

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No.5058 of 2006

ORDER:

The present Writ Petition came to be filed seeking issuance of writ of certiorari calling for records in Case No.B4/ROR/3/2003 on the file of respondent No.1/Joint Collector, Adilabad and quash the same.

2) The facts in issue are as under:-

The petitioner claims to be the owner and possessor of the land admeasuring Ac.4.25 guntas in Sy.No.8/A, situated at Anukunta village, Adilabad District. He claims to have purchased the said land from the original owner by name Gaddam Ananda Rao through a sada sale deed dated 29.01.1971, for a consideration of Rs.4,000/-. Pursuant thereto, he is said to be in possession of the property. Thereafter, entries came to be affected in the revenue records. Subsequently, he filed an application before the third respondent for validation of the sale deed and for grant of pattedar passbooks and title deeds. It is said that after following the procedure, the third respondent validated the sale deed and issued pattedar passbooks and title deeds on 01.10.1993. Challenging the same, the fourth respondent preferred an appeal before the second respondent claiming that she has purchased the said property from Gaddam Yadav

Rao through an agreement of sale dated 09.03.1975. The said appeal was allowed on 15.06.1998 and the matter was remanded to the third respondent for fresh enquiry. By an order dated 23.07.2001, the third respondent while rejecting the claim, held that the parties have settled the dispute before the civil court. Challenging the same, the writ petitioner filed an appeal before the second respondent which was dismissed on 03.06.2002. Thereafter, he filed a Revision before the Joint Collector, which was also dismissed on 01.12.2004. Assailing the same, the present writ petition came to be filed.

3) Learned counsel for the petitioner mainly submits that all the Forums have erroneously held that the petitioner is not entitled for the relief and that the same is against the record. Insofar as the order of the civil court in O.S.No.68 of 1997 is concerned, it is stated that the writ petitioner was not a party to the said suit and the order in the said suit appears to be a collusive one. He further submits that the petitioner also filed O.S.No.26 of 1997 before the District Munsif Court, Adilabad, wherein he was granted ad interim injunction. In C.M.A. 11 of 1997 filed by the fourth respondent, the learned Judge remanded the matter to the trial court for fresh trail and directed both the parties not to interfere with the property. Subsequently the suit was dismissed for default on 21.06.1999. Since the suit was filed for bear injunction, it is urged that the dismissal of the same does not support the claim of the fourth respondent. In

view of the entries made in the revenue records and since the name of G.Yadava Rao was recorded in the possessor column, to the extent of only Ac.2.00, he cannot alienate Ac.3.00 which is more than his share. In view of the above, he submits that the orders passed by all the three Forums, are illegal and improper. Further, relying upon a Division bench judgment of this Court in **Konkana Ravinder Goud and others v. Bhavanarishi Co-operative House Building Society, Hyderabad and others**¹ the learned counsel for the petitioner would submit that under Section 5-A of the A.P. Rights in Lands and Pattadar Pass Books Act, 1971, agreement of sale cannot be considered a transfer of property within the meaning of the Act and as such any entries affected or made on the basis of an agreement of sale, in favour of the respondent, are illegal and incorrect.

4) On the other hand, the learned counsel for the respondent submits that the petitioner who could not get the relief with regard to regularization of the unregistered sale deed under Section 5-A of the Act before the three authorities is raising various aspects which cannot be gone into.

5) According to him, one late Ch.Narasimhulu filed an application before the third respondent for validation of the sale deed dated 29.01.1997 and for grant of pattadar passbooks and title deeds, which was validated and title deeds were issued in favour of

¹ 2003(5) ASLD 654 (DB)

late Ch.Narasimhulu on 01.10.1995. It is said that the said order came to be passed without hearing the respondent herein. Therefore, the appeal filed by the fourth respondent was allowed and the matter was remanded back for fresh enquiry. After remand, the third respondent rejected the claim of the petitioner for regularization of earlier sale deed and the order of the third respondent was confirmed by the second respondent and first respondent. Therefore, he submits that when the petitioner himself has no claim or when he has no registered document in support of his plea, the orders under challenge warrants no interference and the appropriate court to be decided would be only the civil court. In support of the legal proposition, he placed reliance on the judgment of this Court in **Airavbelli Prabhakar Rao v. Emmadi Koteshwar and others²**.

