

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.18808 OF 2011

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ORDER:

This petition is filed for a writ of *Mandamus* declaring the order dated 30.11.2010 issued by the 1st respondent effecting the correction in the R.O.R in respect of Sy.No.193 of Village Jagityal, Tahsil Jagityal to an extent of 0.11 guntas, as illegal and arbitrary.

The case of the petitioner is that his father R.Hanumantha Rao was the Pattedar of land in Sy.No.193 of Jagityal Village and Tahsil and upon his death the petitioner and his elder brother succeeded to the entire agricultural land and their names were mutated in the revenue records as reflected until the R.O.R of the year 2009-2010. The petitioner has no knowledge of notice about the impugned order dated 30.11.2010, whereby the 1st respondent ordered to add the name of the 2nd respondent by causing correction of entry in the record of rights by introducing the name of the 2nd respondent showing an extent of 0.11 guntas in respect of Survey No.193 of jagityal Village and Tahsil. The petitioner came to know about the same when he went to obtain certified copy of R.O.R for the year 2009-2010 and surprised to know that the impugned order was made on 30.11.2010 by the 1st respondent. Thereafter, he immediately applied for certified copy of the said order and upon reading the same it was revealed that the said correction of entry was apparently caused by the 1st respondent based upon an application made by the 2nd respondent dated 10.02.2010 and that the Mandal Revenue Inspector submitted a report to the 1st respondent after causing personal

inspection and conducting Panchanama, wherein it was stated that the 2nd respondent had purchased the land to an extent of 0.11 guntas and that the petitioner and his elder brother were the Pattadars of the said land. It was also revealed that the Sub-Registrar has collected Stamp Duty and Registration Charges and that in pursuance to the decree said to have been made by the District Munsif, Jagityal, dated 08.08.1988, the said correction of entry was ordered. The petitioner had no knowledge of any such suit and decree made in OS.No.480/1988 and therefore he verified the records of the Court and found that the said suit was filed for Declaration and perpetual injunction in respect of 0.11 guntas in Survey No.193 of Jagityal village and Tahsil by the 2nd respondent against the petitioner and his elder brother and apparently the said suit was decreed on the basis of written statement wherein the suit claim was admitted. The petitioner submits that he had never known about the filing and pendency of the said suit nor ever engaged any counsel or filed any written statement in such suit. After knowing such illegal and fraudulent decree, the petitioner initiated steps for questioning the said Judgment and decree dated 08.08.1988 passed in OS.No.480/1988. It is also the case of the petitioner that no notices were issued to the petitioner or his elder brother before passing the impugned order. Aggrieved by the same, the petitioner filed the present writ petition.

The 2nd respondent filed counter stating that originally one R.Hanumantha Rao was the possessor of the land in Survey no.193 of Jagityal Village, and his father was the protected tenant over the said survey number and that the certificate issued under Section 35 and 37 of the Hyderabad Tenancy and Agricultural Lands Act, 1950, clearly establishes the said fact. It is stated that

the said certificate also clarifies the nature of holding of said Hanumantha Rao as possessor and not as pattadar; that subsequently after his father's death the 2nd respondent and his three brothers being the successors of the protected tenant, have purchased Ac.0.11 guntas each under simple sale deed dated 25.12.1966 and that the petitioner and his brother who are the successors of Hanumantha Rao have executed the said sale deed on receipt of valid consideration. Having been already in possession as successors of protected tenant and having obtained sale deed on payment of valid consideration the 2nd respondent and his brothers became absolute owners and continued in possession and enjoyment of the subject land. While so, when the petitioner and his brother tried to interfere with the possession over the subject land, the 2nd respondent filed suit for declaration and perpetual injunction vide OS.No.480/1988 against the petitioner and his brother R.Maruthi Rao. In the said suit the defendants filed written statement admitting that the 2nd respondent is the absolute owner and possessor of the property and also admitted that they have executed sale deed on receipt of a valid consideration. Basing on the said admission in the written statement, the suit was decreed on 08.08.1988 and injunction was granted in favour of the 2nd respondent. But, however, in the year 2010, when the petitioner and his brother again tried to interfere with their possession, the 2nd respondent approached the Revenue Authorities and found that the entries in the Revenue Records are being continued in the name of the petitioner and his brother though they have sold away the said property. As such, the 2nd respondent submitted an application to the competent authority for change of entries in Revenue Records to incorporate

his name in the place of the petitioner and his brother over the subject land. Thereafter, the 1st respondent passed order after following the due process of law in his favour directing change of entries in place of the names of the petitioner and his brother. In pursuance of the same, the entries in the Revenue Records have been mutated from the year 2010-2011 in the name of 2nd respondent. It is further stated that though the petitioner stated in the affidavit that he is taking steps to challenge the said Judgment and Decree, till today, the 2nd respondent has not received any notice from the competent Court having jurisdiction to entertain the appeal. As such, the impugned order cannot be interfered with and sought for dismissal of the writ petition.

Heard learned counsel for the petitioner and learned counsel for the 2nd respondent.

The impugned order dated 30.11.2010 is issued for mutating the name of the 2nd respondent in respect of the subject land in Survey No.193, Jagityal Village, in the revenue records basing on the decree dated 08.08.1988 passed in OS.No.480 of 1988. The petitioner is also one of the defendant in the said suit and the suit was decreed basing on the admission made in the written statement.

Section 8(2) of the A.P.Rights in Land and Pattadar Pass Books Act, 1971 (*fort short 'the Act'*) as follows;

"8. Bar of Suits: (2) 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.”

Admittedly, in this case the petitioner is a party to the said suit and the same was decreed. As per Section 8(2) of the Act, record of rights has to be amended in accordance with the declaration made by the Civil Court. The petitioner himself stated that he approached the Court which passed the decree and found that a decree in OS.No.480/1988 filed for declaration of title and injunction, has been passed against him and in favour of respondent No.2. Though he has stated in the writ affidavit that he is going to take steps for setting aside the said decree, the 2nd respondent in the counter stated that he has not received any notice till today from any Court having jurisdiction to entertain the Appeal against the said Judgment. The only grievance of the petitioner is that he was not issued any notice before passing of the impugned order. When once the decree is executed in favour of the 2nd respondent, it is for the petitioner to file appeal for setting aside the said decree. But, petitioner has not taken any steps as on today. The 2nd respondent states that after issuing notice only, the impugned order was passed. Even petitioner also admits that there is a decree passed against him. Whether the decree was passed after issuing notice to the petitioner or not and whether the decree was obtained by playing fraud, all those aspects cannot be decided by the Revenue authorities. It is for the petitioner to approach competent Court to challenge the said decree, in accordance with law. Though the said decree was passed in the year 1988, as on today, no material was placed before this Court showing that the petitioner has taken steps for challenging the said decree in OS.No.480/1988. Even if the

impugned order is set aside and the matter is remanded back to the 1st respondent, no purpose would be since the said decree is binding on the 1st respondent as stated supra under Section 8 (2) of the Act. In view of the above, I do not see any merits in the writ petition.

Accordingly, the writ petition is dismissed. However, it is open for the petitioner to take steps for challenging the said decree dated 08.08.1988 passed in OS.No.480/1988, in accordance with law. The entries in the revenue records will always be subject to further orders to be obtained by the petitioner in OS.No.480 of 1988. No order as to costs.

As a sequel thereto, miscellaneous applications, if any pending, shall stand closed.

A.RAJASHEKER REDDY, J

16.03.2016
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