

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

WP.No.16764 of 2012

ORDER :

Heard Sri M.N. Narasimha Reddy, counsel for petitioner; the learned Government Pleader for Revenue, for respondent nos.1 to 4; Sri K. Goverdhan Reddy, counsel for 5th respondent; and Sri Y. Ashok Raj, counsel for 6th respondent.

2. The petitioner's father is one C. Kondappa. Apart from the petitioner, he had three other sons by name Kollanagappa, Kondameedirayudu and Lakshmaiah.

3. An extent of Acs.11.60 cents in the other Survey Number was the joint property of the family.

4. In 2007, the petitioner filed O.S.No.409 of 2007 before the Principal Junior Civil Judge, Anantapur for partition and separate possession of his 1/3rd share in Survey No.66/1A against his brothers. The said suit was decreed on 28.12.2007.

5. Thereafter, petitioner filed I.A.No.535 of 2008 for passing final decree and it was ordered on 24.04.2009. In the said final decree, the petitioner was allotted plot marked as "A" of extent Acs.3.87 cents within specified

boundaries, and possession of the said land was also delivered to him by the Advocate-Commissioner on 25.05.2009.

6. Thereafter, the petitioner applied to the 4th respondent under Section 5 of the Andhra Pradesh Record of Rights in Land Act, 1989 (**for short, 'the Act'**) for issuance of pattadar pass book and title deed.

7. By order dt.28.12.2009, the 4th respondent informed the petitioner that a pattadar pass book in I.B.No.1095 in respect of land in Survey No.66 of extent Acs.3.87 cents was already issued to 5th respondent and refused to issue pattadar pass book and title deed to petitioner.

8. Thereafter, the petitioner filed an appeal against the said order before 3rd respondent. The appeal was numbered as D.Dis.D2/157/2010 dt.06.09.2010 by the 3rd respondent. He allowed the said appeal accepting the case of petitioner, and directed 4th respondent to reduce excess extents in the pattadar pass book and title deed issued to 5th respondent and take necessary action. The said order was passed after hearing the 5th respondent.

9. Questioning this order, the 6th respondent, who claimed to have purchased this property from 5th respondent under registered sale deed dt.10.04.2008,

filed Revision under Section 9 of the Act before 2nd respondent. The 2nd respondent dismissed the Revision holding that there is no material to interfere with the order dt.06.09.2010 of the 3rd respondent, and directed both the parties to go to Civil Court.

10. Since the order passed on 06.09.2010 by the 3rd respondent in favour of petitioner had not been implemented by 4th respondent in spite of the Revision preferred by 6th respondent being dismissed by 2nd respondent on 31.12.2010, the present Writ Petition is filed by petitioner seeking issuance of a *Writ of Mandamus* directing respondent nos.1 to 4 to issue pattadar pass book and title deed in respect of Acs.3.87 cents in Survey No.66/1A situate at Kandukur Village, Anantapur Mandal and District to petitioner by deleting the said land from the pattadar pass book and title deed of 5th respondent.

11. The counsel for petitioner contended that neither 5th respondent nor 6th respondent have assailed the judgment dt.28.12.2007 in O.S.No.409 of 2007 or the subsequent proceedings therein; that the vendor of 5th respondent, viz., Smt.C.Aswathamma, was a party to the suit O.S.No.409 of 2007; and since the judgment in the suit is binding on respondent nos.5 and 6, the 4th respondent cannot refuse to delete the said land from the

pattadar pass book and title deed of 5th respondent and issue a pattadar pass book and title deed to petitioner having regard to the order dt.06.09.2010 of 3rd respondent.

12. The 4th respondent filed a counter on behalf of other respondent stating that respondent nos.5 and 6 are not parties in the civil suit and therefore the request of petitioner for issuance of pattadar pass book and title deeds in respect of the said land cannot be considered and the petitioner should approach a Civil Court since there is a civil dispute.

13. The counsel for respondent nos.5 and 6 also reiterated the above stand.

14. It is not in dispute that 3rd respondent passed orders in D.Dis.D2/157/2010 dt.06.09.2010 directing 4th respondent to reduce the excess extents entered in the pattadar pass book and title deed of 5th respondent in respect of the subject land, and to take further action. She also referred to the suit O.S.No.409 of 2007 filed by petitioner which was decreed by the Principal Junior Civil Judge, Anantapur, on 28.12.2007 and the delivery of possession under the said decree to petitioner.

15. When this was questioned in Revision before the 2nd respondent by 6th respondent admittedly the 2nd

respondent stated that there is no material to interfere with the order dt.06.09.2010 passed by 3rd respondent.

16. No doubt, he directed both parties to go to the Civil Court since it is a civil dispute, but this observation cannot be construed as a direction to petitioner to approach the Civil Court for issuance of pattadar pass book and title deed, since such a relief cannot be granted by Civil Court. At best, it is an advice to respondent nos.5 and 6 to go to Civil Court and seek appropriate relief. It cannot be understood that petitioner, who went to the Civil Court by filing O.S.No.409 of 2007 and succeeded there, should again go to Civil Court and re-agitate the issue.

17. Therefore, I find that 4th respondent has no option but to implement the order dt.06.09.2010 in D.Dis.D2/157/2010 of 3rd respondent.

18. For the above said reasons, the Writ Petition is allowed and a *Writ of Mandamus* is issued directing respondent nos.1 to 4 to issue pattadar pass book and title deed in respect of the subject land to petitioner by deleting the same from the pattadar pass book and title deed issued to 5th respondent. No order as to costs.

19. As a sequel, miscellaneous petitions pending if any in this Writ Petition, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 21-06-2016

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