

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF
ANDHRA PRADESH**

WRIT APPEAL No.1205 OF 2016

Between:

A. Paramdama Reddy

.. Appellant

AND

State of Andhra Pradesh,
Rep. by its Principal Secretary,
Revenue Department, Secretariat,
Velagapudi, Amaravathi, Andhra Pradesh
and 4 others

.. Respondents

DATE OF JUDGMENT PRONOUNCED:

SUBMITTED FOR APPROVAL:

**HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND**

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

- | | |
|---|-----|
| 1. Whether Reporters of Local newspapers may be allowed to see the Judgments? | - |
| 2. Whether the copies of judgment may be Marked to Law Reporters/Journals. | No |
| 3. Whether Their ladyship/Lordship wish to see the fair copy of the Judgment? | Yes |

Justice A. Shankar Narayana

HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

WRIT APPEAL No.1205 OF 2016

JUDGMENT: (Per Hon'ble Sri Justice A. Shankar Narayana)

Assailing the order of a learned Single Judge of this Court in W.P. No.28797 of 2016 dated 01.09.2016, whereby and whereunder, the request of the writ petitioner to grant Writ of *Mandamus* to declare the impugned order dated 28.05.2016 passed by respondent No.2 - Joint Collector, Chittoor District, Chittoor as illegal and for a consequential relief to injunct the respondents from interfering with his possession and enjoyment over an extent of Ac.0-91 cents, 0-63 cents and 0-30 cents in Survey Nos.13/4, 13/7 and 13/8, respectively, situated in Baitakodiambedu Village, Nagalapuram Mandal, was refused, the present Writ Appeal has been preferred.

2. For convenience sake, the parties herein are hereinafter referred to as arrayed in the writ petition.

3. Turning to the facts, respondent No.5, Smt. A. Navaneethamma filed revision petition under Section 9 of the Andhra Pradesh Rights in Land and Pattadar Pass Books Act, 1971 (for short 'the Act') before respondent No.2 - Joint Collector challenging the orders of respondent No.3 - Revenue Divisional Officer, Tirupati passed in D.DisH/1090/2012 dated 05.02.2013, in

dismissing her appeal, and the same was allowed by the order dated 28.05.2016.

4. Aggrieved over the orders of respondent No.2, the writ petitioner invoked the jurisdiction of this Court under Article 226 of the Constitution of India seeking a Writ of *Mandamus* to set aside the same and accord consequential injunction as stated hereinabove.

5. In his order, respondent No.2, observing that respondent No.5 - revision petitioner and the other respondents admitted that the disputed property was originally purchased by respondent No.5 - revision petitioner under a registered deed in 1982; the respondents claimed that the consideration was paid from the funds of the joint family; the relinquishment deed under which respondent No.5 - revision petitioner said to have relinquished rights in 1988 cannot be accepted as an article of transfer of rights for want of registration; respondents could not prove partition alleged to have taken place; even assuming that the relinquishment deed actually took place and respondent No.5 - revision petitioner presumptively accepted the same, the same does not deny non-service of notice upon respondent No.5 - revision petitioner giving rise to procedural infirmity, held that the case of the respondents holds no merit and thereby allowed the revision setting aside the order of the Revenue Divisional Officer and gave a direction to the Tahsildar to make necessary entries in the revenue records in favour of respondent No.5 - revision petitioner in accordance with the registered sale deed of 1982.

6. The learned Single Judge adverting to the submissions of the learned counsel for the petitioner that the registered sale deed dated 11.11.1982, executed in favour of respondent No.5 in respect of the subject land, the said property was purchased by utilising the joint family funds; respondent No.5 relinquished her rights under a relinquishment deed dated 20.04.1988; the said deed was not regularised under Section 5A of the Act; and respondent No.5 has not intimated about the acquisition of such right to the Mandal Revenue Officer within ninety (90) days as required by the provisions of Section 4(1) of the Act holding that these submissions would nevertheless are disputed questions of fact and, therefore, cannot be gone into in the writ petition and dismissed the writ petition. The learned Single Judge, however, granted liberty to the petitioner to avail alternative remedy provided under Section 8(2) of the Act for agitating his rights observing that the impugned order will be subject to the order that would be passed by the Civil Court under Section 8(2) of the Act.

7. Aggrieved over the aforesaid order, the present appeal is preferred by the petitioner.

8. Heard Sri Pasala Ponna Rao, the learned counsel for the petitioner (appellant), learned Government Pleader for Revenue for respondent Nos.1 to 4, and Sri E. Srimanth Reddy, learned counsel for respondent No.5.

9. Substantially the grounds agitated in the appeal and the arguments advanced by the learned counsel for the petitioner (appellant) are to the effect that the learned Single Judge overlooked the fact that the official respondents have entertained the application of respondent No.5, after a lapse of thirty five (35) years contrary to the provisions of Section 4(1) of the Act; respondent No.2 failed to notice that the respondent No.5 approached him with unclean hands suppressing the true facts; respondent No.2 failed in observing that the petitioner would have availed the benefits provided under Section 5A and proviso to Section 5(1) of the Act if at all, had the then authorities raised any of the objections that were considered by respondent No.2 and that such latches on the part of authorities cannot be put against the petitioner; the Tahsildar mutated the name of the petitioner in the revenue records and issued title and pattadar passbook by following the procedure prescribed under the Act giving rise to presumption as to correctness of the entries in the record as per Section 6 of the Act; respondent No.2 erroneously held that no notice was served on respondent No.5 without assigning any reasons; respondent No.2 failed to consider the fact that there was no explanation about the respondent No.5 omitting to make any such application/objection though, the lands were being enjoyed by the petitioner all these years and obtained pattadar passbooks; respondent No.2 failed in appreciating the fact that in the year 2009, respondent No.5, herself, acknowledged by giving her consent/security that the petitioner is absolute owner of the disputed land and in possession and enjoyment

of the same having pattadar passbook and title deeds at the time of depositing registered documents pertaining to the subject land by the petitioner to the bank and, therefore, sought to set aside the order of the learned Single Judge and the impugned order passed by respondent No.2.

10. On an intrinsic examination of the grounds agitated in the present appeal and canvassed by the learned counsel for the petitioner (appellant), we are of the considered view, that they all relate to disputed questions of fact and, certainly, cannot be adjudicated upon in the writ petition, where the relief of *mandamus* is sought, while exercising the jurisdiction under Article 226 of the Constitution of India; we are of the opinion that it is unnecessary to elaborate each ground in assessing whether it relates to question of fact or otherwise as the grounds *ex facie* reflect that they do relate to disputed questions of fact.

11. We, therefore, have no hesitation to hold that the order under challenge passed by the learned Single Judge observing that the petitioner can have recourse to alternative remedy available under Section 8(2) of the Act to agitate his rights and the order passed by the respondent No.2 will be subject to the orders that would be passed by the Civil Court under Section 8(2) of the Act cannot at all be construed as legally infirm. Thus, nothing is shown by the petitioner that the order under challenge is patently perverse warranting interference. We find no merit in the appeal.

12. The Writ Appeal fails and is, therefore, dismissed.

No costs.

As a sequel thereto, Miscellaneous Applications, if any, pending in the appeal stand disposed of.

RAMESH RANGANATHAN, ACJ

A. SHANKAR NARAYANA, J

December 26, 2016.

PV

