

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

WRIT PETITION NO.23043 OF 2005

ORDER:

This Writ Petition is filed to quash the proceedings in R.Dis.7504/04(D2) dated 22.08.2005 confirming the order of the second respondent issued in proceedings RCC.1212/2003 dated 17.02.2004 as illegal and arbitrary and violative of principles of natural justice.

The petitioner filed the Writ Petition claiming to be the owner of the property of an extent of Acs.3.25 cents in R.S.No.18/2 situated at Vemugunta Village, Gudlavalleru Mandal, Krishna District, by virtue of a Will dated 23.04.1990 allegedly executed by his father, Potluri Ranga Rao and thereafter, his name was mutated in the revenue records and obtained pattadar passbook for the said land.

While the matter stood thus, the fourth respondent, who is none other than the sister of the petitioner and a resident of Canada, made a representation for cancellation of pattadar passbook issued in favour of the petitioner setting up a Will dated 22.07.1989. After following necessary procedure, the first respondent issued pattadar passbook in favour of the fourth respondent and thereafter, a revision was preferred before the Joint Collector and the same was dismissed by order dated 22.08.2005 confirming the order passed by the Revenue Divisional Officer (RDO).

It is an admitted fact that the petitioner filed O.S.No.415 of 2004 for grant of injunction on the file of the Principal Junior Civil Judge, Gudivada, Krishna District and the same is pending but the petitioner contended that he is only the legatee under the Will dated 23.04.1990 allegedly executed by his father, Potluri Ranga

Rao. Similarly, the fourth respondent has also been claiming the subject property based on Will dated 22.07.1989 executed at an earlier point of time according to her. In those circumstances, the RDO conducted necessary enquiry and passed order dated 17.02.2004. Against the said order, a revision was preferred before the Joint Collector, whereby the Joint Collector confirmed the order of RDO by his order dated 22.08.2005. Aggrieved by the said order, the present Writ Petition is filed only on the ground that the order was passed without following necessary procedure. More particularly, he raised substantial grounds in the revision but the first respondent dismissed the same without considering the substantial grounds urged in the revision.

Learned Government Pleader for Revenue supported the order of the Joint Collector and the RDO in all respects.

None appeared for the fourth respondent.

As per Rule 22-A (2) of the A.P. Rights in Land and Pattadar Pass Books Rules, 1989, every appeal referred to in sub-rule (1) shall be in writing and shall set-forth concisely the grounds thereof within a period of sixty days, from the date of communication of order and shall be accompanied by a copy of the order appealed against. No appeal was preferred as it was barred by time, however, it is an undisputed fact that the suit in O.S.No.415 of 2004 is pending on the file of the Principal Junior Civil Judge, Gudivada, Krishna District. Even according to Section 8(2) of the A.P. Rights in Land and Pattadar Pass Books Act, 1971 ("the Act" for brevity), any person is aggrieved as to any rights of which he is in possession by an entry made in any record of rights, 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 and the entry in the record of rights

shall be amended in accordance with any such declaration.

Thus, it is obvious from the provisions of the Act that the remedy available to the petitioner is to file a suit if he is aggrieved by the order passed by the RDO and confirmed by the Joint Collector in the revision filed under Section 9 of the Act, instead of filing a suit for declaration under Chapter VI of the Specific Relief Act, he filed a suit for grant of perpetual injunction in O.S.No.415 of 2004 even before disposal of the representation made by the fourth respondent to the RDO. Therefore, the rights of the parties based on the Wills set up by both the petitioner and the fourth respondent cannot be decided in a Writ Petition under Article 226 of the Constitution of India exercising power of judicial review as there are disputed facts. Therefore, the petitioner, if aggrieved by the orders impugned, can avail the remedy under Section 8(2) of the Act.

Even on perusal of the orders passed by the RDO and the Joint Collector, there is no illegality and I find no ground to accept the contention of the petitioner that the order passed by the Joint Collector is in violation of principles of natural justice. Therefore, I find no ground warranting interference with the order passed by the RDO dated 17.02.2004 and confirmed by the Joint Collector by his order dated 22.08.2005.

Accordingly, the Writ Petition is dismissed. However, the petitioner can approach the civil Court and avail the remedy under Section 8(2) of the Act. There shall be no order as to costs. Miscellaneous petitions, if any, pending shall stand dismissed.

(M.SATYANARAYANA MURTHY, J)

18th March 2016

RRB