

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

W.P.No. 20555 OF 2004

ORDER:

This Writ Petition is filed questioning the order passed by the 1st respondent bearing No. D/1569/2003 dated 21-06-2004 as illegal, arbitrary and contrary to the provisions of the Andhra Pradesh Rights in Land and Pattadar Pass Books Act, 1971 (for short, 'the Act of 1971'), direct the 2nd respondent to conduct an enquiry as per the Act of 1971 and make necessary mutation in revenue records.

The petitioner is son of P.Venkata Narasayya who had two brothers namely P.Ramachandraiah (died) and P.Laxminarayana (died). The elder brother P.Ramachandraiah had two sons by name Venkateshwara Sastri (died) and Anantha Ramasharma (died). The 3rd respondent is the son of Venkateshwara Shastri.

The father of the petitioner, who was resident of Pentlavelly Village, Kollapur Mandal, shifted his residence to Kurnool and settled there itself. His father was the owner and pattadar of the land measuring Ac. 0.28 guntas in S.No. 179 situated at Pentlavelly Village. After his death, the 3rd respondent, representing himself to be the son of Venkata Narasayya, got his name mutated in revenue records *vide* proceedings R.O.R.No. 8/2000 dated 23-06-2000. Subsequently, the 3rd respondent executed registered sale deed in favour of the 4th respondent bearing document No. 484/2001 dated 19-03-2001 registered with the Sub-Registrar, Kollapur. Basing on the said sale deed, the name of the 4th respondent was mutated in revenue records *vide* proceedings R.O.R.No. 17/2001 dated 02-08-2001 without notice of the petitioner. While the matter stood thus, the petitioner entered into an agreement of sale with one Thalla Satyam and Omkar on 07-03-2003 agreeing to execute a registered sale deed in their favour after getting his name mutated in revenue records. When the petitioner approached the 2nd

respondent for mutation of his name, he came to know about mutation of the name of the 3rd respondent initially and later the 4th respondent's name in revenue records. Immediately, the petitioner made a representation to rectify the record, deleting the names of respondent Nos. 3 and 4, mutating his name as the legal-heir of Venkata Narasayya under Section 3 (3) of the Act of 1971. The 2nd respondent, without conducting any enquiry contemplated under the Act of 1971 and without application of his mind, issued proceedings No. C/5989/03 dated 08-07-2003 rejecting the representation of the petitioner.

Aggrieved by the order of the 2nd respondent, the petitioner preferred an appeal under Section 5 (5) of the Act of 1971, annexing documents, before the 1st respondent but the 1st respondent, without considering the factual position and legal provisions of the Act of 1971, disposed of the appeal in a mechanical manner without applying mind and directed him to obtain succession certificate from competent authority to mutate his name in revenue records for Ac. 0.28 guntas of land in S.No. 179 of Pentlavelly Village of Kollapur Mandal of Mahaboobnagar District. The 1st respondent issued such direction without any legal basis and failed to consider the provisions of the Act of 1971 in proper perspective. Therefore, the order of the 1st respondent confirming the order of the 2nd respondent is illegal and prayed to set aside the same by issuing a Writ of *Certiorari* directing the 2nd respondent to mutate the name of the petitioner in revenue records pertaining to Ac. 0.28 guntas in S.No. 179 of Pentlavelly Village of Kollapur Mandal, Mahaboobnagar District.

The respondents did not file any counter.

During hearing, learned counsel for the petitioner contended that the order of the 1st respondent directing the petitioner to obtain succession certificate from competent authority is against the purport of Section 8 (2) of

the Act of 1971, produced documentary evidence to substantiate his contention that he is the only legal-heir of Venkata Narasayya and prayed to set aside the order passed by the 1st respondent. In support of his contention, learned counsel for the petitioner relied on ***Erukala Uma Vs. The Government of Andhra Pradesh, Rep. by its Joint Collector and Vodnala Ashalu***^[1]; ***K.Siddiah Naidu Vs. District Collector and others***^[2]; and ***D.Leelavathi and others Vs. The Director of Mines and Geology and others***^[3].

Per *contra*, learned Government Pleader for Revenue (T.S.) supported the order passed by the 2nd respondent confirmed by the 1st respondent. Since the dispute is with regard to ownership of the property, the appropriate remedy is to approach civil Court under Section 8 (2) of the Act of 1971. Therefore, the order needs no interference and prayed to dismiss the Writ Petition.

