HONOURABLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION No. 14743 OF 2001

Date :2.3.2015

Between :

Koranga Mothiram S/o Bagwanth Rao
(adopted father) age 33 years
R/o Chandapalli village, Bale mandal,
Adilabad district

… Petitioner

and

Joint Collector, Adilabad,
Adilabad district and others

… Respondents

The Court made the following:

THE HON'BLE SRI JUSTICE P NAVEEN RAO

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ORDER:

Case of the petitioner is that person by name Sitharam had two children viz., Sri Bagwanth Rao and Sri Bujanga Rao, petitioner herein is one of the five children of Sri Bujanga Rao. Bagwanth Rao was issueless, therefore Bagwanth Rao adopted petitioner herein and to that extent declaration was also issued under A.P. Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 . After demise of Bagwanth Rao, petitioner therefore succeeded to the property of Bagwanth Rao. However, erroneously the property was apportioned between three sons of Sri Manik Rao by order passed by Mandal Revenue Officer on 13.5.1988. Sri Bagwanth Rao married Laxmibai who died issueless. Thereafter Sri Bagwanth Rao married Sonu Bai and by the time of said marriage, Sonu Bai was already conceived and child i.e., Manik Rao was born after the marriage. Sri Manik Rao was illegitimate son of Bagwanth Rao.

During the life time of Bagwanth Rao, he did not accept Manik Rao as his son and they did not live together and therefore the question of apportionment of the property to three sons of Manik Rao was illegal. Having come to know about the same, petitioner filed appeal before the Revenue Divisional officer and Agency Magistrate, Adilabad district. The Revenue Divisional officer without appreciating the contentions urged by the petitioner, dismissed the appeal by order dated 13.5.1988. Aggrieved thereby, petitioner preferred revision before the Joint Collector, Adilabad. The Joint Collector by order dated 25.9.1988 dismissed the revision as time barred without going into the merits. A review petition was filed before the Joint Collector and by order dated 8.8.1989 the review petition was allowed and matter was remanded for reconsideration for denova enquiry by the Agency Divisional Officer and Revenue Divisional Officer Adilabad and on such remand the Revenue Divisional Officer without appreciating the contentions urged by the petitioner dismissed the appeal vide order dated 21.12.1992. Aggrieved thereby, petitioner filed revision before the Joint Collector, Adilabad. The Joint Collector, Adilabad dismissed the revision by his order dated 19.7.1997. Aggrieved thereby, this writ petition is filed.

2. Heard the learned counsel for petitioner, learned Assistant

Government Pleader and Sri T Sujon Kumar learned counsel for respondents 7 to 10.

3. Learned counsel for petitioner contends that under the Indian Stamp Act, no authority is vested in any officer including Mandal Revenue Officer to grant partition under Section 15 (1) of the Stamp Act, whereas Mandal Revenue Officer order dated 13.5.1988 is in the form of partition deed apportioning the properties belonging to late Bagwanth Rao and said action is ex-facie illegal. The Appellate Authority and Revisional Authority failed to appreciate the said contention and upheld the decision of the Mandal Revenue Officer.

4. Learned counsel further contended that Sri Manik Rao was illegitimate son of Sri Bagwanth Rao and Sri Bagwanth Rao never recognised
Sri Manik Rao as his son, thus, when declaration was required to be filed under the A.P. Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 name of petitioner was shown as adopted son in the first page of the declaration, which is evidence of such adoption of petitioner. Thus, he alone is entitled to succeed to the properties of Sri Bagwanth Rao being adopted son. Sri Bagwanth Rao is tribal and adoption was made according to tribal customs, thus, there is no other material available on record to prove that petitioner is adopted son except the declaration under the Act, 1973 which clinches the fact that petitioner was recognised as adopted son and therefore he alone is entitled to succeed to properties of Sri Bagwanth Rao.

5. Learned counsel for petitioner further contended that in the agency area, Civil Courts have no jurisdiction to deal with any dispute and therefore Joint Collector erred in holding that petitioner should approach Civil Court for establishing his right to claim the property as adopted son, whereas he ought to have decided the matter.

6. Learned counsel for petitioner further contended that order of Mandal Revenue Officer is liable to be set aside on the sole ground that no notice or opportunity was afforded to the petitioner and Mandal Revenue

Officer could not have decided the status of ownership without putting the affected parties on notice.

