HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No. 7761 of 2016

ORDER:

1) One Narnuri Shashank, preferred the present writ petition under Article 226 of the Constitution of India, seeking issuance of writ of mandamus declaring the action of the 2nd respondent in issuing the impugned order in Case No.G/4310/2014, dated 26.11.2015, canceling the patta issued in favour of the petitioner, without issuing notice, as arbitrary, illegal and violative of principles of natural justice; and consequently to *set aside* the same.

2) The averments in the affidavit filed in support of the writ petition would show that the petitioner herein claims to be owner and possessor of agricultural land admeasuring Ac.2.00 in Sy.No.394 of Gudipet Village, Mancherial Mandal, Adilabad District. Initially his mother by name Narnuri Laxmi purchased the said land and after her demise, the petitioner claims to have succeeded to the said property, as a sole legal heir. Vide proceedings dated 04.11.2015, the 3rd respondent issued a patta in favour of the petitioner and also showing the name of the petitioner in the pahanies. While things stood thus, the 2nd respondent issued proceedings dated 26.11.2015, cancelling the patta held by the petitioner and consequently directing the 3rd respondent to take necessary steps for making necessary changes

in the revenue records. It is contended that the said proceedings came to be passed without issuing any notice to the petitioner and as such the same is liable to be *set aside.*

3) By an order, dated 10.03.2016, this Hon'ble Court while admitting the writ petition, this Court ordered interim suspension as prayed for.

4) Sister Rosamma A.K., representing the 4th respondent, filed her counter affidavit denying the averments made in the writ affidavit except to the extent admitted by her. It is the case of the 4th respondent that the father of the petitioner by name Narnuri Sudhakar Rao, sold the entire extent of Ac.6.36 gts., in favour of the 4th respondent by way of registered sale deed bearing document No.2629 of 2004. The writ petitioner was minor then. Immediately, thereafter, the father of the petitioner made an application seeking mutation of the name of his son in the record of rights in respect of land admeasuring Ac.2.00. Vide proceedings dated 04.11.2015, the Mandal Revenue Officer, Mancherial, mutated the name of the petitioner in the revenue records in respect of the said Ac.2.00 of land. It is urged that the father of the petitioner fraudulently filed the said application for the very same extent of land which he has already sold to the 4th respondent and without any notice to the 4th respondent, the name of the petitioner herein was entered in the records of rights. On coming to know about the illegal entries made, the 4th respondent approached the Revenue Divisional Officer, by way of

filing an appeal and notices were issued to the father of the petitioner, who was the applicant in the application filed in the year 2005 before the Mandal Revenue Officer. It is also stated that the father of the petitioner appeared before the Revenue Divisional Officer and contested the matter. After considering the rival arguments advanced, the impugned order came to be passed. It is urged that if really the petitioner was aggrieved by the action to be taken, he could have also implead himself along with his father before the Revenue Divisional Officer. It is also stated that the undertaking given by the 4th respondent is baseless and untenable and that the said communication does not confer any right on the petitioner nor can the same be taken as a relinquishment of title, on behalf of the 4th respondent. It is also stated that a person taking shelter under an act of fraud cannot take the plea of violation of principles of natural justice.

5) A reply affidavit came to be filed disputing the averments in the counter. It is urged that when the name of the petitioner is reflected in the revenue records, the proper course would have been to issue notice to the petitioner, instead of passing an order after hearing the father of the petitioner, as he was major by then. It is further urged that the petitioner was not aware about any proceedings before the Revenue Divisional Officer and that everything happened behind his back. It is also stated in the reply that a suit for injunction was filed by the petitioner against the 4th respondent vide O.S.No.82 of 2016 and the same is pending.

6) An additional affidavit is filed by the 4th respondent stating that two suits came to be filed by the petitioner one is O.S.No.82 of 2016 wherein he sought for a decree for partition and also to declare the registered sale deed dated 12.04.2004 as null and void and also O.S.No.93 of 2016 seeking injunction. In both the suits, 4th respondent is arrayed as party. Along with the additional affidavit, the 4th respondent also placed on record a copy of registered sale deed dated 12.04.2004 and a copy of the plaint in O.S.No.82 of 2016.

