

HONOURABLE Dr. JUSTICE B. SIVA SANKARA RAO

CIVIL REVISION PETITION No.913 of 2016

ORDER:

The revision petitioner is the 1<sup>st</sup> respondent in A.T.A.No.5 of 2014 and successful petitioner in E.A.No.142 of 2011 in E.P.No.23 of 2011 in A.T.C.No.4 of 2003. He claims as a third party to the so called tenancy proceedings covered by A.T.C.No.4 of 2003 between the revision respondents 1 and 2. The tenancy petition was allowed in favour of the so called landlord (revision 1<sup>st</sup> respondent) that maintained by him for eviction against the so called tenant the revision 2<sup>nd</sup> respondent and it was pursuant to the decree and order in A.T.C.No.4 of 2003 while execution petition in E.P.No.22 of 2006 was filed pending for delivery of possession pursuant to the eviction order, the revision petitioner maintained the claim in E.A.No.142 of 2011 supra. It is his claim that he is owner of Ac.2.50 cents under Ex.P1 so called patta and his mother-in-law by name, Panthadi Lakshmi Rajeswari is owner of Ac.2.40 cents in the same survey No.973 of Mondipora Village, a sub-village which is hamlet of the revenue village Katrenikona Mandal of East Godavari District. It is the claim that his mother-in-law also a patta holder for the said land covered by Ex.P2-D-form patta. It is his further claim that without impleading the mother-in-law and

without examining the mother-in-law even with a claim as if his wife is only issue to the mother-in-law, allegedly orally gifted to him and he is in possession thereby for the entire Ac.4.90 cents in R.S.No.973 and it is the claim that the so called tenancy between the revision respondents is a collusive outcome in claiming for the entire land of Ac.10.05 cents in that R.S.No.973 and the eviction proceedings and the tenancy proceedings so far as that Ac.4.90 cents supra out of Ac.10.05 cents supra of R.S.No.973, Mondipora Village, hamlet of Katrenikona Mandal are thereby unsustainable.

2. The claim was resisted by the respondent, so called tenant and so called land owner of A.T.C.No.4 of 2003 and ultimately from the evidence on record of the petitioner as PW.1, three more witnesses as PWs.2 to 4, respondents 1 and 2 respectively as RWs.1 and 2 and Exs.P1 to P14 and X1 to X2, claim was allowed by the Tenancy Tribunal vide order dated 03.04.2013. It was the observation repelling the contest of the respondents and so called tenant and landlord and proceedings in ATC supra that there are no two survey numbers for no two revenue villages and Mondipora is a sub-village and hamlet of the main village Katrenikona and Katrenikona including for Mondipora is the only revenue village and thereby it reflects only one survey number for Mondipora vis-à-vis Katrenikona with no two revenue survey

numbers with equivalent survey numbers. Impugning the same, the so called landlord (1<sup>st</sup> respondent in E.A.No.142 of 2011 and Decree Holder (for short 'D.Hr.') in E.P.No.23 of 2011) pursuant to the eviction order in his favour in A.T.C. maintained A.T.A.No.5 of 2014 and the lower appellate Court reversed the same by accepting the said contest of the said D.Hr. as if there are two revenue villages with two survey numbers and that could not be established in support of the claim contra for the lower Court to believe. Against that reversal, appellant judgment dated 15.10.2015, present revision is maintained.

3. Heard both sides at length and perused material on record.

4. The facts so far as covered supra no way requires repetition, which are relevant and material for purpose of the revision. Undisputedly, there is no valid title for the claimant to claim Ac.2.40 cents under Ex.P2 of the claim petition of so called D-form patta granted in favour of his mother-in-law to claim that he is the alienee from his mother-in-law, as oral gift is invalid no title conferred there from. She was not even examined either to say that he is protecting her interest and attending her welfare and thereby she is not a necessary party and his claim is on her behalf also and he did not even implead her atleast as a proforma respondent, if at all she wants to say any say

either to support him or to contra his version. In fact she is a necessary party and not mere even proper party for the effective adjudication of the lis that was missed consideration by the Court below, as the claim petitioner claims that she is his mother-in-law and she made a oral gift. For that there is no basis as Ex.P2 is admittedly in her favour which he exhibited. Mere custody of the document does not confer title apart from even an admission but for there is a valid transfer, as per the settled law and in the absence of which no one can convey much less no one can claim any right or title.

