**THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO**

**WRIT PETITION No.19059 OF 2008**

**O R D E R :**

This Writ Petition is filed challenging the order dt.07.08.2008 in Rc.No.2835/2005-D5 of the 1st respondent.

2. One Meduri Anaiah Naidu is pattadar of Acre 0-29 cents in D.No.49/3, Acres 3-23 cents in D.No.236 and Acre 0-37 cents in D.No.237 of Yetikuri Village, Guntur Rural Mandal, Guntur District. He died on 18.09.2006.

3. The Writ Petitioner claims to be the son of deceased through M.Naga Ratnamma said to be the wife of the deceased, while the 4th respondent claims that she is the daughter born to the deceased through Smt Krishnaveni.

4. Contending that after the death of his father, Smt M.Naga Ratnamma became the absolute owner under a Will executed by the deceased, that during her life time, M.Naga Ratnamma executed a Will in favour of the petitioner, that she died subsequently and the petitioner became owner and possessor of the said land, the petitioner approached the 3rd respondent for issuance of Pattadar Pass Book and Title Deeds in his favour.

5. The 3rd respondent thereupon issued Pattadar Pass Book and Title Deed in favour of the petitioner on 16.05.2003.

6. On coming to know of it, the 4th respondent filed an application on 27.05.2005 before the 2nd respondent questioning the mutation in favour of the petitioner and also issuance of Pattadar Pass Book and Title Deeds to the petitioner stating that the deceased had executed a registered Will dt.25.01.2000 bequeathing the property to her.

7. On 29.05.2005, the 2nd respondent initially suspended the Pattadar Passbook and Title Deed and after enquiry directed the 4th respondent to approach the Civil Court since there is a civil dispute involved in the matter, to establish her title over the property mentioned in the registered Will dt.25.01.2000 relied upon by her.

8. The 4th respondent then filed a Revision before the 1st respondent under Section 9 of the A.P. Rights in Land and Pattadar Passbooks Act, 1971 (for short 'ROR Act') challenging the order dt.04.07.2005 of the 2nd respondent.

9. Notice was issued to the petitioner, who contested the same.

10. The 1st respondent opined that 4th respondent had sent an application on 05.02.2001 itself enclosing the Death Certificate and copy of Pattadar Passbook and Title Deed of the deceased-Pattadar requesting for grant of succession in her name and for mutation of her name in the revenue records, apart from grant of Pattadar Passbook in her name to 3rd respondent, but he did not take any action on the said application and issued Pattadar Passbook in favour of the Writ Petitioner. He held that the 3rd respondent, without considering the request of the 4th respondent, straight away mutated the name of the petitioner and issued Pattadar Passbook and as per the decision of this Court rendered on 28.03.2007 in W.P.No.16412 of 1998, since the name of the deceased was already in the revenue records, the then Mandal Revenue Officer should have sent notices to all the legal heirs before issuance of Pattadar Passbook to the petitioner. He further held that the 2nd respondent had decided the appeal filed by the 4th respondent on the 1st date of hearing itself without giving opportunity of hearing and the 2nd respondent should have ascertained information and then pronounced the order after giving reasonable opportunity to the 4th respondent and to the petitioner to prove their respective cases. After referring to the provisions of Hindu Marriage Act, 1955 and observing that a second

marriage held prior to the commencement of the said Act is valid, and noting that the 4th respondent's brother was born on 05.04.1955 and since under Section 16 of the Act, said children would also get right over the property of their parents, and since no probate is required under Section 57 of the Indian Succession Act 1925, he held that the Will relied upon by the 4th respondent has got legal validity until it is proved otherwise. He, therefore, set aside the Pattadar Passbook issued by the 3rd respondent to the petitioner as well as the order passed by the 2nd respondent. He directed that the 3rd respondent to follow the decision dt.28.03.2007 in W.P.No.16412 of 1998.

11. Assailing the same, this Writ Petition is filed.

12. Counsel for the petitioner contended that the order passed by the 1st respondent is not sustainable and he ought not to have decided the questions of title and given any finding as to the right, title or interest of the 4th respondent in the subject property. He contended that the 1st respondent ought to have relegated the 4th respondent to a Civil Court. He also placed reliance on the judgment dt.19.11.2013 in Writ Appeal No.1821 of 2013.

13. Counsel for the 4th respondent, however, supported the order passed by the 1st respondent.

14. The Government Pleader for Revenue appearing for the respondent contended that the parties should be relegated to the Civil Court since there is a dispute of title to the property.

15. From the facts narrated above, it is clear that the 4th respondent had approached the 3rd respondent on 05.02.2001 itself and again on 18.05.2005 for mutation of her name in the revenue records on the basis of a registered Will No.4/2000 dt.25.01.2000 allegedly executed by her father Meduri Anaiah Naidu in her favour, but Pattadar Passbook and Title Deeds had been issued in favour of the petitioner ignoring the same by the 3rd respondent.

16. When such application was filed by the 4th respondent, without issuing any notice to the 4th respondent, the 3rd respondent ought not to have granted mutation in favour of the petitioner on 16.05.2003 on the basis of a Will set up by the Writ Petitioner and he should have issued notice to the 4th respondent. Since the issue of title to the property was involved, he should have directed both parties to approach the Civil Court instead of mutating the name of the petitioner

and issuing Pattadar Passbook and Title Deed to the petitioner behind the back of the 4th respondent.

17. The 4th respondent therefore rightly filed Revision before the 1st respondent placing reliance on the order dt.28.03.2007 in W.P.No.16412 of 1998.

18. In my considered opinion, the 1st respondent also ought not to have expressed any opinion about the right, title or interest of the 4th respondent in regard to the subject property and ought to have relegated the parties to a Civil Court after canceling the mutation affected in the name of the petitioner as well as the Pattadar Passbooks and Title Deeds issued to the petitioner.

19. In Writ Appeal No.1821 of 2013 cited by the counsel for Writ Petitioner, this Court has categorically held that in the matters of this nature title has to be decided first and after decision of title is rendered, then there could be recording of such right under Section 8 of the Act.

20. It is the decision of the Civil Court which binds the revenue authorities and when mutation has been made in favour of the petitioner and Pattadar Passbooks and Title Deeds have been issued to the petitioner behind the back of the 4th respondent by the 3rd respondent, even though 4th

respondent's application for mutation and issuance of Pattadar Passbooks and Title Deeds was first in point of time, there is a clear and gross violation of principles of natural justice by the 3rd respondent.

21. Therefore, the Writ Petition is partly allowed; to the extent the 1st respondent has expressed an opinion on the title of the 4th respondent the said order is set aside; but to the extent the 1st respondent has set aside the mutation and issuance of Pattadar Passbooks and Title Deeds in favour of the Writ Petitioner, the order of the 1st respondent is sustained. However, liberty is given to the petitioner as well as the 4th respondent to approach the competent Civil Court to decide the question of title to the subject property and till such issue is decided finally by the Civil Court, no mutation shall be affected in favour of either party and no Pattadar Passbook and Title Deeds shall be issued to either party. There shall be no order as to costs.

22. Consequently, miscellaneous petitions pending if any, shall stand closed.

**M.S. RAMACHANDRA RAO, J**

23rd January, 2017
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