

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.21911 OF 2012

ORDER

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This writ petition is filed for a *writ of mandamus* declaring the action of the 1st respondent in taking steps to mutate/change the names of the 2nd respondent's daughters by deleting the name of the petitioner in the Municipal records, without passing the orders on the Notice dated 12.06.2012 in R.O.C.No.2832/A1/2011, as illegal and arbitrary and for a consequential direction to the 1st respondent not to mutate the names of the 2nd respondent's daughters.

The case of the petitioner is that the petitioner's father who is the 2nd respondent herein is the absolute owner of the property bearing No.III/169/13/153-I, Ramarao Colony, Madanapalli, Chittoor Distrit. The 2nd respondent without the consent of the petitioner's mother got 2nd marriage and residing separately with the 2nd wife in house bearing D.No.17-390-2-B, Moti Nagar, Madanapalli town, Chittoor District and he is also having children with the 2nd wife. The 2nd respondent executed a will deed dated 26.05.2007 bequeathing the said house property to petitioner's mother. Thereafter, the petitioner's mother executed a register will deed dated 05.05.2011 in favour of the petitioner and the petitioner obtained the encumbrance certificate. After executing the said will, the petitioner made an application dated 14.10.2011 to the 1st respondent requesting him to mutate his name in the Municipal records. Basing on the report of Revenue inspector, the 1st respondent issued proceedings dated 19.12.2011 mutating the assessment in favour of the petitioner. It is further submitted that petitioner paid water tax from the year 2008 and the property tax from 2006 and accordingly the 1st respondent issued the receipts. While so, when petitioner came to know that the 2nd respondent is taking steps to mutate the names of S.Rizwana and S.Farzana, the petitioner got issued a legal notice dated 14.03.2012 to the 1st respondent. The 2nd respondent also issued a legal notice to the 1st respondent. Taking into

consideration of both legal notices, the 1st respondent issued notice dated 12.06.2012 in R.o.c.No.2832/A1/2011 to the petitioner directing him to submit written objections, if any, within seven days. Soon after the receipt of the said notice, the petitioner submitted explanation through register post with acknowledgement and the same was served to the 1st respondent. But as on today, the 1st respondent has not passed orders on the notice dated 12.06.2012 and is taking steps for mutating the names of the 2nd respondent's daughters though he has no power to adjudicate the issue regarding the title. Aggrieved by the same, the present writ petition is filed.

Counter affidavit is filed by the 1st respondent stating that basing on an unregistered WILL deed dated 26.05.2007 alleged to be executed by the 2nd respondent in favour of the petitioner's mother, the petitioner approached the office requesting for mutation of his name and accordingly the transfer was effected in favour of the petitioner. Subsequently, petitioner's sisters namely Rizwana and Farzana also approached the office saying that their father executed a registered gift deed dated 07.12.2007 for the same schedule property and requested for transfer of title in their name. Then, the 1st respondent enquired into the matter calling upon the 2nd respondent to give his statement in this regard. The 2nd respondent gave his statement dated 23.04.2012 saying that unregistered WILL deed dated 26.05.2007 is only a forged and fabricated one and that that the gift deed executed by him in favour of his daughters on 07.12.2007 for delivery of possession is original. Further the Municipal Standing counsel on request gave opinion that 2nd respondent, who is the original owner of the property is alive and as per his statement the petitioner has no right and 2nd respondent's daughters alone have right over the property, as such, the mutation of the name of the petitioner itself is a mistake. Therefore there are no merits in the case of the petitioner, hence prayed to dismiss the petition.

Heard the learned counsel for the petitioner and the learned Standing counsel for the 1st respondent.

In this case, the petitioner has not filed any documents in support of his case, though it is mentioned in the affidavit that the 2nd respondent executed a

WILL deed in favour of his mother, who in turn executed a registered will deed in his favour. However, so called WILL will come into effect only after the death of the testator but not when the testator is alive.

In this case, the 2nd respondent denied the execution of WILL in favour of the petitioner and more so, the WILL will come into effect only after the death of the 2nd respondent. The 2nd respondent executed registered gift deed dated 07.12.2007 in favour of his daughters. The petitioner also does not have any documents to show that the subject house is transferred in his favour, as such the transfer of the house in the municipal records in the name of the petitioner does not arise. More so, these are all disputed questions of fact which cannot be decided in the writ petition nor by the Municipal Commissioner, as petitioner failed to produce any valid documents.

In view of the same, I do not see any merit in the writ petition. Accordingly, the writ petition is dismissed. However, it is open to the petitioner to agitate his rights in the competent Civil Court. There shall be no order as to costs.

As a sequel, miscellaneous petitions pending if any, shall stand closed.

A.RAJASHEKER REDDY,J

Date: 24.06.2015

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