

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.29820 OF 2016

ORDER:

This writ petition is filed seeking writ of mandamus declaring the action of the 3rd respondent in passing the impugned proceedings in file No.B/621/2016, dated 10.05.2016 in respect of the lands covered by Sy.No.128, 130 and 155 admeasuring Acs.17.08 guntas and Acs.17.07 guntas respectively total admeasuring Acs.34.15 guntas, situated at Rachoor Village, Veldanda Mandal, Mahabubnagar District, notwithstanding the order dated 25.02.2006 in case No.B/ROR/3069/2005 passed by the 2nd respondent, thereby suspending the order No.06.07.2005 in File No.A/4251/2004 passed by the 3rd respondent and during the pendency of the suits in O.S.No.73/2006 on the file of Senior Civil Judge at Mahabubnagar and O.S.No.32 of 2016 on the file of I Addl. District Judge, Mahabubnagar as illegal and arbitrary and without jurisdiction and consequently to set aside the proceedings dated 10.05.2016 in file No.B/621/2016 passed by the 3rd respondent.

2. It is the case of the petitioners that the land to an extent of Acs. 34.10 gts covered by Sy.Nos.130, 155 and 128/AA, situated at Rachoor Village, Veldanda Mandal, Mahabubnagar District is the joint ancestral property of the petitioners and their sisters, which has been inherited from their grand father late Sri T.Janga Reddy. That the respondents 4 and 5 laid a claim before the 3rd respondent for mutation of the subject land in their names on the

basis of fabricated documents. Basing on which, the 3rd respondent passed an order dated 06.07.2005 in file No.A/4251/2004 mutating the names of the 4th and 5th respondents in respect of the subject lands, notwithstanding the objections filed by the petitioners. Aggrieved by the same, the petitioners preferred an appeal before the 2nd respondent in case No.B/ROR/3069/2005, who in turn by order dated 25.02.2006, suspended the same till finalization of the case. It is stated that on the application i.e., I.A.No.464 of 2006 filed by the petitioners, the suit filed by the petitioners in O.S.No.118 of 2000 on the file of Junior Civil Judge, Kalvakurthy was dismissed as withdrawn on 31.08.2006 on the ground that the sisters of the petitioners namely Smt. Deepika and Smt. Mounica filed suit in O.S.No.73 of 2006 on the file of Senior Civil Judge, Mahabubnagar seeking partition and separate possession of the joint family properties including the subject land. That the names of the petitioners continued as pattedars and possessors in respect of the subject land and pattedar pass books and title deeds were issued in favour of the petitioners. That the respondents 4 and 5 have filed suit in O.S.No.32 of 2016 on the file of District Judge, Mahabubnagar District against the father of the petitioners, their sisters, seeking relief of declaration of title, recover of possession and consequential injunction and mesne profits in respect of the subject land. That the 3rd respondent issued notice in case No.B/621/2015 dated 18.04.2016 stating that the respondents 4 and 5 have made an application for mutation of their in the revenue records in respect of the subject land and directed to

appear before him on 23.04.2016 along with documents. In response to the same, the petitioners attended on 23.04.2016 with all relevant documents along with objections. That without considering the said objections, the impugned order has been passed by the 3rd respondent and that the said order has not been served on the petitioners. Aggrieved by the same, the present writ petition is filed.

3. Counter affidavit is filed by the respondents 4 and 5 along with vacate petition in W.V.M.P.No.4524 of 2016 denying the averments in the affidavit filed in support of the writ petition stating that this writ petition is filed to harass these respondents. That the 3rd respondent had followed due process of law while passing impugned orders dated 10.05.2016 in respect of the subject land. That these respondents are not aware of the proceedings dated 06.07.2005 in case No.A/4251 of 2004 being suspended by the 2nd respondent vide order dated 25.02.2006 in case No.B/ROR/3069 of 2005. That the suit O.S.No.73 of 2006 on the file of Senior Civil Judge, at Mahabubnagar District is a collusive suit being filed by the sisters of the petitioners for partition and separate possession in respect of subject land. That to avoid future litigations and complications, these respondents has filed a comprehensive suit OS No.32 of 2016 on the file of the I Addl. District Judge, Mahabubnagar for declaration and consequential injunction. That though the suits are pending, approached the revenue authorities for necessary relief like mutation, issuance of patta pass books and title deeds and incorporation of names in pahani patrikas and revenue records is

