

**HON'BLE SRI JUSTICE C.PRAVEEN KUMAR**

**WRIT PETITION No. 5669 of 2012**

**ORDER:**

Assailing the order dated 09.12.2011 passed by the Joint Collector, Mahabubnagar vide proceedings in Case.No.D1/24/2010 in File No.D1/881/2010, the present Writ Petition is filed seeking issuance of writ of Certiorari calling for the records in the above case from the office of the Joint Collector, Mahaboobnagar, and set-aside the above order by declaring the same as illegal, arbitrary and contrary to the specific provision contained in S.5(b) & 9 of the A.P. Rights in Land and Pattadar Pass Books Act, 1971; and consequently set-aside the order dated 31.01.2009 in File No.A/2237/08 passed by the Revenue Divisional Officer, Narayanpet, Mahabubnagar District.

The averments in the affidavit filed in support of the Writ Petition are as under :

One Smt. Govinolla Balamma w/o. late Govinolla Gopi Reddy was the absolute owner and possessor of the land bearing in Sy.No.568, 569 and 570 to an extent of Ac.20-83 cents, Ac.0.08 cents and Ac.2.48 cents respectively situated within the limits of Makthal village and Mandal, Mahabubnagar District. On 28.04.1998 the said Balamma died issueless. Her husband pre-deceased her. The Petitioner No.1 claiming herself to be the Class-II heir of late Balamma made an application in Form VI-A before the Mandal Revenue Officer, Makthal seeking to mutate the property bequeathed by late Balamma in her name. After following the due procedure and after conducting enquiry, the Mandal Revenue Officer (R-4) passed an order on 27.03.2003 amending the entries in ROR in the name of the first petitioner and accordingly entered the name of the first petitioner in the revenue records. Later the 1<sup>st</sup> petitioner is alleged to have sold the above said lands to the 3<sup>rd</sup> petitioner herein vide registered sale deed dated 05.02.2008 bearing Doc.No.143/2008 and 144/2008 registered in the office of the Sub-Registrar, Makthal. Since then the petitioners 2 and 3 who are brothers claim to be in possession of the said property. Thereafter, they made an application to M.R.O., Tahasildar for amendment of revenue records in their name. At that point of time, respondents 5 and 6 herein also filed an application seeking mutation of their names in the records on the ground that the said Balamma executed a Will in their favour bequeathing the property. The respondents 5 and 6 also preferred appeal before the Revenue Divisional Officer, Narayanapet vide ROR.No.2237/2008 seeking to delete the name of the first petitioner. By an order dated 31.01.2009, the R.D.O., set-aside the entries made in the name of the 1<sup>st</sup> petitioner and ordered deletion of the name of the 1<sup>st</sup> petitioner from revenue records. He further directed the M.R.O., to conduct an enquiry to consider the claim of the respondents 5 and 6 for implementation of the Will deed dated 27.03.1997. Aggrieved by the order dated 31.01.2009 the petitioners 2 and 3 filed a Revision before the Joint Collector, Mahaboobnagar. By an order dated 09.12.2011 the said Revision was dismissed directing the parties to approach the Civil Court challenging the Will deed. Aggrieved by the said order, the present Writ Petition is filed.

A counter came to be filed by the respondents 5 and 6 denying the averments made in

the Writ Petition except those which are specifically admitted by them. It is their case that the 1<sup>st</sup> petitioner herein got mutated her name as pattedar by claiming herself to be the legalheir of late Smt. G.Balamma. It is stated that the 1<sup>st</sup> petitioner is the wife of younger brother of the husband of Balamma and therefore, under the provisions of Hindu Succession Act, the 1<sup>st</sup> petitioner cannot be a legalheir to late Balamma. It is further stated that the 5<sup>th</sup> respondent is the younger son of the brother-in-law of late Balamma, who is also the son of the 1<sup>st</sup> petitioner, and the 6<sup>th</sup> respondent is grandson of Balamma through another branch. It is said that due to the close relationship, late Balamma lived with respondents 5 and 6 and made the Will dated 27.03.1997. Basing on the said Will deed, R-5 and R-6 made an application for mutation of their names in the revenue records. At that time the 1<sup>st</sup> petitioner obtained passbooks and title deeds in respect of the above lands by making false representations and subsequently executed sale deeds in favour of the petitioners 2 and 3 who are none other than the grand sons of the 1<sup>st</sup> petitioner, being the sons of his own daughter Ramulamma. Since the mutation was obtained by fraud, the respondents 5 and 6 preferred an appeal before the Revenue Divisional Officer, who after conducting a regular enquiry allowed the appeal by an order dated 31.01.2009. The said order of R.D.O., was confirmed by the Joint Collector. In view of the categorical finding by the two Authorities holding that there was a Will and the same was executed in favour of R-5 and R-6 by late Balamma, this Court cannot re-appreciate facts under Article 226 of the Constitution of India and come to a different conclusion. It is further stated that even in the absence of Will deed executed by Balamma, 5<sup>th</sup> and 6<sup>th</sup> respondents who are the legalheirs of late Balamma within the meaning of Sections 8 and 15 of the Hindu Succession Act are entitled to get their names recorded as Pattedars of the said land. Therefore, it is contended that the orders passed by the 2<sup>nd</sup> and 3<sup>rd</sup> respondents dismissing the appeal of the petitioners warrants no interference.

The question that falls for consideration is "Whether the 1<sup>st</sup> petitioner who is said to be the co-sister of late Balamma is entitled to inherit the property of late Balamma?"

