.2005, after considering the rival contentions.

“It is a fact that Sri Bonagiri Rama Lingaiah S/o. Chinna Lingaiah father of the respondents sold 0.20 acres out of 0.94 acres of land in S.No.343/1 to one Sri Ammatalli Venkata Chalama Reddy S/o Rami Reddy vide document No.115, dated 30.01.1990; 0.02½ acres to Smt.Meda Lakshmiddevamma W/o.Subbarayudu vide document No.219, dated:12.01.1990 and an extent of 0.02½ acres to Smt. Thummaluru Ramalakshumma W/o. Subbarayudu vide document No.189, date:08.02.1990 i.e., totally an extent of 0.24½ acres was sold to three persons and the remaining extent of 0.69½ acres was with him only.

These facts have been clearly established in the judgment issued by the Sub-Ordinate Judge Rayachoty in O.S.No.139/91 where the respondents were plaintiffs against Thummaladinne Radhakrishna and others who planned to acquire the land. The judgment was delivered in favour of the respondents by following due process of law. At this moment if at

all the Revision Petitioners have rights over this land they could have contested, but kept silent which shows that they are well aware of the naked truth and now filed a petition, for illegal right of possession looking for the opportunity.

Therefore in the above circumstances as the facts are apparent on the face of the records there is no meet to interfere with the orders passed by the Sub-Ordinate Judge, Rayachoty, since the judgment of the sub-ordinate Judge, Rayachoty in O.S.No.139/91, dated:25.08.93 is *Aequitas Sequitur Legem.*”

A perusal of the above orders passed by respondent Nos.1 and 2 reveals that the said orders were based on the judgment and decree of the learned Sub-ordinate Judge, Rayachoty, in O.S.No.139 of 1991 dated 25.08.1993. The said suit was filed by respondents 4 and 5 for declaration and consequential injunction against some third parties in respect of land of an extent of Ac.0.69½ cents out of Ac.0.94 cents in Survey No.343/1 of Surabhi Village, Chakrayapet Mandal, Lakkireddipalli Taluk, Kadapa District. In the said suit, the petitioners herein were not parties. Hence respondent Nos.1 and 2 erred in relying on the said judgment, which is not binding on the petitioners. The other ground that is evident is that the earlier Mandal Revenue Officer issued pattadar pass books to the respondents 4 and 5 and also to the first petitioner herein. The total extent comes to more than Ac.0.94 cents. It is not known whether

Ac.0.47 cents in Survey No.343/1 was recorded in favour of respondent Nos.4 and 5 jointly or individually. Be that as it may, now the learned Counsel for the petitioners contended that the second respondent has no jurisdiction to entertain the dispute with regard to the entries made in the pattadar pass books and title deeds and the third respondent alone is competent as per the above decision of the Division Bench of this Court. In the circumstances, respondent Nos.4 and 5 should have approached the third respondent under Section 5(6) of the Andhra Pradesh Rights in Land and Pattadar Pass Books Act. Instead, they approached the first respondent by representation and it was sent to the second respondent. The second respondents treated the petition filed by respondents 4 and 5 as an appeal. There was no petition nor an order before the third respondent in respect of the entries made for the land in Survey No.343/1.

In the circumstances, the orders passed by second respondent dated 30.04.2003 and confirmed by the first respondent on 09.05.2005 is set aside and the Writ Petition is allowed. The respondents 4 and 5 are given liberty to file an appropriate application before the third respondent within two months from the date of receipt of a copy of this order and if they file such an application, the third respondent is

directed to conduct an enquiry with regard to the entries made in the pattadar pass books and title deeds issued in favour of the first petitioner in respect of the land of an extent of Ac.0.47 cents in Survey No.343/1 of Surabhi Village, Chakrayapet Mandal, Lakkireddipalli Taluk, Kadapa District, and complete the same within a period of three months from the date of receipt of application after issuing due notice to the first petitioner and to respondent Nos.4 and 5 herein. *Status quo* with regard to the possession of land in Survey No.343/1 shall continue, pending disposal of the issue before the third respondent.

The Writ Petition is accordingly allowed to the extent indicated above. The miscellaneous petitions pending, if any, shall stand closed. There shall be no order as to costs.

(A.RAMALINGESWARA RAO, J)

01.05.2015

Note: LR copy to be marked: No

B/o.

vs

[\[1\]](#) 2002 (4) ALD 497 (DB)