5. It is one of the contentions raised by the revision respondent, no doubt, in gravely supporting the order of the lower appellate Court. The other important aspect to clear the cloud, both courts missed from consideration is imminent requirement of the localization of the properties and genuineness of the so called Exs.P1 and P2 pattas issued by the revenue authorities for A.T.C.No.4 of 2003 petitioner cum revision 1<sup>st</sup> respondent cum lower appellate court appellant disputes the genuineness of the pattas. It is for him, if necessary, to call for the original revenue record and manifest the same, in the absence of which the presumption is the patta issued by the revenue authorities in discharge of the official duty is a valid one. For that the respondents did not make any attempt much less by receiving any document

and except Exs.X1 and X2, no way even relate to them much less in reference to that and there is no even admission in their searching cross examination of PWs.1 to 4 much less from their evidence orally through their mouth as RWs.1 and 2. Apart from it with reference to the said revenue record and any documents of title from R.S.No.973 is total extent of Ac.10.05 cents and the claim is for Ac.2.50 cents and Ac.2.40 cents respectively under Exs.P1 and P2 of the claim and his mother-in-law by name, Panthadi Lakshmi Rajeswari, it requires appointment of advocate commissioner to measure and demarcate the property with reference to the revenue records and respective pattas and other documents of title and with Mandal Surveyor's assistance thereby the matter requires remand not merely to the lower appellate Court but to the learned Tenancy Tribunal with the following directions to implead by virtue of this order invoking under Order I Rule 10(2) C.P.C. said Panthadi Lakshmi Rajeswari as a co-respondent to the claim petition. Unless she joins as a co-applicant with the claim petitioner with his consent so to transpose, after her impleadment on notice and receive her objections or counter if any even she wants to oppose the said stand of her son-in-law/ claim petitioner so far as her Ac.2.40 cents concerned under Ex.P2-D-form patta in her favour in R.S.No.973 and appoint thereafter an advocate commissioner with little survey knowledge atleast to

measure and demarcate with assistance of the Mandal Surveyor concerned and with the original revenue record including Exs.P1 and P2-pattas and the original record in proving the said pattas and with document of title of the claim petition 1<sup>st</sup> respondent i.e., so called landlord if any in relation to R.S.No.973, Mondipora Village, hamlet of Katrenikona Mandal, main revenue village and then show the entire extent and if the revision 1<sup>st</sup> respondent so called landlord of A.T.C.No.4 of 2003 establishes any title for that entire Ac.10.05 cents or any extent out of it, prepare a plan by indicating the same and also to prepare another plan with reference to Exs.P1 and P2 respective pattas for Ac.2.50 cents and Ac.2.40 cents and for the remaining out of Ac.10.05 cents of R.S.No.973 and further to prepare any separate plan, if there are two revenue villages with two revenue records reflecting in two villages same R.S.No.973 and to answer any work memos given by parties within the scope of the warrant and file report and then after receiving objections if any and from any necessity of the examination of the said advocate commissioner, if any party asks or as a court witness invoking Order XVI Rule 7 C.P.C., otherwise for commissioner report forms part of Court record to consider and there from ultimately decide by giving a fresh disposal uninfluenced either by the trial Court's order or by the lower appellate Court's order but for on own merits. Endeavour

shall be made for early disposal as per the scope of the remand supra. The commissioner fee shall be borne by the claimant of E.A.No.142 of 2011 and it is to include in costs subject to the result of the claim to be decided. If it is shown the mother-in-law of the claimant is no more, from the information to be submitted by the claimant and also equally by the respondents including with reference to the respective voter list to be summoned the Court can implead, who are the legal representatives to be reflected from the names of her and her husband as to who are the sons, besides the claimant's wife with other daughters if any.

6. Accordingly, the Civil Revision Petition is allowed by setting aside the decree and judgment dated 15.10.2015 in A.T.A.No.5 of 2014 passed by the District Judge, Rajahmundry, by remanding the same to the Junior Civil Judge, Mummidivaram, to decide on own merits. Meanwhile, the existing status quo shall be maintained by both parties. No order as to costs.

7. Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

---

Dr. B. SIVA SANKARA RAO, J

Date:30-09-2016  
Pab