not arbitrary illegal, without jurisdiction and violative of article 14 & 300-A of the Constitution of India. That the father of the petitioners being kartha of the family, to meet the family necessities, sold the subject property to the 4th respondent and vendor of the 5th respondent i.e., M.Satyanarayana through registered sale deed document Nos.2636 of 1997, 2637 of 1997 and 2638 of 1997 dated 20.10.1997. The petitioners misrepresented the revenue authorities in the appeal filed by them in case No.B/ROR/3069 of 2005 on the file of 2nd respondent. The petitioners in collusion with their father developed evil design to grab the subject land. That before obtaining mutation orders in favour of petitioners, no notices were served on the 4th respondent and also the vendor of 5th respondent. That the petitioners knowingly about the execution of registered sale deeds and pendency of revenue cases in respect of subject lands, played fraud against the purchasers only to grab the subject land.

4. That the 5th respondent filed an application for mutation of patta in his name from the holding of M.Satyanarayana for an extent of Acs.17.7 guntas as per the registered sale deed bearing document No.1397/2006 read with link document No.1718 of 2005 and 4th respondent also filed an application for mutation. The 3rd respondent issued notices on 02.04.2016 in Form No. VIII served on the petitioners in prescribed manner. When the petitioners have not filed any objections, mutation orders were passed in proceedings No.B/621/16, dated 10.05.2016. The copy of objection stated to have been filed by the petitioners does not

belong to the office of the 3rd respondent as the same bears the acknowledgment with English round seal without date. That the round seal of the 3rd respondent is only in Telugu and whenever the petition is filed, it will be acknowledged with date, as such, the objection petition, alleged to have been filed by the petitioners, is a fake document to mislead this Court. That the impugned order passed by the MRO is based on registered sale deeds, encumbrance certificates. That the 3rd respondent conducted *denovo* enquiry and passed two separate orders under Section 5 of the Act sanctioning the mutation in favour of the respondents.

5. Heard learned counsel for the petitioners and learned Assistant Government Pleader for respondents 1 to 3 and Sri A.Keshava Reddy, learned counsel for the respondents 4 and 5.

6. In this case, it is to be seen that the impugned proceedings have been issued by the 3rd respondent basing on the registered sale deeds bearing Nos. 2636 of 1997, 2637 of 1997 and 2638 of 1997 dated 20.10.1997, alleged to have been executed by the father of the petitioners in the year 1997. However, the factum of execution of registered sale deeds in favour of the 4th respondent and the vendor of the 5th respondent i.e., M.Satyanarayana is neither specifically denied by the petitioners in their affidavit nor have challenged said sale deeds as on today. Learned counsel for the petitioners submitted on the appeal filed by the petitioners, earlier mutation proceedings in File No.A/4251/2004, dated 06.07.2005 in favour of the respondents 4 and 5 have been suspended by the 2nd respondent vide proceedings in File No.B/ROR/3069/2005, dated 25.02.2006 and that the said

appeal pending. He contends that when the said appeal filed by the petitioners is pending, the 3rd respondent could not have passed the impugned proceedings dated 10.05.2016.

7. A perusal of the proceedings of the 2nd respondent in case No.B/ROR/3069/2005, dated 25.02.2006 goes to show that the proceedings in file No.A/4251/2004, dated 06.07.2005 were suspended till finalization of the case. It is pertinent to note that the petitioners in the said appeal prayed for suspension of the mutation granted in favour of the 4th respondent and vendor of 5th respondent till finalization of civil suit in O.S.No.118 of 2000 on the file of Junior Civil Judge Court, Kalwakurty. Admittedly, in the affidavit of the writ petition, it is categorically stated that on the interlocutory application filed by the petitioners in I.A.No.464 of 2006 in O.S.No.118 of 2000, the suit OS No.118 of 2000 was dismissed as withdrawn vide orders dated 31.08.2006 and therefore, the suit O.S.No.118 of 2000 is not pending. As such, even by virtue of the proceedings of the 2nd respondent dated 25.02.2006 and also according to the averments in the affidavit of the petitioners, the suspension of mutation proceedings dated 06.07.2005 was only till finalization of suit OS No.118 of 2000. As such, it cannot be said that the stay order in proceedings Case No.B/ROR/3069/2005 dated 25.02.2006 is in operation, as on today.