The undisputed facts are that the 3rd respondent is the grandson of Ramachandraiah who is the elder brother of Venkata Narasayya. The petitioner is the only son of Venkata Narasayya who died intestate. In such case, the property of Venkata Narasayya would devolve upon the petitioner as per Hindu Succession Act, 1956 (for short, 'the Act of 1956').

The petitioner is the only son of Venkata Narasayya and the 3rd respondent is the grandson of elder brother of Venkata Narasayya. The petitioner is claiming that Ac. 0.28 guntas of land in S.No. 179 of Pentlavelly Village belongs to Venkata Narasayya, father of the petitioner. If Venkata Narasayya died intestate, the petitioner alone will succeed the estate of the deceased Venkata Narasayya as per Hindu law but strangely the grandson of Ramachandraiah, elder brother of Venkata Narasayya, claimed entire property being the legal-heir of Ramachandraiah. None of the parties before this Court did produce any documentary proof that the property belongs to Venkata Narasayya. However, Ac. 0.28 guntas of land in S.No. 179 of

Pentlavelly Village was initially recorded in the name of Venkata Narasayya in record of rights; later, the name of the 3rd respondent was mutated and, in pursuance of sale deed, the name of the 4th respondent was mutated in revenue records. Thus, it is clear from the record of rights that Venkata Narasayya was the owner of the land in dispute. If Venkata Narasayya was the owner, the petitioner and other legal-heirs will succeed the estate of the deceased Venkata Narasayya. It is not even the case of respondent Nos. 3 and 4 that the 3rd respondent succeeded the property under any testamentary disposition by Venkata Narasayya. The Photostat copy of the Secondary School Certificate shows that the petitioner is the son of Venkata Narasayya. Therefore, in ordinary course of events, if the death of Venkata Narasayya is intestate, the petitioner and other legal-heirs would succeed the estate of Venkata Narasayya as per the Act of 1956 and entitled to claim mutation of their names in revenue records under the Act of 1971.

Undisputedly, the name of the 3rd respondent was mutated after death of Venkata Narasayya but there is no basis for it and later, in pursuance of sale deed, the name of the 4th respondent was mutated. However, the 4th respondent filed a suit against Thalla Satyam and Omkar claiming mandatory injunction and for possession which was dismissed and the same was confirmed in A.S.No. 8 of 2012 on the file of the Court of Senior Civil Judge, Nagarkurnool, but these documents are of no assistance to establish the case of the petitioner. At this stage, it is relevant to advert to the provisions of Section 8 (2) of the Act of 1971 which reads as follows:

"The right to file suit presupposes the person holding rights traceable to any entry made in any record of rights. Whenever such a right is sought to be denied, the person in possession of right based on entry made in any record of rights may file suit against such person denying or interested to deny the title to such right and seek declaration of his right under Chapter VI of the Specific Relief Act, 1963."

In view of Section 8 (2) of the Act of 1971, when an order is passed under the Act of 1971 and when there is a dispute regarding title to the

property, the parties have to approach the Court under Chapter VI of the Specific Relief Act, 1963 (for short, 'the Act of 1963'), to get declaration of their title and, if any decree is passed, the party has to mutate his name who succeeded in the suit. Thus, the mutation made by revenue authorities is not conclusive and it is always subject to result in civil suit but the 1st respondent, instead of directing the petitioner to redress his grievance before civil Court under Section 8 (2) of the Act of 1971, directed him to produce succession certificate. Succession certificate shall be issued to recover securities, debts due to the estate of the deceased but not for recovery of immovable property under Part X of the Indian Succession Act, 1925 (for short, 'the Act of 1925'). Therefore, the direction issued by the 1st respondent against the petitioner to obtain succession certificate is contrary to Section 8 (2) of the Act of 1971.

