

* THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

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WRIT PETITION No. 30294 of 2014

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10.04.2015

Between

Bommaku Narsinga Rao and another

... Petitioners

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\$ 1. The State of Telangana and 6 others

...Respondents

! COUNSEL FOR THE PETITIONERS: Sri Jelli Kanakaiah

^ COUNSEL FOR RESPONDENTS 1 TO 4: Government Pleader

^ COUNSEL FOR RESPONDENTS 5 TO 7 : Sri. B. Sudhakar Reddy

< Gist:

> Head Note:

? CITATIONS: 2009 (2) ALD 212

2012 (5) ALD 576

2005 (1) ALD 485 (DB)

2000 (3) ALT 433

2006 (5) ALD 348

2003 (1) ALD 681

2002 (4) ALD 497

2013 (6) ALD 678

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

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WRIT PETITION No. 30294 of 2014

ORDER:

The writ petition is filed questioning the order dated 23.08.2014 passed by the 2nd respondent under Section 9 of the A.P. Rights in Land and Pattadar Passbooks Act, 1971 (for short, 'the ROR Act'), setting aside the order dated 20.01.2012 passed by the appellate authority confirming the orders of the Revenue Divisional Officer passed under Section 5(3) of the ROR Act.

2. The writ petition has both undisputed and disputed facts. For the purpose of clarity, it would be convenient to refer to the facts as recorded by the authorities as undisputed and disputed.

3. Undisputed facts:

Both the petitioners as well as the respondents 5 to 7 are lineal descendants of one Bommaku Lachaiah @ Laxmaiah. Bommaku Laxmaiah had two sons by name Balaiah and Narsaiah. Bommaku Laxmaiah's family had vast extents of lands, both

Inam and Patta lands, recorded in the revenue records in the names of Bommaku Laxmaiah, Balaiah and Narsaiah. Bommaku Balaiah has five sons, namely Yadaiah, Gangaiah, Rajaiah @ Rajalingam, B. Pochaiah and B. Chittari. Respondent No.5 is the son of Gangaiah and respondents 6 and 7 are the legal heirs of Bommaku Anjaiah who is the son of Rajalingam. Likewise, Narsaiah has three sons by name Ramaiah, Narsimha and Shankaraiah. Through a Registered Partition Deed bearing No.245/1960 dated 07.09.1960, Bommaku Laxmaiah's family partitioned their agricultural lands, thereby severing the relationship of joint family. Pursuant to the partition, the parties took possession of their respective shares and necessary entries in the revenue records were also got effected. So far as relevant to the dispute in the present writ petition is concerned, an extent of Ac.14-17 guntas in Survey No.201 came to the share of the family of the sons of Narsaiah, namely, Bommaku Ramaiah, Narsimha and Shankaraiah. The petitioners are sons of Bommaku Shankaraiah. In the revenue records, the names of Ramaiah, Narsimha and Shankaraiah were recorded as pattadars in Survey No.201 in the entire extent of Ac.14-17 guntas from 1960 onwards. Though Ac.14-17 guntas fell to the shares of Ramaiah, Narsimha and Shankaraiah in entire of proceedings before the lower authorities, there is no claim made by Ramaiah and Narsimha or any of their legal heirs with respect to Ac.4-32 guntas in Survey No.201, which is the subject matter of the writ petition. Petitioners belong to the family tree of Narsaiah and the respondents belong to the family tree of Balaiah.

4. The entire controversy in the writ petition is in relation to the property in Survey No.201 of Boduppall village, Ghatkesar mandal, over an extent of Ac.4-32 guntas out of a total extent of Ac.14-17 guntas in the said survey number. The petitioners' claim to record their names as successors of Late Shankaraiah (hereinafter referred to as 'petitioners') which came to be accepted by the Tahsildar, thus paving way for issuance of pattadar passbooks in their names, rejecting objections raised by the respondent No.6 and father of respondent No.7 (hereinafter referred to as 'the objectors'). The appeal filed by the objectors under Section 5(5) of the ROR Act was rejected by the appellate authority-Revenue Divisional Officer. In the revision filed by the objectors against the order in the appeal, the revisional authority set aside the order of the appellate authority, holding that the petitioners were not entitled to be recorded as successors of Late Shankaraiah in respect of Ac.4-32 guntas in

question and directed them to approach Civil Court.