7. Sri T Sujon Kumar, learned counsel for respondents 7 to 10 submits that Sri Manik Rao was blessed with three sons and one of them was named as Sri Moti Ram in the declaration filed under the Land Reforms Act and the name of Sri Moti Ram was mentioned and shown as adopted son and as father's name was not mentioned, writ petitioner is taking advantage of the same to claim as adopted son of Sri Bagwanth Rao. He further contended that it is a false claim set up by the writ petitioner and writ petitioner is not entitled to succeed to the properties of Sri Bagwanth Rao. The property was validly devolved on the children of Sri Manik Rao and writ petitioner is no way concerned with the family of Sri Bagwanth Rao. Merely because he is son of brother of Sri Bagwanth Rao, he has no right to claim the property and there is no merit in the contention of the petitioner that he should have been heard by the Mandal Revenue Officer, before orders were passed on 13.5.1988.

8. Learned Assistant Government Pleader produced the declaration given by Sri Bagwanth Rao under Land Reforms Act. The original record produced disclose that name of Sri Moti Ram is mentioned as adopted son showing the age as 9 years. A note is appended stating "since I do not have children, I have taken on adoption Moti Ram'. No other details are mentioned.

9. As contended by the respondents, which is not denied by the petitioner, one of the sons of Mr Manik Rao is also named as Moti Ram, therefore, which Moti Ram is taken on adoption is not clear. No other material is placed before this Court by the petitioner to show that he was the adopted son. Petitioner has not made any effort to ascertain the fact of age of children born to Sri Manik Rao and whether the age description shown in the declaration is applicable to him or any other person. As evident from the orders passed by the Revenue Divisional Officer and Joint collector, sufficient opportunity was afforded to the petitioner to establish that he was adopted son of Sri Bagwanth Rao. Except contending that he was adopted son of

Sri Bagwanth Rao and that Sri Bagwanth Rao and Sri Manik Rao are not in good terms, petitioner has not brought on record any material to substantiate his claim that he was adopted by late Bhagwanth Rao. Furthermore, except contending that on the death of Sri Bagwanth Rao, Manik Rao has not attended the funeral, he has not stated who has performed the funeral rights.

10. The Revenue Divisional Officer as well as Joint Collector have considered the issue in detail, analysed the contentions of petitioner and having found that no material is brought on record to show that he was adopted by late Bagwanth Rao, have not accepted the stand of the petitioner that he was entitled to succeed to the properties of Sri Bagwanth Rao and not the respondents. In exercise of certiorari jurisdiction against orders passed by the quasi judicial authorities the Court tests the decisions of such authorities only with reference to observance of procedural safeguards, jurisdictional error and whether reasoning assigned in support of the decision is patently illegal and unconceivable. In the instant case as noticed above, no other material is placed on record to substantiate the claim of the petitioner that he was adopted son of Sri Bagwanth Rao. The material on record of the writ petition and the record produced by the Assistant Government Pleader is not sufficient to dis-lodge the findings recorded by the Authorities with reference to claim of the petitioner for succeeding to the properties of Sri Bagwanth Rao. There is no jurisdictional flaw. The authorities given been ample opportunity to the petitioner to establish his claim. Thus, it cannot be said that the decisions taken by the Appellate Authority and Revisional Authority are patently illegal warranting interference by this Court.

11. Lastly learned counsel for petitioner pointed out that for schedule tribes belonging to agency area, Civil Courts have no jurisdiction and the Agency Court alone has to deal with all the civil matters, therefore the observation of the Joint Collector, Adilabad that petitioner should avail the civil remedy regarding status of adopted son of Sri Bagwanth Rao is erroneous. It is only an observation, It does not bind the petitioner to

approach appropriate Court having jurisdiction to decide the issue of adoption. Thus, it is open to the petitioner to avail the appropriate remedies as available to him in law to establish his status as adopted son of Sri Bagwanth Rao.

12. I see no error in the decision arrived at by the Agency Divisional Officer cum Revenue Divisional Officer affirmed by the Joint Collector impugned in the writ petition warranting interference by this Court. Accordingly, the writ petition is dismissed, leaving it open to the petitioner to workout his remedies available under law to establish his status as adopted son of Sri Bagwanth Rao. No costs. Having regard to the same, miscellaneous petitions are closed.

P NAVEEN RAO,J

DATE:2.3.2015
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HONOURABLE SRI JUSTICE P. NAVEEN RAO

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