

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

WRIT PETITION No.7291 of 2009

ORDER:

The petitioner claims that she is owner of house bearing No.11-24-94, Deshaipet Road, Warangal and her husband's name was recorded in the municipal records as owner and possessor. Her husband died on 23.08.2007 leaving behind him the petitioner and her children. After the death of her husband, some disputes with regard to property arose between her, her mother-in-law and the 3rd respondent, brother-in-law. The petitioner's mother-in-law executed a registered gift settlement deed on 11.09.2007 in favour of the 3rd respondent. On the basis of the said document, he submitted an application on 26.03.2008 to the 1st respondent seeking mutation of his name in the records. After receipt of the said application, the 2nd respondent issued a notice on 13.11.2008 calling for the explanation of the petitioner to submit the proof of documents relating to the said property. She submitted an explanation on 28.11.2008 stating that on the basis of an earlier document executed by her mother-in-law before Notary Public on 15.12.2003, the name of the husband of the petitioner was mutated and after mutation she is not entitled to execute another registered gift settlement deed in favour of the 3rd respondent. When an order was passed on 05.12.2008 mutating the name of the 3rd respondent in the register of property in respect of the above property, the present writ petition was filed.

2. A counter affidavit was filed stating that as per the available record, the property stood in the name of one Ch.Someshwar Rao, who

is husband of the petitioner. However, the 3rd respondent submitted a representation as aforesaid and the mutation was effected after considering the explanation submitted by the petitioner. It is also stated that the open house plot was purchased by the mother-in-law of the petitioner from one Mettu Vijaya under a registered sale deed dated 11.07.1983 and there on, the house bearing No.11-24-94 was constructed. Since the mother-in-law of the petitioner executed a registered document in favour of the 3rd respondent, though earlier she executed a notarised declaration affidavit dated 15.09.2007 permitting mutation in the name of the husband of the petitioner for convenience sake, the earlier affidavit cannot have any validity in view of the registered document executed in favour of the 3rd respondent. It is also stated that in the impugned proceedings dated 05.12.2008 the petitioner was asked to approach the Civil Court for redressal of her rights.

3. The Rules issued under the Greater Hyderabad Municipal Corporation called the Hyderabad Municipal Corporation (Registry of the Transfer of Ownership of Properties in the Assessment Book) Rules, 1965, govern the cases of mutation of names in the property registers. In respect of transfers, which accrue by succession, they provide that the Commissioner on production of evidence to his satisfaction can transfer the ownership, in other case, where property vests in a person either on succession or by inheritance or request or by otherwise. In the instant case, admittedly, the mother-in-law of the petitioner was owner of the property and earlier she executed an affidavit in favour of the husband of the petitioner for the convenience sake, but no

document exists in favour of the husband of the petitioner. She merely expressed her no objection for mutating the name, later on, she executed a registered gift settlement deed on 11.09.2007 in favour of the 3rd respondent, which was taken into consideration by the Commissioner in passing the impugned order dated 15.12.2008.

4. In view of the above facts, the decision of respondents 1 and 2 in taking the registered document into consideration in the place of the earlier affidavit executed by mother-in-law of the petitioner cannot be held illegal. The impugned order also speaks of the liberty given to the petitioner to establish her rights in a competent Court of law.

5. In view of this, the Writ Petition is dismissed giving liberty to the petitioner to approach competent Court of law, if she claims any right to the property and in the said proceedings she can seek the consequential relief for mutation of her name in the property registers.

Consequently, Miscellaneous Petitions, if any, pending in this writ petition shall stand closed. There shall be no order as to costs.

JUSTICE A.RAMALINGESWARA RAO

Date:22.11.2016
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