7) Reiterating the averments made in the affidavit and the reply to the counter, learned counsel for the petitioner would submit that since the impugned order came to be passed without giving any notice, it would be just and proper to remand the matter to the Revenue Divisional Officer.

8) On the other hand, learned counsel for the 4th respondent would submit that the entries in the revenue records came to be made by way of fraud as the entries came to be recorded in the revenue records at the instance of the father of the petitioner, the Revenue Divisional Officer was justified in issuing notice to the father of the petitioner only.

9) As seen from the record, the civil Court is already ceased of the matter, in the two suits filed by the petitioner seeking cancellation of the registered sale deed, declaration of title and also for injunction.

10) Further, the father of the petitioner executed a registered sale deed dated 12.04.2004 in respect of land admeasuring Ac.6.36 in Sy.No.394 in favour of the 4th respondent vide document No.2629 of 2004. The said fact is not in dispute. Immediately thereafter, the father of the petitioner as a guardian of the minor, made an application before the Mandal Revenue Officer for grant of succession/partition of the land since the petitioner is legal heir of Narnuri Laxmi, who is the mother of the petitioner. Basing on the said application, the Mandal Revenue Officer, Mancherial, accepted the claim of the father of the petitioner and ordered inclusion of his name as a successor in the revenue records.

11) It is to be noted that though the father of the petitioner was aware about the said land being sold by him in favour of the 4th respondent by way of registered sale deed, intentionally appears to have made an application for recording the name of his son in the revenue records, in respect of very same land, which he has sold. On coming to know about the same, the 4th respondent herein challenged the same before the Revenue Divisional Officer. The record further discloses that subsequent to the purchase of the land by the 4th respondent, they made an application before the authorities for mutation of their name in the revenue records. After verification, the Mandal Revenue Officer issued mutation proceedings in favour of the 4th respondent in respect of land to an extent of Ac.4.36 gts., and only is failed to do so in respect of other portion as the name of the pattadar did not tally. The

impugned order as well as the record discloses that Ac.2.00 of land in Sy.No.394/1 stood in the name of the mother of the petitioner which was purchased from one Nadipalli Kamala Manohar, S/o. Kishan Rao through registered sale deed bearing document Nos. 420/98, 421/98 dated 04.03.1998. However, after the death of said Laxmi, her husband Sudhakar Rao sold the entire extent of Ac.6.36 infavour of 4th respondent, as a legal heir, since the writ petitioner was a minor then. He also claims to have received the entire sale consideration of Rs.9,21,500/-. Out of the said land, an extent of Ac.0.08 gts. was acquired by the Government for excavation of the canal under Rallyvagu project and the compensation amount of Rs.24,000/- was paid to the 4th respondent in the year 2007.

12) In the year 2005 the father of the petitioner made an application, fully knowing about the execution of sale deed, seeking mutation of Ac.2.00 of land in favour of his minor son, which originally stood in the name of his wife. Since the petitioner is a major now; in view of the claim made and as his name is reflected in the records, it would be just and proper for the authorities to hear him as well, more so in view of the letter issued by the 4th respondent. After filing of the writ petition two suits came to be filed by the petitioner seeking cancellation of sale deed executed by his father in favor of the 4th respondent, declaration of title and also for injunction. Since the civil Court is already ceased of the matter with regard to the issue on hand, it

may not be proper for this Court to adjudicate the same on merits.

13) Having regard to the above, the writ petition is disposed of directing both the parties and also the authorities concerned to maintain *status quo* as on today with regard to possession and the entries in the revenue records in respect of land admeasuring Ac.2.00 in Sy.No.394/1, which is subject matter of dispute, till appropriate orders are passed by the civil Court. After passing of appropriate orders by the civil Court, necessary changes shall be effected in the revenue records. It is needless to mention that the civil Court shall decide the issue un-influenced by the observations, if any, made in this order, as early as possible, preferably, within a period of three to five months from the date of receipt of a copy of the order.

14) 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

16.03.2017
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