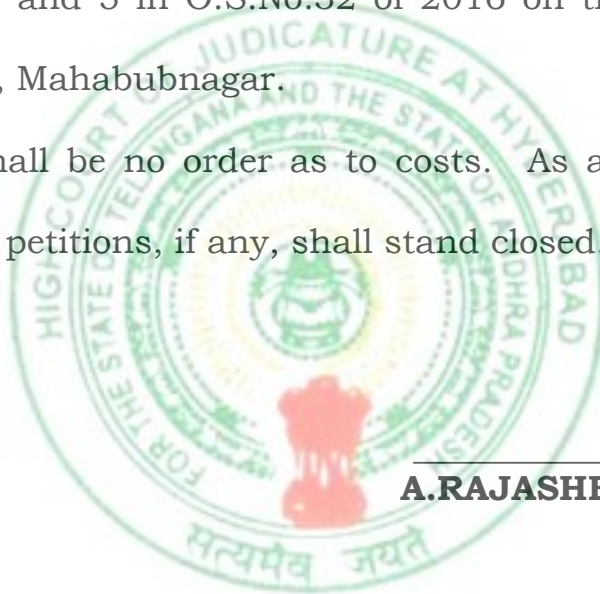
8. Learned Assistant Government Pleader for Revenue, on instructions submits that the file relating to the subject property is not available with the authorities concerned.

9. A perusal of a copy of plaint in O.S.No.73 of 2006 on the file of Senior Civil Judge at Mahabubnagar, filed by the sisters of the petitioners, the respondents 4 and 5 are made as defendants 6 and 7, and it has been admitted that the subject property was sold in favour of the respondents 4 and 5 herein. Though the petitioners and their sisters are well aware of the factum of sale of subject property in favour of respondents 4 and 5, they never challenged the same, as on today, though it is alleged that they were collusive one. As observed supra, petitioners have not challenged the registered sale deeds executed in favour of the respondents 4 and 5 by their father. In view of above facts, if the petitioners are aggrieved by the execution of registered sale deeds by their father in favour of the respondent No.4 and the vendor of 5th respondent, they could have taken steps for cancellation of subject sale deeds, but they have not done so. Moreover, it is stated that the sisters of petitioners filed O.S.No.73 of 2006 have filed suit for partition and separate possession of properties including the subject property. When once the registered sale deeds have been executed by the father of the petitioners in favour of the respondents 4 and 5 and basing on the same, the 3rd respondent passed impugned orders dated 10.05.2016. Moreover, even according to the proceedings dated 25.02.2006, suspension of the proceedings was operating in file No.A/4251/2004, dated 06.07.2005 till the finalization of suit OS No.118 of 2000 filed by the petitioners, but on their application i.e., I.A.No.464 of 2006, the same was dismissed as withdrawn. However, it is well settled law that the entries in revenue records

will always be subject to result of the civil suit pending between the parties. In view of above facts and circumstances, this Court is not inclined to exercise its jurisdiction under Article 226 of the Constitution of India.

Accordingly, this writ petition is dismissed. However, the entries in revenue records in respect of the subject property will be subject to result of partition suit filed by the sisters of the petitioners in O.S.No.73 of 2006 on the file of Senior Civil Judge at Mahabubnagar and comprehensive suit filed by the respondents 4 and 5 in O.S.No.32 of 2016 on the file of I Addl. District Judge, Mahabubnagar.

There shall be no order as to costs. As a sequel thereto, miscellaneous petitions, if any, shall stand closed.



A.RAJASHEKER REDDY, J

25-04-2017

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HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.29820 OF 2016



Date: 25.04.2017

kvs

