

**THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SRI JUSTICE M.S.K. JAISWAL**

Writ Appeal No.100 of 2018

Judgment: {Per the Hon'ble the Acting Chief Justice Ramesh Ranganathan}

Heard Sri S. Subba Reddy, learned counsel for the appellant, and the learned Government Pleader for Revenue. Though his name is printed in the cause list, neither is Sri M.L. Ali, learned counsel for respondents 1 and 2 herein (petitioners in the Writ Petition), present nor is there any representation on his behalf.

This appeal, under Clause 15 of the Letters Patent, is preferred against the order passed by the learned Single Judge in WPMP No. 16282 of 2017 in W.P. No. 13109 of 2017 dated 2.1.2018. Respondents 1 and 2 herein filed the said Writ Petition questioning the proceedings dated 7.11.2016 directing mutation of the name of the appellant in the revenue records, after deleting the name of the 1st respondent herein in whose name pattadar passbook and title deeds are said to have been issued.

While the Writ Petition came to be filed in April, 2017 and, on notice being ordered, the appellant herein (6th respondent in the Writ Petition) filed her counter-affidavit on 21.12.2017, the order under appeal came to be passed on 2.1.2018. In the order under appeal, the Learned Single Judge held that the Tahsildar had failed to take into consideration the objections filed by the 1st respondent before him; the fact that such objections were filed was admitted by the Tahsildar in the counter-affidavit filed by him in W.P. No. 12521 of 2016; and the impugned order was in violation of principles of natural justice. The learned Single Judge granted interim suspension as prayed for, i.e to suspend operation of the proceedings of the Tahsildar dated 7.11.2016.

In effect the order, impugned in the Writ Petition, dated 7.11.2016 was suspended a year and half thereafter on 2.1.2018 even without considering the contents of the counter-affidavit filed by the appellant herein (contesting respondent in the Writ Petition).

Sri S. Subba Reddy, learned counsel for the appellant, would submit that though he had drawn the attention of the learned Single Judge to the fact that a counter-affidavit was filed, and had requested him to take note of its contents wherein the appellant had asserted that respondents 1 and 2 had suppressed relevant and material facts, the order under appeal came to be passed leaving it open to the appellant herein to file a petition to vacate the interim order.

From the contents of the counter-affidavit, it does appear that the subject property was the subject matter of a Civil Suit in O.S. No. 62 of 1993 against which A.S. Nos. 628 of 1996 and 1526 of 1995 were filed before this Court by both the appellant and the defendants in O.S. No. 62 of 1993; the appeal preferred by the appellant in A.S. No. 1526 of 1995 was allowed, and A.S. No. 628 of 1996 was dismissed; Civil Appeal Nos. 10949 and 10950 of 2014 were disposed of by the Supreme Court by its order dated 2.12.2014 in as much as the parties had entered into a compromise during the pendency of the appeals before the Supreme Court; O.S. No. 132 of 1996 was filed by the 1st respondent (petitioner No.1 in the Writ Petition) along with others, wherein they filed I.A. No. 323 of 2008 seeking permission to withdraw the Suit; the Senior Civil Judge, Gudivada had, by order in I.A. No. 323 of 2008 in O.S. No. 132 of 1996 dated 26.3.2008, permitted them to withdraw the Suit; and the order of the learned Senior Civil Judge, Gudivada dated 26.3.2008 records the desire of the petitioners therein (which included the 1st respondent herein) to withdraw the Suit in O.S. No. 132 of 1996 in view of the judgment of the High Court in A.S. Nos.

626 of 1996, 1126 of 1996 and CMP No. 8114 of 1999. As noted hereinabove, A.S. No. 1526 of 1995 was decreed in favour of the appellant herein.

The appellant has also contended, in the counter-affidavit filed by her, that the Writ Petition was liable to be dismissed for suppression of facts. As the learned Single Judge has, in the order under appeal, failed to consider the contents of the counter-affidavit, filed by the appellant, though it was placed on record before him prior to the order under appeal being passed, we consider it appropriate to set aside the order under appeal, and restore the WPMP to file.

WPMP No.16282 of 2017 shall be considered by the Learned Single Judge afresh taking note of the contents of the counter-affidavit filed by the appellant herein. We record the submission of Sri S. Subbareddy, learned counsel for the appellant (6th respondent in the Writ Petition) that, pending further orders in the Writ Petition, the appellant shall not alienate or create any third party rights with respect to the subject property.

The Writ Appeal is disposed of accordingly. Miscellaneous petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(M.S.K. JAISWAL, J)

31st January, 2018

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Date: 31.01.2018

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