

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No.34611 of 2011

ORDER:

The present writ petition came to be filed seeking issuance of writ of mandamus declaring the impugned notices in ROC.No.71 of 2011 dated 20.12.2011 and 25.11.2011, issued by the 4th respondent/Gram Panchayat, as illegal and arbitrary.

2) The facts in issue are as under:-

The petitioner claims to be the absolute owner of the property to an extent of 166.33 sq. yards in R.S.No.444/1 of Poranki Revenue village. The said property was transferred to her by way of a registered gift deed by her husband and has been in possession and enjoyment of the said property. It is stated that the owners of the lands in R.S.Nos.444/7, 448/1, 444/5, 448/1C and 444/1C divided the said lands into house plots and made a layout. While making layout, they earmarked certain extent of land in the said survey numbers as common site and transferred the same in favour of 4th respondent/Gram Panchayat by way of registered gift deed bearing document No.2248/1981 dated 30.12.1981. It is said that though the land of the petitioner does not form part of the land transferred to Gram Panchayat, the President of the 4th respondent, having personal grudge against the family of the petitioner, got issued a notice dated 15.04.2005, demanding the petitioner to remove the thatched house, as he claiming ownership of the property. Questioning the same, the petitioner filed O.S.No.46 of 2005 for declaration of title and permanent injunction against

the Gram Panchayat. It is said that though the findings of the civil court in the said suit show that the Gram Panchayat has no right over the said property still the impugned notices came to be issued for removal of the structures i.e., thatched shed from the said land. Challenging the issuance of show-cause notice by the authorities of the Gram Panchayat the present Writ Petition came to be filed.

3) While issuing rule nisi, this Court on 29.12.2011 ordered *status quo* to be maintained by both the parties.

4) A counter came to be filed stating that the petitioner herein tried to grab the land lying with Gram Panchayat, which is the common site left in layout No.4/82 and subsequently revised as No.13/88 of Poranki Gram Panchayat, which is part and parcel of the approved lay out by the Vijayawada Urban Development Authority. It is said that the petitioner herein occupied and encroached upon the said land. Since the suit filed by the petitioner was dismissed, the petitioner has no right to be in possession of the said property. It is said that after dismissal of the suit, the Gram Panchayat took possession of the land and removed the thatched hut of the petitioner. It is urged that taking shelter under the interim order passed by this Court, the petitioner herein again raised the thatched hut. It is said that the petitioner being unsuccessful in the civil court, filed the present Writ Petition for the very same relief and as such the same is liable to be dismissed.

5) A reply came to be filed stating that dismissal of the suit does not confer any right on the Gram Panchayat to take possession of the property, which was gifted to her by her husband. Since the title devolved

on the petitioner pursuant to the gift deed, it is urged that the petitioner can be dispossessed only in accordance with law.

6) Since the entire matter revolves around O.S.No.46 of 2005 filed by the petitioner, it would be useful to refer to the contents therein. It was a suit filed for declaration of title over the suit schedule property and for the consequential relief of permanent injunction against Gram Panchayat. The plea, which is raised in the present writ petition, was also raised therein. The issues framed by the civil court were 1) Whether the plaintiff got right, and if so, she is entitled for the relief of declaration of title to the plaint schedule property as its owner as prayed for? 2) Whether the plaintiff is in possession with any legal right, and if so, entitled to the relief of permanent injunction as prayed for?