5. Before the Tahsildar, the objectors filed their objections on 08.04.2011 primarily contending that:

(i) Through an Exchange Deed dated 25.03.1979, Ac.14-17 guntas of land in Survey No.201 was exchanged with Ac.5-23 guntas in Survey No.140 and they are in possession of the land and their names are reflected in possession column.

(ii) Due to urbanisation, all the recorded name holders have executed a General Power of Attorney in favour of one of the family members by name Bommaku Venkatesham, who made the land into plots and sold the same except an extent of Ac.3-00 guntas. The unsold land is in their possession and they are personally cultivating the same by constructing one side granite wall.

iii. The petitioners had suppressed the factum of Exchange Deed, and they are not the owners and possessors of land in Survey No.201 at any point of time after the execution of the Exchange Deed on 25.03.1979.

6. The Tahsildar rejected the objections holding:

(i) Unregistered Exchange Deed dated 25.03.1979 cannot be given credence and further the same was never implemented in revenue records. The objectors have not filed any valid documents in support of their claims and as such their objections were overruled.

(ii) The General Power of Attorney holder Venkatesham, S/o Edaiah filed an affidavit to the effect that the Shankaraiah was included in the General Power of Attorney only for the sake of family undivided property and the share of Shankaraiah to the extent of Ac.4-32 guntas in Survey No.201 is not included in General Power of Attorney and other remaining extent of land in Survey No.201 was already sold. Further, the petitioners are in custody of the unsold land in Survey No.201.

(iii) The revenue records reflect only the names of Bommaku Shankaraiah,

Bommaku Ramaiah and Bommaku Narsimha as pattadars, and neither Bommaku Swamy (the 5th respondent) nor their fathers were recorded as pattadars and as such they are in no way concerned with land in Survey No.201. The 5th respondent is the owner in Survey No.202 which is adjacent land to Survey No.201.

(iv) Mandal Revenue Inspector, after local enquiry, reported that Bommaku Shankaraiah, S/o Narsaiah, expired on 12.05.1999 and was cultivating the land in Survey No.201 in an extent of Ac.4-32 guntas. The petitioners are sons of Late Bommaku Shankaraiah. Further, in the land in Survey No.201, there is no plotting and the same is with clear boundaries and a compound wall built on one side and the petitioners are in possession of the same.

7. The appellate authority confirmed the orders of the Tahsildar and the objectors filed Revision under Section 9 of the ROR Act. The Revisional authority summarised the contentions of the objectors as under:

“Main Contents of Written Arguments Filed by Revision Petitioner

The revision petitioner filed their written arguments on 16.11.2013 and Addl. Rejoinder and written arguments on 22.11.2013 denying the contents of the counter filed by the R1 & R2. In support of his claim the Revision Petitioner filed certain copies of documents such as Encumbrance Certificates for last ‘33’ years from 28.06.1980 to 14.12.2013 issued by the Sub-Registrar, Uppal showing the sale of plots, in Sy.No.201 of Boduppal village, copy of Exchange Deed dated 25.03.1979, copy of GPA as Doc.No.267/1986 and copies of pahanies, layout maps approved by the Grampanchayat, Boduppal etc. The Revision Petitioner has contended that the land in Sy.No.201 has been converted into plots by the said GPA holder under four different layouts and that in the Pahani for the year 1998 also against Sy.No.201 the land use is recorded as plots and that the ROR Act is not applicable to the lands in question. As such they have prayed to allow the appeal and set-aside the orders of the RDO, R.R. East Division, dated 20.01.2012 & the Tahsildar, Ghatkesar, dated 06.07.2011.”

8. The revisional authority had set aside the order of the Tahsildar as confirmed by the appellate authority holding:

(i) The entire dispute is relating to the Exchange Deed dated 25.03.1979 and as it is the contention of the petitioners that there is a doubt with respect to the genuineness and the authenticity of the Exchange deed, it is for the petitioners to approach the competent Civil Court and establish the inauthenticity of the Exchange Deed. Burden of proof lies on the party who denies the document filed by the opposite party and it is beyond the scope of Revenue Court to decide the same, hence petitioners should approach Civil Court.

