

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No. 27432 of 2003

ORDER:

1) Assailing the order dated 09.12.2003, passed by the first respondent-Joint Collector in Proceedings No.D5/ 1537/ 99, confirming the order dated 16.02.1999 of the second respondent-Revenue Divisional Officer in Proceedings No.A2/ 246/ 1997, the present writ petition is filed under Article 226 of the Constitution of India.

2) The petitioners herein claim to be the owners of land in Sy.Nos.888 and 889 admeasuring Ac.2.06 gts., and Ac.1.34 gts., totaling to Ac.4.00 situated at Edulabad Village, Ghatkesar Mandal, Ranga Reddy district as the same was purchased by their mother in the year 1971 vide registered sale deed bearing document No.939 of 1971. It is stated that from the date of purchase, the petitioners through their mother are in possession of the land. After the death of their mother, the petitioners being the legal heirs, inherited the said property and got their names mutated in the revenue records. It is also stated that pattadar pass books and title deeds were issued in their favour. The averments in the affidavit further show that the land in Sy.Nos.888 and 889 was inherited by B.Agaiah, from his father and the said land was purchased by the mother of the petitioners herein. It is also stated that respondent Nos.3 to 6 never questioned the sale or the possession of the petitioners, but

however, due to increase in rates of land, they started claiming share in the property. Respondent Nos.3 to 6 filed an appeal before the Revenue Divisional Officer, questioning the issuance of pattadar pass books and title deeds in favour of the petitioners. A counter came to be filed by the petitioners along with sale deeds showing their possession and title to an extent of Ac.2.06 gts. It is said that the said appeal was allowed though it was filed with an inordinate delay. Aggrieved by the same, the petitioners herein filed a revision before the first respondent, which was dismissed confirming the order passed by the Revenue Divisional Officer. Challenging the same, the present writ petition is filed.

3) The main ground urged by the learned counsel for the petitioners is that the Revenue Divisional Officer erred in entertaining the appeal which was filed with an abnormal delay of 26 years. According to him, the date of purchase of the land was in the year 1971 and thereafter their names were mutated in the year 1971 itself. About 26 years later, an appeal came to be filed in the year 1997. It is further stated that since there is a dispute with regard to title, the revenue authorities could not have settled the same in view of Section 8 of the Andhra Pradesh Record of Rights Act, 1971.

4) The same is seriously opposed by the learned counsel appearing for respondent Nos.3 to 6 stating that there is absolutely no delay in filing the appeal. The appeal came to be filed immediately after coming to know about the entries made.

Insofar as the second argument is concerned, the petitioners have already approached the civil Court and basing on the findings given by the civil court in A.S.No.183 of 2004, the authorities are justified in incorporating the names of the respondent Nos.3 to 6 in the revenue records.

5) In order to appreciate the same, it is to be noted that the order of the Revenue Divisional Officer was passed on 16.02.1999, after hearing all the concerned. It is also to be noted here that the vendors of the petitioners by name B.Agaiah and father of respondent Nos.3 to 6 by name Bathini Seethaiah were real brothers and both of them acquired lands from late Bathini Kistaiah and as such they are the joint owners and pattadars of the said property, having half share in the said land. Bathini Seethaiah died leaving behind respondent Nos.3 to 6, as legal heirs. Thereafter, mutation was sanctioned in the name of respondent Nos.3 to 6 vide File No.A1-4456/ 78, for half share.

6) *Prima facie* a perusal of the material placed before the Court would show that the names of Bathini Seethaiah and Bathini Agaiah figured in the revenue records as joint owners, pattadars and possessors of the property upto 1976-77. Bathini Seethaiah died leaving respondent Nos.3 to 6 as legal heirs. After his death, mutation was effected in the names of respondent Nos.3 to 6 and one Pangaiah, who died issue less. In the pahanies for the year 1978-79, 1979-80, the names of the respondents were shown in respect of land Ac.1.03 gts. No reasons are forthcoming how the

vendor of the mother of the petitioners by name B.Agaiah, sold the entire extent of Ac.2.06 gts. in Sy.Nos.888 and 889, since he is the owner of only half of the extent. The record also shows that the name of respondent Nos.3 to 6 were shown earlier but were found to be missing subsequently. After some time, their names started appearing in the records. In order to avoid further complications, respondent Nos.3 to 6 filed an application for correction of entries. It is to be noted that the question of delay would not arise for the reason that the names of Bathini Agaiah and Bathini Seethaiah figured in the revenue records during the period 1977-78. As their names were occurring on and off, in the records, and in order to avoid any further problem, the respondents filed an appeal questioning the action of issuance of pattadar pass books in favour of the petitioners for the entire extent and for rectification of the records. Therefore, it cannot be said that there was delay in filing the appeal.

