

HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

WRIT PETITION No. 38125 of 2016

ORDER:

1) The present Writ Petition came to be filed seeking issuance of writ of mandamus declaring the action of the 2nd respondent in passing impugned order in D.Dis.No.8742/2015/D4, dated 08.10.2016 setting aside the order passed by 3rd respondent, as illegal and unconstitutional and consequently to set-aside the same.

2) The averments in the affidavit filed in support of the petition would show that the petitioner herein claims himself to be the absolute owner of the land in Sy.No.364-2 to an extent of Ac.5.00 cents situated at Itikalapalli village, Anantapur Mandal and District. According to him the land was originally assigned to one Smt. C.Beerakka W/o. Uddappa in the year 1968 and since then she was in possession and enjoyment of the said land till her death. During her life time, the said Smt. Beerakka is alleged to have executed a Registered Will dated 23.04.2003 in favour of the petitioner, who looked after her welfare till her death. It is the case of the petitioner that after her death, the petitioner came to be in possession and enjoyment of the property. While things stood thus, one A.Venkataramudu filed a suit against him in O.S.No.411 of 2007 on the file of the Court of Principal Junior Civil Judge, Anantapur,

seeking permanent injunction on the ground that the said Beerakka gifted the property in his favour and that pattadar passbooks and title deeds were issued in his favour. On coming to know about the same, the petitioner herein filed an appeal before the 3rd respondent/R.D.O., which was allowed on 25.07.2015, canceling the pattadar passbooks and title deeds issued in favour of A.Venkataramudu. Aggrieved by the order of the 3rd respondent, the 5th respondent herein filed a Revision before the Joint Collector, which came to be allowed setting aside the orders of the R.D.O. Challenging the same, the present Revision came to be filed.

3) The main ground urged by the learned counsel for the petitioner is that the second respondent/Joint Collector failed to consider the registered Will executed by the original assignee in favour of the petitioner and after her demise, the petitioner, by virtue of the said Will, became the absolute owner of the said land. It is the case of the petitioner that since the 5th respondent is not in possession of the land, the question of giving pattadar passbooks and title deed in her favour, would not arise. The petitioner questions the execution of gift deed in favour of A.Venkataramudu, which according to him is violative of Section 3(2) of the A.P. Assigned Lands (Prohibition of Transfers) Act, 1977.

4) A counter came to be filed by G.P.A. of the 5th respondent, disputing the averments made in the affidavit filed in support of the

Writ Petition. The averments in the counter show that Tahasildar, Anantapur assigned land to an extent of Ac.5.00 in Sy.No.364-2 in favour of Chitra Beerakka, who was cultivating the same during her life time. During her last stages, her son-in-law, who is the husband of the G.P.A. of 5th respondent herein was looking after her welfare. Under those circumstances, a registered gift deed No.8647/2005 dated 30.06.2005 came to be executed in favour of A.Venkataramudu and since then he was cultivating the assigned land. When he applied for the pattadar passbooks, the competent authority conducted due enquiry and thereafter issued pattadar passbooks in his favour apart from mutating his name in the revenue records. It is said that A.Venkataramudu is in possession and enjoyment with absolute rights. When the said A.Venkataramudu fell ill and hospitalized, for which the 5th respondent herein spent considerable amount, which lead to A.Venkataramudu executing a registered sale deed No.1672/2014 dated 17.09.2014 in favour of the 5th respondent, who is now residing in Florida. But, her mother-in-law, by name A.Chennamma, who is the G.P.A. Holder of 5th respondent is cultivating the assigned land without any interruption. The averments in the counter show that the petitioner is trying to disturb the peaceful possession and enjoyment of A.Venkataramudu, over the property, which got the same by virtue of registered document. In view of the same, said A.Venkataramudu filed O.S.No.411 of 2007 seeking permanent injunction, which was

decreed in his favour on 20.12.2007. The averments in the counter also show that the said A.Venkataramudu filed W.P.No.1216 of 2013 and obtained orders of *status quo* against respondents 3 and 4 on 30.04.2013, when they tried to interfere with the property. The averments in the affidavit filed in support of the counter further shows that the petitioner misguided the respondent No.3 and obtained ex parte order regarding the assigned property. A copy of which was not served either on respondent No.5 or on her G.P.A. holder. Only after coming to know about the cancellation of pattadar passbooks, the G.P.A. holder preferred and obtained a copy and then took steps in accordance with law. The averments in the affidavit also show that the G.P.A. of respondent No.5 filed a suit in O.S.No.692 of 2015 seeking permanent injunction against the petitioner before the Court of Principal Junior Civil Judge, Anantapur, wherein the said Court ordered *status quo*.

