HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No. 21406 of 2009

ORDER:

1) Heard Sri G.Krishna Murthy, learned counsel appearing for petitioners, Government Pleader for Revenue and Dr. Challa Srinivasa Reddy, learned counsel appearing for respondent Nos.4 to 7.

2) The present writ petition came to be filed seeking issuance of a writ of certiorari calling for records relating to order passed by the first respondent vide No.F2/10251/2007 dated 20.12.2008, declaring the same as illegal, arbitrary, null and void, violative of the principles of natural justice and contrary to the provisions of the Andhra Pradesh Rights in Land and Pattadar Pass Books Act, 1971 (for short "the Act").

3) The facts in issue are as under:

The father of the petitioners by name Bachu Yadagiri along with Maddi Narasimha, Yedavalli Krishna Murthy, Cheruku Chandraiah, Arvapally Achaiaha and Ramasani Sathiaah jointly purchased land admeasuring Ac.1000.00 in Sy.Nos. 656, 680, 681, 683, 684, 714 to 728, 730 to 733, 686 to 688, 697 to 712 and 734 to 742, situated at Pochampally Village and Mandal, Nalgonda District, under a possessory agreement of sale on 14.11.1962, from the original pattadar by name Moinuddin Shaik Imam. Out of the said land, the father of the petitioners was entitled to

Ac.80.00 of land. The petitioners and other sharers claim to be in possession of the entire land, which was delivered to them on 14.11.1962. The original pattadar died in the year 1977, without executing any registered sale deed, leaving behind seven sons. The said persons also did not execute any sale deeds and postponed the issue on one pretext or the other. Thereafter, the share holders of the land, filed declarations under the Andhra Pradesh Land Reforms Ceiling on Agricultural Holding Act, 1973 showing that they are in possession of the land, as purchasers, which was accepted by the authorities. It is to be noted here that 50% of the share holders ie. Atchaiah, Balaiah and Chandraiah sold away their share to third parties by way of consent decrees obtained in O.S.No.113/1987, 131 to 138 of 1987, without the consent and knowledge of the other 50% share holders namely Sathaiah, Krishna Murthy, Narasimha and Yadagiri.

While things stood thus, the petitioners came to know that respondent Nos.8 to 21 approached respondent No.3 for issuance of pattadar pass books and title deeds, claiming to have purchased the land from Bachu Yadagiri, who is father of the petitioners, along with Maddi Narasimha, Yadavalli Krishna Murthy under an agreement of sale dated 16.08.1967. Vide proceedings dated 10.06.2001, the respondent No.3 issued 13-B certificates to respondent Nos.8 to 21, without giving any notice to other sharers though they claim to be in possession of the land. Against the order of respondent No.3 dated 10.06.2001, the petitioners filed an appeal under Section 5-B of the Act, before the respondent

No.2, which was numbered as C/769/2002. After hearing all the persons, the Revenue Divisional Officer cancelled 13-B certificates and also the pattadar pass books and title deeds issued in favour of respondent Nos.8 to 21. Aggrieved by the same, the respondents therein filed a revision, under Section 9 of the R.O.R.Act, before the Joint Collector. After hearing all the concerned, the Joint Collector allowed the revision vide orders dated 20.12.2008 which was received by the petitioners in the month of April, 2009. Challenging the same, the present writ petition came to be filed.

4) Learned counsel for the petitioners mainly submits that the agreement of sale which is made the basis to claim title over the land does not fall within the definition of sale and does not satisfy the requirement of Section 5-A of the Act. It is further urged that the notice as required under Section 22 (3) of the Act was also not issued. It is also urged that after the lapse of 31 years, the agreement of sale is sought to be regularized, when the rights of the petitioners are crystallized. It is further stated that in view of pendency of O.S.No.6 of 2000, which was filed for partition and in view of the orders passed in I.A.No.679 of 2000, which is still in force, the authorities ought not to have decided the rights of the parties in the proceedings initiated under the Act, 1977, which are summary in nature. It is further pleaded that, in the instant case there is no gazette publication as required under section 22 of the Act.