One of the contentions of learned Government Pleader for Revenue before this Court is that the petitioner is required to obtain legal-heir certificate from competent authority to get his name mutated in revenue records. However, revenue authorities will issue family member certificate but not succession certificate or declaration that a particular person is the owner of certain property. Mere production of family member certificate or succession certificate or legal-heir certificate is of little consequence in view of Section 8 (2) of the Act of 1971. However, the petitioner is not a party to O.S.No. 157 of 2004 on the file of the Court of Junior Civil Judge, Kollapur, and A.S.No. 8 of 2012 on the file of the Court of Senior Civil Judge, Nagarkurnool. Therefore, whatever findings recorded in the said judgments are not binding on the petitioner and his remedy is only to approach a civil Court under Section 8 (2) of the Act of 1971. Instead of invoking jurisdiction of civil Court under Section 8 (2) of the Act of 1971, the petitioner is seeking a positive direction against the 2nd respondent to mutate his name in revenue records which cannot be granted in view of Section 8 (2) of the Act of 1971.

Learned counsel for the petitioner mainly contended that legal-heir certificate can be issued by Tahsildar alone but issuing a direction by the 1st respondent to obtain succession certificate to mutate the name of the petitioner in record of rights is illegal and placed reliance on ***D.Leelavathi*** (3rd *supra*). In the facts of the above judgment, this Court held that family member certificate can be issued by Tahsildar to decide who is entitled to succeed mining lease. Applying the principle laid down in the above judgment, the 2nd respondent in the present case is competent to issue family member certificate but not succession certificate. Even if the 2nd respondent is competent to issue family member certificate, that would have no direct bearing on the issue. Therefore, the above judgment is of no assistance to support of the case of the petitioner.

Learned counsel for the petitioner also drawn attention of this Court to ***Erukala Uma*** (1st *supra*), wherein a Division Bench of this Court held that issue of notice by Collector in revision under the Act of 1971 could not be said to be without jurisdiction and it was open to the petitioner to submit her objections, based upon the plea of the respondents, which she raised in civil suit and raise appropriate contentions before revisional authority. Thus, it is clear from the above judgment that issue of notice to appear before Collector in revision cannot be said to be illegal though civil suit is filed under Section 8 (2) of the Act of 1971. From the principle laid down in the above judgment, it is abundantly clear that there are statutory remedies under the Act of 1971 besides remedy under Section 8 (2) of the Act of 1971 and the entries made in revenue records are not conclusive proof of title. In ***K.Siddiah Naidu*** (2nd *supra*), this Court is of the same view that it was neither possible nor desirable for Tahsildar to mutate the name of the petitioner in view of the dispute between the parties. However, it is always subject to decree passed by civil Court under Section 8 (2) of the Act of 1971.

I n ***Musku Mallaiah Vs. State of Andhra Pradesh***^[4], a Division

Bench of this Court had an occasion to decide the scope of Sections 8 (1) and 8 (2) of the Act of 1971 and held that it is open for any person aggrieved by an order of Revenue Divisional Officer to file a suit for declaration of his right under Chapter VI of the Act of 1963 and entry in record of rights shall be amended in accordance with the declaration made by civil Court. Thus, it means the aggrieved person alone is competent to file suit invoking the remedy under Section 8 (2) of the Act of 1971 for declaration of title to the property. If the principle laid down in the above judgment is applied to the present facts of the case, the remedy of the petitioner is only to file suit in view of Section 8 (2) of the Act of 1971 and this Court, while exercising the power of judicial review under Article 226 of the Constitution of India, cannot decide title of the parties which is required to be proved by producing evidence. Hence, the order of the 1st respondent directing the petitioner to produce succession certificate is erroneous since it is not contemplated under any of the provisions of the Act of 1971. Apart from that, succession certificate cannot be issued to claim right in immovable property. At best, the remedy available to the petitioner, who is aggrieved by the order passed by respondent Nos. 1 and 2, is to approach civil Court for declaration of title under Chapter VI of the Act of 1963. Hence, the petitioner is directed to approach civil Court to seek relief of declaration of title to the property in dispute and, in the event of passing any decree in his favour, the 2nd respondent is directed to make necessary amendment invoking power under Section 8 (2) of the Act of 1971.

With the above direction, the Writ Petition is dismissed. Pending miscellaneous petitions, if any, in this Writ Petition shall stand dismissed in consequence. No order as to costs.

M.SATYANARAYANA

MURTHY, J.

Date: 01st April, 2016.

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- [\[1\]](#) 2014 (3) ALT 176
 - [\[2\]](#) 1999 (5) ALT 480
 - [\[3\]](#) 2013 (5) ALT 489
 - [\[4\]](#) 2005 (1) ALD 485 (DB)