(ii) The Encumbrance Certificates issued by the Sub-Registrar for last 33 years reveal the sale of a good number of residential plots in the Gram Panchayat approved layout prepared in Survey Nos.201 and 202 and as such there is no agricultural land.

(iii) In the Column No.13, for the years 1987-88 to 2006-07 as against Survey No.201 recorded as plots, evidencing conversion of agricultural land for non-agricultural use from the year 1982 onwards and thus the ROR Act has no application. Thus, the Tahsildar had not verified these aspects and as such grant of succession in favour of the petitioners is not correct and the order requires to be set aside.

9. Heard Sri Jelli Kanakaiah, learned counsel for the petitioners, Sri B. Sudhakar Reddy, learned counsel for the contesting respondents and the learned Assistant Government Pleader for the Revenue. Both the counsels filed synopsis/written submissions.

10. In support of his case, Sri Jelli Kanakaiah, the petitioners' counsel, placed reliance on the judgments in **K. Pratap Reddy and others v. Joint Collector, Ranga Reddy District, Hyderabad and others, Vanga Narsa Reddy and another v. Joint Collector District Adilabad, Adilabad District and others, Musku Mallaiah v. State of Andhra Pradesh and another, Kondaveti Francis v. M. Ludramma and others**. Sri B. Sudhakar Reddy, learned counsel for the contesting respondents placed reliance on the judgments in **Syed Abdul Majeed and others v. Joint Collector-II, Ranga Reddy District and others** and also **K. Pratap Reddy (1 supra)**.

11. In the light of the admitted and undisputed facts, the issues that are required to be decided broadly are:

- i. Whether the order of the 2nd respondent is sustainable in law, particularly in the light of the provisions of the ROR Act.
- ii. Whether the finding recorded by the 2nd respondent that the land in Survey No.201 ceased to be an agricultural land, is contrary to the finding recorded by the authorities below and contrary to the material on record.
- iii. Whether the 2nd respondent is right in setting aside the order passed by the Tahsildar under Section 5(3) of the ROR Act, as confirmed by the Revenue Divisional Officer, placing reliance on the unregistered Exchange Deed dated 25.03.1979; and
- iv. Whether the 2nd respondent-revisional authority is right in directing the petitioners to establish the said document as fabricated and forged by observing that the burden of proof lies on the petitioners to establish the document dated 25.03.1979 is fabricated and forged.

12. To answer the questions and resolve the dispute in the present case, it may be necessary to make a reference to the provisions of the ROR Act and the Rules framed thereunder, especially Sections 2(4), 4, 5(1), 5(2), 5(3), 6-D(1) and 8; and Rules 4, 4(i), 9(1)(a)(i), 9(1)(a)(ii), 9(1)(c)(i) and 9(1)(c)(ii) in particular. In order not to burden the record, the provisions as such are not extracted.

13. In the light of the statutory scheme, the first thing that is required to be noticed in the present case is that the petitioners claim is to get their names recorded as successors of Late Shankaraiah with regard to the property over an extent of Ac.4-32 guntas in terms of Section 4 read with Section 5 of the ROR Act.

14. It is an admitted fact that with respect to Ac.14-17 guntas of land in Survey No.201, in the revenue records, Bommaku Ramaiah, Bommaku Narsimha and Bommaku Shankaraiah were recorded as the pattadars and enjoyers of the property; in exclusion of Bommaku Yadaiah, Gangaiah, Rajaiah @ Rajalingam, Pochaiah and Chittari. In other words, so far as the property in Survey No.201 is concerned, on account of the partition deed, exclusive ownership rights vest with three brothers. It is the case of the petitioners that their father and their two uncles among themselves have taken their individual shares over an extent of Ac.4-06 guntas and the particular property which is in issue fell to the share of the petitioners' father. It is also not in dispute that neither Sri Bommaku Ramaiah nor Bommaku Narasimha or any of their legal heirs claimed any right over the property and have objected in the present proceedings. In other words, so far as the succession rights are concerned, there is no dispute that the petitioners are the ones who are entitled to succeed as successors of Shankaraiah and their applications made under Section 4 of the ROR Act are required to be considered under Section 5(1) of the ROR Act read with Rule 9(1)(a)(i) of the Rules. In normal circumstances, the alteration/ amendments in the revenue records based on succession, the only persons who could have raised objections are Bommaku Ramaiah and Bommaku Narasimha or their successors. However, in the instant case, there was no objection from the above persons, who are the only persons who could have raised objections. The only objection received by the Tahsildar, in the process of considering the application of the petitioners under Section 5(1) of the ROR Act is from respondents 5, 6 and 7 who are the legal heirs of Gangaiah and Rajalingam, based on an unregistered Exchange Deed dated 25.03.1979.