7) After considering the oral and documentary evidence placed before that Court, the civil court held as under :

"ISSUE NO.2:

i) Plaintiff claimed the relief of permanent injunction as a consequential relief to the relief of declaration of her title over plaint schedule property. Plaintiff failed to establish her title over suit schedule property. Therefore, she is not entitled for the consequential relief of permanent injunction. Further the oral evidence placed by plaintiff is self contradictory with regard to the period of possession of suit schedule property. Plaintiff contending that there is a thatched hut with door No.7-108 is there in suit schedule property. There is no such reference in Ex.A-6 gift deed about the existence of thatched shed. As per Ex.A-6, the suit schedule property is a vacant site. I have already observed that evidence of P.Ws.4 and 5 is not reliable. Ex.A-5 is not relates to the suit schedule property. Filing of a document which is not relates to suit property by making alterations is nothing but playing fraud against court by plaintiff. On this ground itself, plaintiff is not entitled for injunction.

ii) After considering the facts and circumstances of the case and above observations, I am the considered opinion that plaintiff is not entitled for permanent injunction as prayed for.

iii) As the evidence on record established the fact that plaintiff failed to prove her title over suit schedule property and long possession over it, the date of removal of hut of plaintiff on 30.04.2005 as contended by defendant or 04.05.2005 as contended by plaintiff is now not having any significance in view of the reliefs sought in this case. Therefore, I am discussing about that aspect.

iv) Without having any right in the property covered by S.No.444/1, defendant high handedly demolished the structures of plaintiff in the suit property. It is an admitted fact. The act of defendant is high handed. Defendant without having right in the suit property, passed various proceedings and demolished the structures of house of plaintiff. Therefore, even though plaintiff failed to prove her title, as the acts of defendant are high handed and illegal, defendant is directed to pay costs of this litigation to plaintiff."

8) Pursuant to the order passed by the civil court, the Gram Panchayat claims to have issued notice and took possession of suit property, which is seriously disputed by the learned counsel for the petitioner in view of the letters dated 25.11.2011 and 20.12.2011, which according to the petitioner indicate that he is still in possession of the property. As seen from the record, the suit was dismissed on 24.08.2011. No appeal has been filed challenging the said order. The civil court held that the oral evidence adduced by the plaintiff therein i.e., the petitioner herein, is self-contradictory with regard to period of possession of the suit schedule property. Though the petitioner claims that property with a thatched shed was gave to her by her husband, but the gift deed-Ex.A-6 is silent as to the existence of thatched shed. Since the property gifted under Ex.A-6 does not relate to the suit schedule property, the same has to be rejected. Basing on the material collected, the trial court held that the petitioner failed to prove her title over the suit schedule property and also long possession over it. The Court further held that the date of removal of hut, as urged by the plaintiff, was on 04.05.2005, which was contraverted by the defendant as 30.04.2005, which looses its significance, in view of the relief

sought in the case. The Court also held that since the hut came to be removed without following due process of law, it directed the defendant therein to pay costs of the litigation to plaintiff. Taking advantage of the observations made in sub-para iv of para 7, the learned counsel for the petitioner contend that Gram Panchayat has no right and title over the property. It is to be noted that the substance of sub para (iv) shows that the defendants have highhandedly demolished the structures of plaint schedule property and accordingly directed them to pay costs. The Court also held that defendants without having any right over the property, passed various proceedings and demolished the structures. At the same time, the court also held that the plaintiff failed to prove her title over the suit schedule property. That being the position, there is a dispute with regard to issue as to whether the Gram Panchayat is having any right over the said common site area. But, the findings of the civil court amply establish that the petitioner has no right over the suit schedule property and the thatched hut was removed in the year 2005 itself. However, it is claimed by the petitioner that she is in possession of the property with a thatched hut. Therefore, a doubt arises as to whether really the petitioner is in possession of the property. However, it is the case of the respondent that taking shelter under the interim orders passed by this Court, the petitioner has been making every effort to erect a shed and occupy the said land.

9) In view of the orders passed by the civil court, wherein it has been held that the petitioner has no right over the said property, the present writ petition is disposed of directing the authorities concerned to

take steps for eviction of the petitioner in accordance with law, if the petitioner is still in possession over the said property.

10) With the above observation, the Writ Petition is disposed of.

No costs. Miscellaneous petitions pending if any, in this Writ Petition, shall stand closed.

JUSTICE C. PRAVEEN KUMAR

Dt:23.03.2017
GM

