

THE HON'BLE SRI JUSTICE A. RAJASHEKER REDDY

WRIT PETITION No.22236 OF 2007

ORDER:

This Writ Petition is filed seeking to call for the records in Case No.D5/3357/04, dated 07.10.2005, and quash the same, and consequently, to direct the respondent authorities to include the names of petitioners in the revenue records.

2. The case of petitioners is that one Rasool Bee, wife of Hussain Khan, was the pattadar of land admeasuring Ac.13-06 guntas covered by Survey No.207 situated at Madharam Village of Pargi Mandal, and was in possession and enjoyment of the same till her death. As she died without issues, the subject property devolved on the next heirs. Petitioner No.1 and father of petitioner No.2 claiming that they fall under Class-I and Class-II heirs filed an application before respondent No.3 for incorporating their names in the Revenue Records. While so, respondent No.4, who is a distant relative of late Rasool Bee, claimed right over the subject property stating that the same is the ancestral property of late Rasool Bee, his grand mother, and she has executed a gift deed in his favour. Hence, the petitioners made an application for correction of their names in the pass books. Basing on the same, respondent No.3 has conducted enquiry by informing the concerned parties and vide proceedings

No.B/3663/96, dated 03.04.1997, stating that petitioner No.1 and father of petitioner No.2 are share holders of the subject property, ordered to effect necessary changes in the records and also instructed the Village Administrative Officer to issue pattadar pass books. Aggrieved by the same, respondent No.4 filed an appeal before respondent No.2, under Section 5 (5) of the A.P. Rights in Land and Pattadar Pass Books Act, 1971 (for short, 'the Act'), but as the same was dismissed, he preferred a revision before respondent No.1, under Section 9 of the Act, and the same was disposed of by impugned order, dated 07.10.2005, setting aside the order of respondent No.2 as well as the order of respondent No.3. Stating that the impugned order was passed without issuing any notice as contemplated under the Act and without giving any opportunity of hearing to the petitioners, the present Writ Petition is filed.

3. Counter affidavit is filed by respondent No.4 disputing that the petitioners are legal heirs of late Rasool Bee. It is stated that he is claiming the subject property based on the registered conveyance deed, dated 05.10.1953, executed by late Rasool Bee, by obtaining requisite permission under Sections 47 and 48 of the A.P. (Telangana Area) Tenancy and Agricultural Lands Act, 1950, from the Assistant Collector, Mahaboobnagar, in file No.A/189/1953, dated 16.09.1953, and his name was

mutated in the Faisal Patti for the year 1967 – 68 and the same was also implemented in the pahani pathraks. It is also stated that he is in possession and enjoyment of the subject property and his name is also mutated in the revenue records by issuing pattadar pass book and title deed. It is also stated that father of petitioners filed an application before respondent No.3 in the year 1996 seeking rectification of entries in the Revenue Records claiming that they are the legal heirs and successors of late Rasool Bee and respondent No.3, without verifying the records and conducting enquiry, passed order, dated 03.04.1997, and aggrieved by the same, he filed an appeal before respondent No.2, but the same was dismissed and as such, he filed a revision before respondent No.1 and the same was disposed of by setting aside the order of respondent No.3. Hence, respondent No.3 after issuing notice to the petitioners and after fixing the date of hearing, passed orders in File No.B/321 of 2006 directing the Village Secretary as well as record keeper to rectify the entries from the year 1967 – 68 onwards by deleting the names of the petitioners. It is also stated that the petitioners filed O.S.Nos.114 and 124 of 2006 before the Junior Civil Judge, Pargi, Ranga Reddy District, seeking declaration of title and perpetual injunction in respect of the lands admeasuring Ac.4-16 guntas and Ac.4-15 guntas covered by Survey No.207, but the same were dismissed on 03.09.2014 and

aggrieved by the same, they filed appeals before the Additional District Judge, Vikarabad, which are pending.

4. Learned counsel for the petitioners submits that incorrect address of the petitioners was mentioned in the revision and without serving any notice on the petitioners, the impugned order was passed. Learned counsel also submits that there is discrepancy in the date of birth of respondent No.4 and by the time the gift deed was executed in favour of respondent No.4, he is not born. She also submits that respondent No.3, after conducting enquiry and issuing notice to the concerned parties, passed order, dated 03.04.1997, and the same was rightly upheld by respondent No.2, but the revisional authority, without considering the above facts, has set aside the same, which is erroneous.

5. On the other hand, learned counsel for respondent No.4 submits that even before filing this Writ Petition, petitioners filed O.S.Nos.114 and 124 of 2006 for declaration of title and perpetual injunction. He also submits that respondent No.1 passed orders by issuing notice to the petitioners and once declaration Suits are filed making revenue authorities as parties and the same were dismissed and appeals are pending, for the very same relief, the present Writ Petition cannot be entertained and if the petitioners succeed in the appeals, the entries in the revenue records will be changed as per

the orders of the civil Court in view of Section 8 (2) of the Act. He also submits that after execution of gift deed, the name of respondent No.4 continued in the revenue records and the petitioners also admitted about the same, based on which, the Suits filed by the petitioners were dismissed.

6. Section 8 (2) of the Act reads as follows:

“If any person is aggrieved as to any rights of which he is in possession by an entry made in any record of rights he may institute a suit against any person denying or interested to deny his title to such right for declaration of his right under Chapter VI of the Specific Relief Act, 1963 (Central Act 47 of 1963) and the entry in the record of rights shall be amended in accordance with any such declaration.”

7. In this case, it is to be noticed that after passing of the impugned order by the revisional authority, admittedly, the petitioners filed Suits, before filing this Writ Petition, for declaration of title and perpetual injunction in respect of Ac.4-16 guntas and Ac.4-15 guntas of land covered by Survey No.207, which is the subject matter of this Writ Petition, on the self-same grounds raised in this Writ Petition making the revenue authorities as parties, and when such Suits were dismissed, aggrieved by the same, they filed appeals, which are pending consideration. As the issues involved in this Writ Petition are almost disputed questions of fact and as the subject matter of this

Writ Petition is already seized of by the civil Court, the petitioner cannot maintain parallel proceedings, one by way of Suit and another by way of Writ Petition, and hence, I am of the view that the Writ Petition cannot be entertained. However, all the contentions raised herein by the petitioners can be advanced by them before the civil Court, since in the Writ Petition, the scope of enquiry is limited and in the civil Suit, evidence can be let in and enquiry can be conducted at length. Hence, I do not see any merit in this Writ Petition, so as to interfere with the impugned order.

8. Accordingly, the Writ Petition is dismissed. Miscellaneous Petitions, if any, pending in this Writ Petition, shall stand closed. No costs.

REDDY, J

February 18, 2016
MD

A. RAJASHEKER