15. The objections filed by respondents 5, 6 and 7 are required to be considered by the Tahsildar on the ground that they are the persons interested in the property based on their alleged acquisition of right, title over the property by virtue of the unregistered Exchange Deed and not as successors of Bommaku Shankaraiah. The objections are required to be considered in terms of Rule 9(1)(a)(i) read with Rule 9(1)(c)(ii). In other words, the claim and objections of the respondents are not as successors but in the capacity of persons who have acquired right and title to the property independently. It is admitted and undisputed fact as stated supra, that all along the revenue entries were in the name of Bommaku Ramaiah, Narasimha and

Shankaraiah.

16. Though respondents 5, 6 and 7 claim right over the property, that it is admitted fact that, at no point of time, neither by themselves nor their forefathers made an application under Sections 4 and 5 of the ROR Act, read with the Rules based on the alleged Exchange Deed dated 25.03.1979 seeking amendment of entries in the revenue records.

17. Now, applying the provisions of the ROR Act and Rules to the facts on record, on account of the statutory presumption contained in Section 6 of the ROR Act, correctness of the entries in the Record of Rights cannot be questioned at this point of time.

18. In that view of the matter, the objections raised by respondents 5, 6 and 7 were unsustainable and were rightly ignored by the respondents (the Tahsildar and the Revenue Divisional Officer).

19. Respondents 5, 6 and 7 did not seek to get the document regularized at any time by invoking Section 5(A) of the ROR Act. A careful reading of Rule 9(1)(a)(ii) prohibits taking cognizance of unregistered documents as evidence. Rule 9(1)(a)(ii) reads as under:

“All cases requiring change of registry necessitated by sale, gift, etc., through registered documents, if there is no dispute. In all cases of absolute transfer of title the Registry of a holding should be altered to correspond with the transfer of its ownership. Where registered holder should be enquired. The Parties involved in a transfer should be connected by a complete chain of registered documents. Unregistered documents are not admissible as evidence in this enquiry to prove the ownership or title of their property. Where the chain is not complete, no transfer of registry shall be done. Such cases shall be referred to the Mandal Revenue Officer, for disposal after confirmation of the Record of Rights for the Village.”

20. This is on account of the specific bar contained in Section 17 of the Registration Act read with Section 35 of the Stamp Act.

21. As the respondents 5, 6 and 7 not being successors of Bommaku Shankaraiah, they cannot be said to be the persons interested in succession proceedings under Sections 4 and 5 of the ROR Act read with Rule 9(1)(a)(i). Having held that the respondents 5, 6 and 7 cannot be said to have acquired any interest in the property, whether the Tahsildar was required to take into account the unregistered document while considering the applications of the petitioners, is a question to be answered. In the light of the prohibition contained in the Rules, the respondents 5, 6 and 7 by themselves could not have maintained an application under Section 4 and 5 of the ROR Act and, as a natural corollary, could not be said to be persons interested as successors.