Both the Forums, namely the Revenue Divisional Officer and the Joint Collector, rejected the request of the petitioners. It is to be seen that by an order dated 31.01.1999 the R.D.O., Narayanapet after hearing bothsides in the Appeal filed under Section 5(5) of A.P. Rights in Lands and Pattedar Pass Book Act 1971, allowed the appeal and set-aside the order of M.R.O. He further directed the Tahasildar to conduct detail enquiry on the claim made by the appellants therein for implementing the Will deed dated:27.03.1997 and also on the claim of respondent No.1 and her vendees i.e., Respondents 2 and 3 therein by giving adequate opportunity to either parties to produce evidence in support of their claims and dispose of the case within three months. Challenging the said order, a Revision came to be filed before the Joint Collector under Section 9 of R.O.R. Act, 1971. After considering the entire material on record and after hearing both the parties, the Joint Collector, observed as under :

"In this case the Revision Petitioner No.1 herein is claiming declaration of the title over the suit lands, stating that she is alone the legal heir of original pattadar Smt. G.Balamma. But the revision Petitioner No.1 herein has not produced, any documentary evidence in support of her claim. There is a dispute with regard to title over the subject lands between the Revision Petitioners and Respondents herein. As per the High Court rulings of 1999 (5) ALT-480 and 2006(6) ALT (523) the powers of Revenue Courts are very limited and they are not supposed to decide the Civil rights between the two parties. The relief provided under the provisions of A.P. ROR in land and

pattadar pass Books Act, 1971 as amended by Act 1 of 1980 is with regard to correction of irregular entries if any made in the ROR only. As per the High Court rulings discussed as above, the Revenue Courts have no jurisdiction to deal with the cases of civil nature and Civil Courts alone are competent to decide such matters.

In view of the above circumstances, the Revision Petitioner is hereby dismissed. The Revision Petitioners herein are advised to approach the Competent Civil Court seeking redressal in the matter."

From a reading of the order passed above, it is clear that there was a dispute with regard to the title over the subject lands between the first petitioner herein and respondents 5 and 6.

In ***K.Siddiah Naidu v. District Collector and others***<sup>[1]</sup> and ***Yanala Malleshwari and others v. Ananthula Sayamma and others***<sup>[2]</sup> it is 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 ***Kuthuru Narasimha Reddy v. Pusala Venkataiah and others***<sup>[3]</sup> 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 relief which the Authorities can grant under the ROR Act is only with regard to the corrections of any entries made in the ROR register. Neither the Tahasildar nor the R.D.O., nor the Collector have any right or jurisdiction to decide as to the ownership of the land.

As stated earlier, the learned counsel for the petitioner mainly contended that the finding of the R.D.O., which are based on a Will deed, which has not seen the light of the day, cannot be accepted. It is his case that the Will is not produced before this Court and as such any order passed on the Will deed cannot be said to be in accordance with law. The entire order of the R.D.O., is based on a Will deed said to have been made by late Bamma in favour of respondents 5 and 6, but the Joint Collector without looking into the existence or otherwise of the Will deed held that it is only civil court which is proper forum to decide as to who the actual owner of the property is. In fact this Court in the judgments referred to above has categorically held that the issue of ownership over any property, where there is a dispute with regard to title, can only be decide by a competent civil court.

Further, the learned counsel for the petitioners submits that since the first petitioner happens to be wife of brother of the husband of Bamma, she is entitled for the property as a legal heir. It is to be noted that in the instant case, Bamma inherited the property after the death of her husband and died issue less. Such being the position, under Section 15 (2)(b) of the Hindu Succession Act, 1956, any property inherited by a female Hindu from her husband or father-in-law shall devolve upon heirs of the husband, in the absence of any son or any daughter of the deceased (including the children of any pre-deceased son or daughter). Section 15(2)(b) of the Hindu Succession Act, read as under :

"Section 15 (2).....

(a).....

(b) any property inherited by a female Hindu from her husband or from her father-in-law shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter) not upon the

other heirs referred to in sub section (1) in the order specified therein, but upon the heirs of the husband.”

Further, Section 8 of the Hindu Succession Act, which deals with rules of succession in the case of males, would show that the property of a male Hindu dying intestate shall devolve according to the provision of that Chapter-

- (a) firstly, upon the heirs, being the relatives specified in class I of the Schedule;
- (b) secondly, if there is no heir of class I, then upon the heirs, being the relatives specified in class II of the Schedule;

As per the Schedule if there are no heirs in class-I, then the heirs of class II i.e., brother’s son, who stands at serial No.4 will inherit to the property.

In the instant case, Balamma died issueless and hence the respondent No.5, who claims himself to be the brother’ son of the husband of late Balamma, shall inherit the property. In my view these aspects also need to be established in a civil court. Hence, the writ petition is dismissed leaving it open to the petitioners to approach the civil court for an appropriate relief. It is made clear that any observation made in the order are only for deciding the issue on hand and the same shall not influence the civil court in the proceedings if any to be initiated.

Accordingly, the Writ Petition is dismissed. No order as to costs. Miscellaneous petitions pending if any in this Writ Petition shall stand closed.

**JUSTICE C. PRAVEEN KUMAR**

Date: 27.08.2015

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[\[1\]](#) 1999 (5) ALT 480  
[\[2\]](#) 2006 (6) ALT 523  
[\[3\]](#) 2011 (5) ALT 564