5) Though no counter is filed, learned Government Pleader for Revenue would submit that the argument of the learned counsel for the petitioners that no notice was issued, appears to be incorrect as the order of the Joint Collector clearly indicate that the petitioners have participated in the proceedings and they have signed the register maintained in the office of the Joint Collector. He further submits that it is a dispute between two private individuals and unless a competent civil Court passes an order, the issue cannot be decided finally.

6) Respondent No.4 filed counter stating that the writ petition itself is not maintainable as the writ petitioners failed to avail the statutory remedy of appeal, available under the Act. The averments in the counter further show that respondent No.4 purchased land admeasuring Ac.80.00, through a registered agreement of sale-cum-irrevocable general power of attorney, dated 31.12.2001, for a valid consideration of Rs.30,00,000/-. Basing on this, the revenue officials entered their names in the revenue records. Thereafter, the respondent No.4 sold away the land in Sy.No.698 admeasuring Ac.9.17 gts., to respondent No.7 for a valid consideration of Rs.4,71,300/- and executed a registered sale deed dated 29.04.2002. He further claims to have sold away the land admeasuring Ac.10.00 in Sy.No.698 to respondent No.6 for a consideration of Rs.5,00,000/- and executed registered sale deed on the very same day. It is also stated in the counter that respondent No.4 along with respondent Nos.5 to 7 are absolute owners and possessors of the said land.

According to him, respondent Nos.8 to 21 sold away the land to respondent No.4 and pursuant there to, the above transactions took place. It is also stated in the counter that the writ petitioners filed a similar case against the Mandal Revenue Officer, before the Revenue Divisional Officer, Bhongir, which was dismissed on 27.08.2000. The petitioners herein were appellant Nos.6 to 9 in the said proceedings. Thereafter, the petitioners filed a revision before the Joint Collector against the order of the Revenue Divisional Officer, Bhongir, which is still pending. Having regard to the above, it is stated that there is no illegality in the order passed by the Joint Collector.

7) It is to be noted here that there is a dispute between two private individuals with regard to title and possession over the property and also as to how they have come into possession of the said property. The Revenue Divisional Officer in his order, dated 02.07.2007, found that there is procedural lapse in issuance of 13-B certificates and accordingly cancelled the 13-B certificates and also pattadar pass books and title deed. But in revision, the Joint Collector held that possession on the date of issuance of orders is the criteria for regularization of un-registered sale deed. It has been held that pattadar pass books and title deeds were issued under the provisions of R.O.R.Act to the persons, who are in possession of the land, which fact was not taken into account by the Revenue Divisional Officer, while allowing the appeal. The Joint Collector further held that the respondents therein failed to

produce any material in O.S.No.6 of 2000 in respect of their contention. Hence, rejected the contention of the respondent.

8) In the present writ petition, a dispute is raised as to who is in possession of the property and also as to whether the respondents or the petitioners have any right over the property, in view of the transactions which took place between the parties. But fact remains that O.S.No.6 of 2000, which has been initiated by Ramasani Pakeer Reddy and Ramasani Chandra Shekar Reddy, against the writ petitioners and most of the respondents herein, is still pending adjudication. The said suit was filed for partition of the properties, which are subject matter of dispute in the present writ petition. Infact in I.A.No.679 of 2000, there is an order of injunction which was made absolute on 24.03.2003.

9) Having regard to the circumstances of the case, it may not be proper for this Court to give any finding on factual aspects, more so, as to who is having a right over the property. In view of the pendency of civil suit, the argument of the learned counsel for the petitioners that the agreement of sale cannot be considered as 'transfer' within the meaning of Section 5-A of the Act, need not be dealt with. Hence, this Court is of the view that as the civil Court is ceased of the matter, it would be just and proper for the civil Court to decide the issue as to possession and rights of the parties over the property, basing on the evidence adduced therein.

10) Accordingly, the writ petition is disposed of holding that till appropriate orders are passed by the civil Court in O.S.No.6 of 2000, status quo as on today shall be maintained with regard to possession and entries in the revenue record. Thereafter, steps shall be taken, in accordance with law, for entering the names in the records. There shall be no order as to costs.

11) Consequently, miscellaneous petitions, if any, pending in this Writ Petition shall stand closed.

JUSTICE C. PRAVEEN KUMAR

07.09.2017
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