

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.2785 OF 2008

ORDER:

The case of the petitioners is that they are the daughters of Late Malik Mangla S/o Buddu of M.Hattaguda Village, who is the owner of the land admeasuring Ac.1-00 situated in S.No.13/3 of M.Hattaguda Village, Arakuvalley Mandal, Paderu Agency Area, Visakhapatnam. Pattadar passbook and title deeds were also shown in the name of their father. While so, the name of the father of respondents 3 to 5 resembles the name of the petitioners' father and taking advantage of the same, the 3rd respondent obtained pattadar passbook and tried to trespass into their land. Against the same, petitioners filed A.O.S.No.24/2002 on the file of Agency Sub-Judge, Paderu, for permanent injunction and seeking a direction to the 2nd respondent to cancel pattadar passbook obtained by the 3rd respondent and in the said suit, the respondents 3 to 5 are directed to appear before the Court on 22.11.2002. Since they remained absent on the said date, they were set ex-parte and an ex-parte decree was passed granting injunction in favour of the petitioners. In spite of the same, the respondents 3 to 5 were still interfering with the subject land. Thereafter, at the request of both the parties to settle the matter, 1st respondent *suo moto* taken up the matter and requested the counsel for both the parties to file a memo to that effect. Pursuant to the filing of the said memo, the 1st respondent on 24.10.2004 conducted enquiry and passed orders holding that the land in dispute belongs to 3rd respondent vide order dated

27.11.2004. Aggrieved by the said order, the present writ petition is filed.

Learned counsel for the petitioners submits that though injunction was granted in favour of the petitioners by the Agency Sub-Judge in A.O.S.No.24/2002, the 1st respondent decided the title between the petitioner and respondents 3 to 5. He also submits that the statements made in support of the petitioners are not properly considered and petitioner's counsel was not permitted to cross-examine the witnesses of other side and no documents are marked. In view of the same, the impugned order is liable to be set aside.

On the other hand, learned Assistant Government Pleader for Social Welfare submits that after filing of the Joint memo, the statements of both the parties are recorded and therefore no interference is called for.

It is to be seen that originally dispute between the parties was byway of suit for injunction and admittedly, no appeal is filed before the 1st respondent against grant of injunction. It is not disputed by the learned counsel for the petitioner that Joint memo is filed for deciding the dispute. But the impugned order goes to show that only statements of witnesses were recorded and no cross examination was permitted and no documents are also marked.

In view of the above facts and circumstances, the impugned order is set aside and the 1st respondent is directed to dispose of the matter after issuing notice to the petitioners as well as the respondents and after affording opportunity of hearing.

With the above direction, the writ petition is disposed of.

No costs. No costs.

As a sequel thereto, miscellaneous petitions, if any, pending in the writ petition, shall stand closed.

A.RAJASHEKER REDDY, J

08.06.2017
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