22. The question can also be considered from another angle in terms of Section 5(3) r/w Rule 9(1)(c)(ii). In the case on hand, it is not that the Tahsildar himself had issued a notice considering the respondents 5, 6 and 7 are persons interested or affected by the proposed amendment in considering the application of the petitioners. Respondents 5, 6 and 7 themselves filed objections setting out their case. It is not that all and every objection raised before him are required to be considered by the Tahsildar. The procedure for raising objections and the circumstances under which the Tahsildar is required to consider such objections is prescribed by the Statute and the Rules. In that context, Section 8(2) of the ROR Act read with Rule 9(1)(c)(ii) so far as relevant (page 75) may be noticed. "Section 8(2)" gives a right to file a suit. In the present case, there is no suit filed by respondents 5, 6 and 7 staking their right. Though respondents 5, 6 and 7 claim their right, title and interest on the property by virtue of an unregistered Exchange Deed, they never chose to claim amendment of entries in their favour in the revenue records based on the said document. Further, they never filed a suit to enforce their right by resorting to Section 8(2) of the ROR Act. The method and manner of filing objections is set out in Rule 9(1)(c)(ii). Admittedly, there is no suit initiated asserting their right and seeking a declaration filed as required under Rule 9(1)(c)(ii). In those circumstances, the Tahsildar is not required to take into consideration the objections raised by respondents 5, 6 and 7 and his order cannot be found fault with for ignoring the same.

23. Yet another ground on which the revisional authority had set aside the order of the Tahsildar is on the ground of the land ceasing to be an agricultural land relying on the documents placed before him, particularly, the Encumbrance Certificates etc.

24. It is the specific contention of the petitioners' counsel that the Encumbrance Certificates etc, which are placed before the revisional authority are documents which were brought before Revisional Authority for the first time and that they are not relevant for the purpose of considering of the petitioners' application made under Sections 4 and 5 of the ROR Act, seeking amendment of entries in the revenue records as successors-in-interest of their father, Late Shankaraiah. The Tahsildar had got enquired into the nature of the property and after considering the same to be an agricultural land had allowed the application. The Tahsildar had taken into consideration the report of the Mandal Revenue Inspector apart from the affidavit of Bommaku Venkatesham. The Tahsildar had called for a report from the Mandal Revenue Inspector, who had also recommended succession be granted in favour of the petitioners. The report of the Mandal Revenue Inspector was totally ignored by the Revisional Authority. Instead, the Revisional Authority placed reliance on the encumbrance certificates etc., filed before him for the first time. How far they are relevant and whether the Mandal Revenue Inspector report could have been ignored is the question.

25. To answer the above questions, certain admitted facts like the report of the Mandal Revenue Inspector, the affidavit of Bommaku Venkatesham and the contents and the effect of GPA are required to be analysed.

26. Bommaku Venkatesham, the GPA holder, had filed an affidavit that the land of Ac.4-32 guntas in Survey No.201 belonging to Shankaraiah was not part of the layout and he has no objection to grant succession in favour of the petitioners was also taken into consideration by the Tahsildar. There is no contra finding recorded by the revisional authority. The said affidavit has to be read in the light of the report of Mandal Revenue Inspector. Though much emphasis was placed on the registered

GPA executed in favour of Bommaku Venkatesham, wherein the property in Survey No.201 was also mentioned, in the light of the affidavit by the GPA holder himself that the land over an extent of Ac.4-32 guntas belonging to the petitioners branch was not included and was not sold by him in exercise of the power conferred under the GPA and there being no claim from other possible successors-in-interest from the family of brothers of Shankaraiah, namely, Ramaiah and Narasimha, the finding recorded by the revisional authority that the land is converted into non-agricultural land and as such the provisions of ROR Act would not apply is a finding based on no material and is liable to be ignored.

27. The GPA executed in favour of Bommaku Venkatesham authorizing him to prepare layout and sell the properties is in general terms, authorizing Bommaku Venkatesham appointing him as an agent of the principals to do certain acts, is of limited value and does not throw much light, except to the extent that the land in Survey No.201 was also authorized to be converted into house sites and sold. As a matter of fact whether the share of Late Shankaraiah was also included and sold is not discernible from the GPA. However, in the light of the affidavit of Bommaku Venkatesham, the GPA holder himself, categorically stating that the land in Survey No.201 over an extent of Ac.4-32 guntas was not part of the layout scheme and the very fact that the respondents 5, 6 and 7 are objecting for grant of succession in revenue records in favour of the petitioners leave no manner of doubt that there exists land as defined under Section 2(d) of the ROR Act which includes in its definition “not only the land used but also is capable of being used for the purpose of agriculture” with respect to which the provisions of ROR Act apply.