5) Reiterating the averments made in the counter, the learned counsel for the respondent strenuously submits that since the dispute is purely civil in nature, the petitioner ought to have approached the civil court for an appropriate relief.

6) It is to be noted that the Joint Collector in his order dated 08.10.2016 have considered the matter in detail and ultimately held that A.Venkataramudu is none other than the husband of A.Chennamma i.e., the daughter of Chitra Beerakka, assignee of the

land in question. Having regard to the above, it is held that the legalheirs of the assignee-late Chitra Beerakka w/o. late Muddappa are the rightful pattadars of the land in question. As seen from the material on record, A.Venkataramudu filed O.S. No.411 of 2007 against the petitioner herein seeking permanent injunction restraining the defendant, his men and agents from interfering with the peaceful possession and enjoyment of the suit schedule property. By its judgment dated 20.12.2007, the suit was decreed and defendant was restrained from interfering with the peaceful possession and enjoyment over the schedule property. No steps are taken till date, to challenge the said decree.

7) The record also discloses that Venkataramudu along with Chennamma and another filed W.P.No.12167 of 2013 against the respondents 2 and 3 questioning their interference with the property in dispute. By an order dated 30.04.2013, this Court ordered *status quo* as on that day to be maintained. Subsequently, A.Venkataramudu also filed W.P.No.22518 of 2014 questioning the action of the Sub-Registrar in not registering the document, which is the subject matter of dispute in the present Writ Petition. By an order dated 07.08.2014, this Court ordered Sub-Registrar, Anantapur Rural, Anantapur District to receive and process the documents presented by the petitioner therein without insisting upon such NOC and in the event the documents presented fulfill the

requirements of the Registration Act, 1908, and the Indian Stamp Act, 1899, he shall register and release the documents in accordance with the due procedure.

8) The record also shows pendency of suit vide O.S.No.692 of 2015 between the same parties. In I.A.No.2528 of 2015, which was filed seeking interim injunction, the Court directed both the parties to maintain *status quo* as on that day in respect of the disputed plaint schedule property.

9) The petitioner herein claims right over the property pursuant to a registered Will dated 23.04.2003 executed in his favour by Beerakka. The 5th respondent herein claims her right over the same property on a registered gift deed dated 30.06.2005 executed in favour of Venkataramudu by said Beerakka. Though both the documents are registered, the petitioner and 5th respondent are disputing the same and also their execution.

10) Issue identical to the case on hand came up for consideration before this Court in **Bonus Reddy v. Government of Andhra Pradesh, rep.by its Principal Secretary, Revenue Department and others ((2014(1) ALT 542)**. It was also a case where the writ petitioner and the 5th respondent therein raised a dispute based on the respective Wills executed by the same person, who was the original owner of the property. Dealing with the said aspect and

taking into consideration Section 8 of the Andhra Pradesh Rights in Land and Pattadar Passbooks Act, 1971 (for short "the Act"), the Court held that a dispute raised by the parties based on their respective Wills needs to be adjudicated by the competent civil court. It has been held that even if the case is remanded to any of the hierarchical authorities as requested by the learned counsel for the petitioner on the short ground of lack of notice to the petitioner's father before issuance of pattadar passbooks and title deeds by respondent No.4, the said authority will not be in a position to decide the rival claims of the petitioner and respondent No.5. Under those circumstances, the Court felt that it is appropriate for the petitioner to file a comprehensive civil suit for declaration of his title based on the purported Will and approach respondent No.4 under Section 8(2) of the Act in the event of his success in the suit.

11) It is to be noted that the case on hand is almost identical to the case referred to above. Though it is reversing order but the parties are claiming right over the property under a registered Will executed in the year 2003 in favour of the writ petitioner, who is not a family member of Beerakka and a registered gift deed executed in the year 2005 in favour of the son-in-law of Beerakka. Since there is a dispute with regard to the executing of documents by Beerakka, as both parties are claiming right over the same property and having regard to the civil litigation in the civil court, this Court is of the view

that proper remedy for the petitioner would be to approach the civil court and thereafter approach the Tahasildar under Section 8(2) of the Act in the event of his success in the suit.

12) With the above observation, the Writ Petition is disposed of. No costs. As a sequel to it, miscellaneous petitions pending if any in this Writ Petition shall stand closed.

JUSTICE C. PRAVEEN KUMAR

Date:02.12.2016
GM

