

HONOURABLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.38930 OF 2012

ORDER :

The case of the petitioner is that the petitioner No.1 purchased the land admeasuring Ac.8-20guntas in Sy.No.737 through registered sale deed bearing document No.1307/2004, dated 17.09.2004 and petitioner No.2 and 3 purchased the land admeasuring Ac.11-32guntas through registered sale deed bearing document No.1308/2004 dated 17.09.2004 from the 5th respondent and after conducting enquiry passed order dated 25.08.2004 for recording the name of the 5th respondent in current pahanies with necessary entries in Form No.2 mutation register. The 5th respondent acquired the said land through Will deed dated 04.01.1981 executed by one N.Rukma Bai, the original pattadar of the above lands. Aggrieved by the said order, the 4th respondent filed an appeal before the 2nd respondent under Section 5(B) of Andhra Pradesh Rights in Land and Pattadar Pass Books Act, 1971 (for short 'the Act) and the same was allowed vide order dated 26.06.2006 by setting aside the order dated 25.08.2004 cancelling the pattadar pass books and title deeds issued in favour of the 5th respondent and directing to incorporate the name of the 4th respondent in the pattadar column by deleting the name of the 5th respondent. Aggrieved by the same, the 5th respondent filed Revision before the 1st respondent and the same was dismissed vide proceedings bearing No.D1/3045/2006 dated 29.08.2012. Aggrieved by the same, the petitioners preferred the present writ petition.

Though notice is served on the respondents, no counter is filed and there is no appearance on behalf of the respondents.

Learned counsel for the petitioners submits that O.S.No.194/2004 filed by the 4th respondent against the 5th respondent and petitioner No.1 for declaration of title and recovery of possession and cancellation of sale deed No.1307 of 2004 dated 17.09.2004 executed by the 5th respondent in favour of the petitioner No.1 and O.S.No.195/2004 filed by the 4th respondent against the 5th respondent and petitioner No.2 and 3 for declaration of title and recovery of possession and cancellation of sale deed No.1308 of 2004 dated 17.09.2004 executed by the 5th respondent in favour of the petitioner No.2 and 3 were dismissed and the suit filed by the 5th respondent along with petitioners in O.S.No.3 of 2005 in respect of the subject lands was allowed by the common judgment. He also submits that the 1st respondent while dismissing the Revision observed that the Second Appeal No.197/2007 filed by the 5th respondent along with petitioners against the exparte decree and judgment passed in O.S.No.195/2004 filed by the 4th respondent is pending. Subsequently the said second appeal was allowed and the matter was remanded back for sufficient consideration. Thereupon O.S.No.195 of 2004 was dismissed by common judgment dated 30.03.2016. He also submits that the 3rd respondent vide proceedings dated 25.08.2004 allowed the application of the 5th respondent for mutation as well as for grant of pattadar pass books and title deeds basing on the Will deed executed by the original pattadar and basing on the declaration filed by the 5th respondent before the Land Reforms Tribunal. He also submits that the 3rd

respondent passed the said orders after calling for objections. He further submits that the appellate authority without considering the fact that the Rukma Bai was the original pattadar and Subhadra Bai was the daughter of Rukma Bai, allowed the appeal. When once Rukma Bai executed the Will in favour of the 5th respondent and when the same was made basis for mutation of her name in the revenue records, the appellate authority could not have allowed the appeal filed by the 4th respondent, by observing that the Will executed in favour of the 5th respondent is an unregistered one. He submits that the suits filed by the 4th respondent in O.S.No.194 and 195 of 2004 were dismissed holding that the 5th respondent is claiming the subject land basing on the Will executed by the great grand mother of the 4th respondent. The Revisional authority dismissed the Revision holding that the Second Appeal filed by the 5th respondent along with petitioners is pending.

It is to be seen that admittedly the 5th respondent is claiming for mutation of her name in the revenue records in respect of the subject land basing on the Will deed dated 04.01.1981 executed by one Rukma Bai, who also filed for declaration before the Land Ceiling authorities in C.C.No.2339-2340/KNR/75. Apart from that the 5th respondent also filed declaration in Form No.1 under Section 18 of the A.P.Land Reforms Act, 1973 on 17.08.1991 declaring the subject lands. Since Rukma Bai, the declarant in CC.No.2439/KNR/75 died on 04.03.1981, the Will deed came into effect from 04.03.1981 and basing on the said Will deed, the 3rd respondent issued proceedings dated 25.08.2004. Further, the 2nd respondent allowed the appeal filed by the 4th respondent only on

the ground that the name of the Subhadra Bai is entered in the revenue records and not the name of the Rukma Bai and also on the ground that the Will deed executed in favour of the 5th respondent is not a registered one, which is erroneous.

The suits filed by the 4th respondent in O.S.No.194 and 195 of 2005 against the 5th respondent and the petitioners seeking declaration and recovery of possession and for cancellation of sale deed bearing Doc.Nos.1307 and 1308 of 2004 dated 17.09.2004 executed by the 5th respondent in favour of the petitioners in respect of the subject lands were dismissed on merits and in the said suits the 5th respondent claimed the property basing on the Will deed dated 04.03.1981 executed by one Rukma Bai. In view of the same, the order passed by the appellate authority has to be set aside. However, the Revisional authority dismissed the Revision only on the ground that the Second appeal filed by the 5th respondent and the petitioners is pending. The suits filed by the petitioners and 5th respondent in O.S.No.3 of 2005 was allowed by common judgment dated 30.01.2006 while dismissing the suits filed by the 4th respondent. In view of the same, the order of the appellate authority and Revisional authority have to be set aside. Accordingly, the same are set aside and the order of the 3rd respondent is restored.

Accordingly, the writ petition is allowed. However, any entries made in respect of the subject lands will be subject to further orders if any, in the appeal filed against the judgment in O.S.No.194 and 195 of 2005. No costs.

As a sequel thereto, miscellaneous petitions, if any, pending in the writ petition, shall stand closed.

A.RAJASHEKER REDDY, J

24.11.2016

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