28. Apart from this, on 08.04.2011, in the objections filed on behalf of the petitioners, Bommaku Swamy S/o Late Gangaiah, had himself categorically stated that atleast an extent of Ac.3-00 guntas in Survey No.201 remained unsold and not converted into plots and the same is being cultivated by them. In the face of the admission of respondents 5, 6 and 7, the revisional authority, without any material, ignoring the report of the Mandal Revenue Inspector and the affidavit of the GPA holder- Bommaku Venkatesham, could not have come to a different conclusion that the land on the ground has been converted into house-site plots and ceased to be an

agricultural land. It may well be remembered, the crucial date is not the date on which the revisional authority is considering the case, but the date on which the petitioners are entitled to be considered their application.

29. Both the counsels relied on the judgment of this Court in **K. PRATAP** (1 supra). In my considered opinion, the said judgment does not support the case of the respondents counsel, in any way. The said judgment considered various precedents elaborately. It noticed that the power conferred on the revenue authorities to determine the rights of the parties with respect to succession even in a summary enquiry subject to the limitations placed on them in the ROR Act and the Rules. The limitation placed in the ROR Act, one which is required to be taken into consideration by the revenue authorities is contained in Section 8(2) read with Rules 9(1)(a)(ii) and 9(1)(c)(ii).

30. This Court also noticed the judgment of **V. Goutham Rao v. Revenue Divisional Officer** and the judgment in **Sannepalli Nageswar Rao v. District Collector**. The sum and substance is that the procedure prescribed under the ROR Act has to be followed in letter and spirit by the party who seeks remedy under the ROR Act and the Rules. In that view of the matter, in the present case, as already noticed, in the absence of the respondents approaching the Civil Court ascertaining their right on the basis of the Exchange Deed, the Tahsildar ignoring the same and granting amendment in the revenue records in exercise of power under Section 5(3) of the ROR Act, recognizing the petitioners as successors of their father Late Shankaraiah, cannot be said to be erroneous and interfered with by the revisional authority in exercise of powers conferred under Section 9 of the ROR Act.

31. When the revisional authority found fault with the Tahsildar in allowing amendment of entries in revenue records in favour of the petitioners by way of succession, the claim of the respondents 5, 6 and 7 is that there exists a dispute with respect to the property on account of unregistered Exchange Deed dated 25.03.1979. While dealing with this aspect, advertent to the claim of the petitioners that the document is sham, non-existent, fabricated and forged, the Revisional Authority had held that the burden of proof lies on the petitioners who alleges fabrication and forgery, and thus directed them to approach Civil Court to establish

their claim. By making such a statement, the petitioners claim is sought to be negated. While there can be no dispute that the law with respect to burden of proof, i.e., legal burden in cases of allegations of fabrication and forgery of document lies on the person who alleges so, the crucial aspect on this issue is also well settled that there lies an initial onus on the party who relies on the document to prove its truth, validity and binding nature. Only after discharge of such onus, the onus shifts to the other party who alleges fabrication and forgery to prove his stand. In the present case that initial burden of existence of a document and its true nature has not been discharged by respondents 5, 6 and 7 and the respondents 5, 6 and 7 had also failed to follow the procedure prescribed for asserting their right based on the unregistered Exchange Deed. The law is also well settled that he who asserts title must prove. In the impugned order, the burden is wrongly cast on the writ petitioners, whose father's name admittedly finds place in the records as registered holder. In that view of the matter, the only legal ground on which the order of the Tahsildar, passed in exercise of powers conferred under Section 5(3) of the ROR Act, and confirmed by the Revenue Divisional Officer is set aside, is unsustainable.

32. The revisional authority's order is contrary to the law declared by this Court in **Basireddy Rukminamma v. The Joint Collector, Kadapa** wherein this Court had held that the revisional authority having come to the conclusion that there is a serious dispute between the parties, requiring them to settle the same before the Civil Court could not have interfered with the pattadar passbooks and title deeds issued in favour of the petitioners therein.

33. In the result, the writ petition is allowed. No costs.

Miscellaneous petitions, if any, pending in this writ petition shall stand closed.

CHALLA KODANDA RAM, J

10th April, 2015

KSM