6) The sale deed dated 29.01.1971, is neither registered nor regularized till date. Therefore, the claim of the petitioner that his name is to be recorded basing on the sada sale deed, which is not regularized, may not be correct. The pahanis of the year 1969-70, 1970-71 stands in the name of Gaddam Anandarao and Gaddam Rama Rao and Ch.Bhumanna (father of the writ petitioner) . The pahani patraks for the years 1971-72, 1972-73, 1973-74 and 1974-75 reveal that Gaddam Yadav Rao was in possession of Ac.2.00 as shareholder and Ch.Bhumanna was in the remaining extent of land. The same position was maintained till 1987-88. That being the position, the

² 2009(6) ALT 35

contention that the entire extent of Ac.4.25 never fell to Gaddam Anandrao and that the name of Gaddam Yadavrao, who is the vendor of fourth respondent does not appear in the revenue records at any point of time, in respect of the suit land, may not be correct. Insofar as O.S.No.68 of 1987 is concerned, though the claim of the petitioner is that he was not a party, but it is to be noted that it was filed by one Sita bai, the mother of Yadavrao and grandmother of Viswanatham and Ramarao who are the sons of Yadavarao, the second defendant in the said suit. Smt. Malathi Bai was the first defendant in the said suit. Similarly, late Ch.Narasimhulu filed O.S.No.26 of 1997 in respect of Ac.1.20 guntas of land in which initially an injunction was granted but subsequently an appeal filed, the matter was remanded back and ultimately the suit itself was dismissed for default on 21.06.1999. But late Ch.Narasimhulu or his legalheirs, who knew about the order passed in O.S.No.68 of 1987 which was filed in respect of land admeasuring Ac.2.30 guntas, never contested by impleading themselves. The said suit was dismissed holding that the fourth respondent herein who is the first defendant in the suit is entitled to retain the possession under Section 53-A of the Transfer of Property Act. The appeal preferred against the said order was dismissed by the Hon'ble High Court on 20.10.2011. Therefore, *prima facie* it appears that the petitioners were never in possession of the land, in view of the orders passed by the civil court and also by the revenue authorities.

7) In **V.Krishnaiah and others v. Joint Collector, Mahabubnagar and others**³, this Court held as under:-

"21. The experience shows that, wherever the Legislature had intended to confer the power of a civil court upon an administrative or *quasi-judicial* authority, or a different forum, either an independent, procedure is prescribed or the one, that applies to civil courts is extended to them. To the extent the power of adjudication is conferred on the alternative for a, the jurisdiction of the civil courts is taken away through specific provisions of law. This becomes necessary because the jurisdiction of a civil court is comprehensive. Further, the exclusion of jurisdiction of the civil courts would depend upon the efficacy of the remedy that can be granted by the alternative forum. If the matter is examined on the touchstone of these principles, it emerges that hardly any powers of a court to adjudicate the disputes are conferred upon the recording authority. He cannot record evidence. He is not trained to adjudicate the disputes involving complicated questions, such as capacity to contract, succession, testamentary, or otherwise, limitation etc. Therefore, the irresistible conclusion is that the jurisdiction of the recording authority under the Act in relation to the regularization under Section 5-A is confined to cases, where, no dispute exists as to the execution of the document. If there is any dispute as to the execution of the document or any other contentions are raised, the dispute has, invariably to be adjudicated by a civil court."

8) Insofar as the argument with regard to applicability of the Section 5-A of the Act is concerned, a plain reading of Section 5-A of the Act clearly shows that a person who is in occupation by virtue of alienation or transfer made or affected otherwise than by registered document is only eligible for regularization of sale deed. Sub-clause(2) of Section 8 of the Act clearly show that any person aggrieved by any rights, of which he is in possession by way of entries in record of rights, may institute a suit

³ 2007(3) ALT 720

against any person denying or interested to deny his title to such right for declaration of his rights under chapter VI of Specific Relief Act, 1963 and entry in the record of rights shall be amended in accordance with any such declaration.

9) In view of the judgment referred to above and since both the parties are relying on the sada sale deeds dated 29.01.1971 and 09.03.1975; in view of the entries made recording the name of the vendor as the fourth respondent as the person in possession and taking into consideration the orders passed by the civil courts, I am of the opinion that order under challenge warrants no interference. However, it is always open to the petitioners to file a civil suit seeking appropriate relief if they are otherwise entitled to.

10) With the above direction, the Writ Petition is disposed of. No costs. Miscellaneous petitions, if any, pending in this Writ Petition, shall stand closed.

JUSTICE C. PRAVEEN KUMAR

Dt:30.08.2017

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