

THE HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No.30296 of 2013

ORDER:

1) Seeking issuance of writ of Certiorari and calling for entire records pertaining to impugned proceedings dated 31.08.2013 and to declare them as erroneous, illegal, improper and violating the principles of natural justice, the present writ petition is filed.

2) The averments in the affidavit filed in support of the writ petition are as under:

The petitioners who are brothers claimed to have acquired property and are having joint patta over the land admeasuring Ac.2.15 gts. in Sy.No.925/ 1, Ac.0.19 gts. in Sy.No.928/ 2, Ac.3.06 gts. in Sy.No.973, Ac.0.10 gts., in Sy.NO.974, Ac.0.21 gts., in Sy.NO.975/ 1, Ac.3.06 gts., in Sy.No.925/ 8, Ac.1.36 gts., in Sy.No.929/ 5, Ac.0.36 gts., in Sy.No.956 and Ac.2.16 gts., in Sy.No.975/ 2, total admeasuring Ac.15.05 gts., situated at Kodandaramapuram Village of Garidepally Mandal. Respondent No.4, 7, 8, 11 and 14 are their sons and other un-official respondents are grandsons and grand daughters. It is said that in the year 2003, the sons of the petitioners, at the instigation of respondent No.8, obtained bank loan by taking the signatures of the petitioners, who are old and disabled. In the year 2010, the petitioners came to know about the fraud played by their sons in changing the names of the petitioners and entering their names in the revenue records. It is stated that un-numbered and un-dated proceedings in the revenue records clearly indicate the fraud played by the un-official respondents. On coming to know about the same, an appeal was

preferred before the 2nd respondent, who by his order, dated 27.09.2010 remanded the matter back to Tahsildar, for fresh enquiry and disposal, after observing the statutory requirements of law. Thereafter, the petitioners approached the 3rd respondent-Tahsildar explaining the circumstances of the case. It is said that without any notice, the 3rd respondent accepted the statement of fifteenth respondent and passed orders on 11.11.2011, confirming the earlier proceedings. Aggrieved by the same, the petitioners again preferred an appeal before the 2nd respondent ie. R.D.O., who by his order dated 18.07.2012 allowed the same. Challenging the same, the fifteenth respondent herein preferred a revision before the first respondent, which was allowed on 31.08.2013. Aggrieved by the same, the present writ petition is filed.

3) Pending writ petition, both the petitioners died as such the wife of 1st petitioner is brought on record as legal representative vide order dated 28.03.2017 passed in W.P.M.P.No. 54965 of 2016.

4) By an order dated 22.11.2013, this Court while admitting the writ petition, suspended the operation of the impugned order.

5) The learned counsel for the petitioners mainly submits that sons of the petitioners and the un-official respondents played fraud by obtaining signatures of the petitioners on the pretext of obtaining loan and thereafter mutated their names in the revenue records. It is his case that even the Tahsildar colluded with the un-official respondents in making the un-numbered proceedings. Relying upon the judgments of this Court and the Apex Court, it is urged that since the Tahsildar passed an order, without giving any notice to the petitioners, the entire

proceedings need to be set aside. It is further contended that as the plea of fraud can be taken at any stage of the proceedings and in view of the fact situation, the entire proceedings gets vitiated.

6) A counter came to be filed by the fifteenth respondent along with vacate stay petition. It is stated in the counter that he purchased part of the land from respondent No.10 by paying valuable consideration which came to be registered vide document No.3901 of 2009. Since then fifteenth respondent is in possession and enjoyment of the property. On an application made, his name was mutated in the revenue records and pattadar pass books and title deeds were also issued in his name. The fifteenth respondent who claims to be in possession of the property, is said to be carrying out the agriculture operations in the said land. It is said that earlier pattadar pass books and title deeds were issued in favour of respondent No.10 and after conducting due enquiry, he purchased the said property. It is his case that the petitioners colluded with respondent Nos.4 to 14 who are their children and are creating litigation, alleging fraud by their own children. It is his case that the entries came to be mutated on the basis of a partition in the family, which was recorded by the 3rd respondent in the form of statements given by the petitioners. In order to support the plea of collusion between the petitioners and their children, the counsel for the fifteenth respondent would submit that the fact that the respondent Nos.4 to 14 remained exparte in the proceedings would indicate the same. It is further stated that as there is an abrupt rise in the price of the land, the petitioners have come forward with the plea of fraud.

7) As seen from the pleadings, the main ground urged by the learned counsel for the petitioners is that no opportunity was given by the Tahsildar to cross-examine, on the signatures of the petitioners before passing the order dated 11.11.2011. A reading of the impugned order show that the matter came to be remanded to the 3rd respondent by Revenue Divisional Officer pursuant to the appeal filed by the petitioners herein. A reading of the order of the Joint Collector would show that the deposition was signed by all the respondents (petitioners) in token of mutually agreeing to the oral partition. Since the partition took place with the consent of the holder, the Tahsildar did not go into the issue as to whether the property is self-acquired or ancestral property. Accordingly, the Tahsildar, partitioned the property held by respondents 1 and 2 therein, who are the petitioners herein, which is as under:

Respondent No.	Name	Sy.No.	Extent
3	Nallabolu Pedakoti Reddy	928/ 2	0.15
4	Nallabolu Jagadishwar Reddy	925/ 1	0.20
5	Nallabolu Chandra Shekar Reddy	925/ 1	0.20
6	Nallabolu Kotamma, D/ o. Pullareddy	925/ 1 956 974 975/ 1 975/ 2 Total:	0.21 0.36 0.10 0.21 2.16 4.24
8	Nallabolu Sathish Reddy, S' o. Chinakoti Reddy	973	01.02
9	Nallabolu Saritha, D/ o. China Koti Reddy	929/ 5 928/ 2	1.36 0.04
10	Nallabolu Venkat Reddy, S' o. Venkat Narsi Reddy	925/ 8	2.00
11	Nallabolu Nagi Reddy, S' o. Venkat Reddy	973	1.02
12	Nallabolu Navya, D/ o. Venkat Reddy	925/ 1 925/ 8	0.34 1.06
13	Nallabolu Srinivas Reddy, S' o. Venkat Narsi Reddy	973	1.02

8) Thereafter, he made necessary entries in the records and issued pattadar pass book and title deeds to the children of the petitioners. Seven years later, one of the respondents sold away her share to the fifteenth respondent herein through a registered sale deed bearing document No.3901 of 2009 dated 16.12.2009. In the year 2010, the petitioners filed an appeal before the Revenue Divisional Officer questioning the very partition of the property, which is reflected from the 1st para of the order passed by the Revenue Divisional Officer in Appeal Case No.E1/ 62/ 2010. In the said appeal, they questioned the partition alleging fraud. The said matter was contested by the respondents. As there was a partition but notice in Form-8 was not issued and there are no proceedings accepting the partition, the Revenue Divisional Officer sent the matter back to the Tahsildar. After remand, the main ground taken by the petitioners is alleged fraud. Even now the main complaint of the petitioner is that the respondent played fraud on the petitioner. There is no dispute with regard to the proposition that fraud vitiates entire proceedings. If any order is obtained by playing fraud, it has to be declared as null and void.

9) In *A.V.Papayya Sastry and others Vs. Government of Andhra Pradesh and others*¹ the Apex Court held that in order to establish fraud, it is not sufficient to plead but the same should be proved by producing evidence.

10) In the instant case, no concrete material has been placed before the authority to show as to how the respondent (Tahsildar) colluded with the children of the petitioners in making the entries. The counsel

¹ (2007) 4 SCC 221

relied upon the conduct of the children (respondents) in remaining exparte in the proceedings before the Revenue Divisional Officer and the Joint Collector, to establish fraud. It is well established principle of law that fraud has to be pleaded first and then proved. Further, merely because the children remained exparte it cannot be presumed that there was a fraud. The other ground which is advanced to prove fraud is that while changing the names in the R.O.R. register, no file number was given and no proceedings were issued thereafter. But the record show that the petitioners herein signed in token of mutually agreeing for a oral partition. The signature of the petitioners was found on the documents. Having regard to the above, the Tahsildar divided the property in the year 2002-2003 and recorded the patta by entering the names. About seven years later, an appeal is filed. Further, the record reveals that respondent No.10 executed a sale deed in favour of respondent No.15 in the year 2009 and since then respondent No.15 claims to be in possession of the property and also doing agriculture work in the said land. The extent of land which respondent No.15 claims to be in possession of Ac.1.31 gts., in Sy.No.929/ 5 and Ac.0.04 gts., in Sy.No.928/ 2. In view of the oral partition; entries came to be made basing on the partition and basing on the statements of the petitioners herein, the plea of fraud is negatived.

11) As stated above, the grievance of the petitioners now is that no opportunity was given to cross-examine, on the signatures made by the petitioners. A plain reading of the order shows that the matter was remanded back to the Tahsildar for conducting fresh enquiry and to dispose of the case after observing the statutory provisions. The order

clearly indicates issuance and service of notice on the un-official respondents herein, who are the children of the petitioners. They were directed to appear before the Tahsildar and explain as to how they came in to possession of the land and also as to when and how they got their names mutated in the revenue records. The statements of the witnesses also show disposal of the property in favour of respondent No.15. The statements of the children of the petitioners, which were recorded by the Tahsildar, reveal that partition was affected in the year 2002-2003 and their names were also mutated in the revenue record. It is their case that in their absence, the Tahsildar recorded their statements. The order does not anywhere indicate such a plea was taken either before the R.D.O. or the Joint Collector.

12) Though the learned counsel for the petitioners relied upon a Division Bench Judgment of this Court in *B.G.Laxman v. Joint Collector, Ranga Reddy District, Hyderabad*², but the said judgment may not be applicable to the case on hand. It was a case where a Division Bench of this Court held that under Section 5 (3) of the Andhra Pradesh Record of Rights in Land and Pattadar Pass Books Act, 1971, issuance of notice at the time of mutation is mandatory. In the instant case mutations were affected long prior to the date of passing of the order by the Tahsildar, which is revealed from the impugned order itself.

13) Pending the writ petition, both the writ petitioners died and the wife of the first petitioner was brought on record as his legal representative.

² (2003) ALT (1) 3

14) Even if the matter is remanded back, as sought for the petitioner, the respondents herein may not be in a position to prove the authenticity and genuinity of the signatures on the statement, as petitioners 1 and 2 are no more. Having regard to the above and since the issues raised can only be proved by a regular trial, I see no merit but the petitioner (LR) is always at liberty to avail common law remedy to prove the authenticity and genuinity of signatures and nature of transaction including fraud, in which event the same shall be decided uninfluenced by the observations made herein.

15) Accordingly, the writ petition is disposed of. There shall be no order as to costs.

16) Consequently, miscellaneous petitions if any, pending shall stand closed.



JUSTICE C. PRAVEEN KUMAR

27.04.2017
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