7) It is also to be noted here that the V.R.O. Ghatkesar in his proceedings No.B/ 52/ 2016 dated 22.01.2016, stated that he visited the land in Sy.Nos.888 and 889 and noticed paddy crop being raised respondent Nos.3 to 6. The respondents also sold the agricultural produce to Agricultural Co-operative Society and on the recommendation of V.R.O., the same was sold to Civil Supplies Department, who inturn gave purchase certificate, in favour of respondent Nos.3 to 6.

8) Coming to the incorporation of the names, after filing the revision, the petitioners herein filed O.S.No.77 of 1999 seeking declaration of title and perpetual injunction. It is said that without considering the documents filed by respondent Nos.3 to 6, the trial Court decreed the suit. Challenging the same, respondent Nos.3 to 6 herein filed A.S.No.183 of 2004 before the III Additional District Judge, Ranga Reddy District. Vide its judgment dated 17.03.2015 in A.S.No. 183 of 2004, the appellate Court while setting aside the judgment and decree in O.S.No.77 of 1999, held as under:

“The plaintiffs did not make any efforts to examine any revenue officials to prove that Agaiah had got absolute right over the property. When the plaintiffs have lost their battle in the revenue courts, they approached the civil Court. The vendor of the plaintiffs ie. Agaiah never has absolute right, title to the schedule property execute the sale deed and the documents filed by the defendants proved and established that they are having equal share in the property and they are in possession of the property. Therefore, the question of plaintiffs having possession to the schedule property as on the date of filing of suit does not arise.

9) Apart from the circumstances stated above, it would be useful to refer to the findings of the R.D.O. and Joint Collector which are as under:

“ R.D.O. findings:

As per Khasra Pahani, Sesla Pahani and Pahanies upto 1977-78 it is evident that the names of both Bathini

Agaiah and Bathini Seethaiah are shown as pattadars in Sy.NO.888 of Edulabad Village. But it is not known how the name of Bathini Seethaiah has been removed from the pahanies subsequently. The mutation was also sanctioned by the Tahsildar, Hayathnagar in File No.A1/ 4448/ 78, dated 13.05.1978 transferring from Bathini Agaiah to Smt. Late Kalva Laxmi Narsamma, only to an extent of Ac.1.03 gts., in Sy.No.888 of Edulabad and the Tahsildar, Hayatnagar also sanctioned succession vide File NO.A1/ 4456/ 78 in favour of Bathini Kistaiah and others over the lands for their half share of Ac.1.23 gts. It is clearly established that without any notice and valid order from any competent authority the name of Bathini Seethaiah or his legal heirs have been removed from pattadar column in the pahanies which is quite irregular and bad in law. In view of the foregoing facts, the names of the appellants and respondents should be shown in Pahanies for half share each in respect of Sy.No.888 of Edulabad and the pass books be corrected accordingly.”

“ Findings of Joint Collector:

Bathini Agaiah was having right only to half extent in Sy.NO.888 he has executed registered sale deed covering full extent of Sy.No.888. No man can transfer better title than he himself has. Hence, I found that the orders of the Revenue Divisional Officer, dated 16.02.1999 are well founded. Therefore, there is no reason to interfere with the said orders. As such the orders passed by the Revenue Divisional Officer, R.R.East Division are hereby confirmed and accordingly, the revision is dismissed.”

10) The order of the Civil Court which was passed in the year 2015 and the findings of both the authorities referred to above clearly show that there was no illegality or impropriety in the impugned order. The findings of the civil Court in A.S., supports the findings of the Revenue Divisional Officer and Joint Collector. Though the second appeal is pending before this Court, no interim orders are passed in the second appeal.

11) Having regard to the above, this Court is of the view that the order under challenge warrants no interference. Accordingly, the W.P. is dismissed. However, it is made clear that if, the petitioners succeed in the second appeal, which is pending before this Court, they can get the entries corrected/rectified/ altered in accordance with law.

12) There shall be no order as to costs. Consequently, miscellaneous petitions, if any, pending in this Writ Petition shall stand closed.

JUSTICE C. PRAVEEN KUMAR

17.08.2017
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