

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Writ Petition No.1337 of 2015

ORDER:

This writ petition under Article 226 of the Constitution of India is filed by the petitioners requesting to issue a writ in the nature of *mandamus* declaring the order, dated 09.05.2014, passed by the 4th respondent/ Revenue Divisional Officer, Kakinada, in ROR Appeal No.A/ 193/ 2013 and the order, dated 30.12.2014, passed in D.Dis.D9/ 5351/ 2012 passed by the 3rd respondent confirming the aforesaid order passed by the 4th respondent, as arbitrary, capricious, unconstitutional and violative of the principles of natural justice & the provisions of A.P. Record of Rights in Land and Pattadar Passbooks Act, 1971; and to consequently set aside the said orders.

2. I have heard the submissions of *Sri K.V.Seshagiri Rao*, learned counsel appearing for the petitioners; of the learned Government Pleader for Revenue (AP) appearing for the respondents 1 to 5; and, of *Sri Pappu Srinivasa Rao*, learned counsel appearing for the 6th respondent. I have perused the material record.

3. The case of the petitioners and the submissions made on their behalf, in brief, are as follows:

The petitioners' maternal grandfather Buddaraju Venkatapathiraju was the original owner of the properties in respect of which pattadar passbooks (PPBs) and Title Deed documents (TDs) have been issued to the petitioners. The maternal grandfather of the petitioners executed two registered Wills, dated 11.09.1991 & 21.10.2012 and also a Codicil, dated 12.01.2005 in a sound and disposing state of mind and bequeathed the properties to the first petitioner's grandmother, who is living with the 1st petitioner, creating life interest in favour of the said grandmother and vested remainder rights in the petitioners. Such bequests were made with the consent of the grandmother.

The petitioners are looking after the cultivation of the properties. After the death of the grandfather, the petitioners continued in possession of the schedule property. Therefore, the petitioners made an application to the 5th respondent, Tahasildar, Gollaprolu Mandal, for issuance of pattadar passbooks and title deed books. After making enquiry, the 5th respondent issued pattadar passbooks and title deed books to the petitioners. The 6th respondent is aware of the same. The 6th respondent made an application to the 5th respondent-Tahasildar. In fact, the 5th respondent issued an endorsement, dated 26.04.2011, stating that the pattadar passbooks and title deed books were issued to the petitioners after proper enquiry only, and informed the 6th respondent to settle the issue before the Civil Court since the matter is already *subjudice*. The 6th respondent is also aware of the Wills and Codicil executed by the grandfather of the 1st writ petitioner. However, suppressing the same, she filed O.S.no.1 of 2010 on the file of the Court of the learned VI Additional District Judge, Kakinada, for partition of the properties of the grandfather and the same is pending. Till the suit is disposed of, the rights of the 6th respondent, if any, will not stand determined. The 6th respondent has not filed any appeal against the endorsement given by the 5th respondent. Without challenging the endorsement given by the 5th respondent by preferring an appeal before the 4th respondent, who is the proper authority, she approached the Chief Commissioner of Land Administration, A.P., Hyderabad, for cancellation of the pattadar passbooks and title deed books issued in favor of the petitioners. The 2nd respondent-District Collector, who is the Revisional Authority, forwarded the petition of the 6th respondent to the 4th respondent, vide his Proceedings, dated 10.12.2012. The 4th respondent passed the impugned order under the influence of the 2nd respondent-District Collector, who is the Revisional Authority. The impugned order passed by the 4th respondent is not against the endorsement of the 5th respondent. The 4th respondent passed the orders only on the instructions of the higher authorities

and since forwarded by the revisional authority. The 4th respondent has to pass the order independently. But, he did not do so. The 5th respondent in his endorsement rightly stated that the issue is within the purview of the Civil Court and that the right of the 6th respondent is not yet determined by the Civil Court. Therefore, the order of the 4th respondent is illegal. The further orders of the 3rd respondent confirming the said orders of the 4th respondent are also illegal. Hence, the writ petition is filed.

4. The case of the 6th respondent and the submissions made on her behalf, in brief, are as follows:

The material allegations in the writ petition including the averments regarding execution of the Wills and Codicil by the grandfather of the petitioners and the further allegations about the petitioners succeeding to the property after the death of the grandfather & grandmother are all false. Buddaraju Venkatapathiraju is the father of this respondent and he was the Manager of the joint family consisting of the 6th respondent, her younger sister, Kalidindi Jaya Lakshmi. The petitioners are the sons of the said Kalidindi Jaya Lakshmi, the younger sister of this respondent. The joint family owned and possessed Ac.4.26 cents of mango garden in R.S.no.50/ 2B & 51/ 2B and Ac.7.34 cents of Zeroyati Wet/ Dry land in R.S.No.175/ 1, 2, 510/ 2 & 511 of Durgada village. Buddaraju Venkatapathiraju, got the said property in a family partition amongst his family members. While enjoying the said properties, from out of the income derived from the said properties, he started a rice mill under the name and style 'Lakshminarayana Rice Mill' and acquired the rice mill property situated in an extent of Ac.0.83 cents in R.S.no.373 and a terraced building bearing no.7-25 with ground and 1st floors in an extent of about Ac.0.40 cents, in R.S.No.302/ 1 and 322/ 1 & 2, of Durgada village. As a Family Manager, he used to look after the family affairs including the management of the joint family properties. The 6th respondent is a resident of Hyderabad. The father of this respondent used to give her share in the income

as and when she used to go to her native village. The mother of the writ petitioner, that is, the younger sister of this respondent, also used to take her share as and when she desired as she was a native of the same village. The father of the 6th respondent died intestate in February 2007. On his intestate death, this respondent, her younger sister and their mother became entitled to the property being legal heirs. The petitioner and her younger sister became entitled to a 1/3rd share each apart from other share. Therefore, this respondent sought division of the properties. However, the mother of the writ petitioners, that is, the younger sister of this respondent did not cooperate. Hence, this respondent filed a suit in O.S.no.1 of 2010 on the file of the Court of the learned III Additional District Judge, Kakinada, and the same was transferred to the Court of the learned Additional District Judge, Pithapuram, and was re-numbered as O.S.no.75 of 2014. In order to deprive the rights of this respondent and taking advantage of the fact that she is staying away from the village, the writ petitioners who are the sons of the younger sister of this respondent brought into existence the alleged Wills and codicil mentioned in the writ petition. Only after filing of the written statement in the name of the mother of this respondent, she came to know about the alleged documents. In fact, this respondent's mother never informed her about the alleged Wills and codicil. The petitioners might have played fraud upon her and obtained her marks and got filed the alleged written statement. Having come to know that the petitioners obtained pattadar passbooks in their names, this respondent applied to the then Tahasildar to provide information. The Tahasildar, however, did not provide the required information and on the other hand, informed that the pattadar passbook books and title deed books were rightly issued basing on the Wills and codicil produced by the writ petitioners and further advised to have dispute adjudicated before a Civil Court. This respondent also came to know that the alleged Will was further manipulated by the writ petitioners to obtain passbooks in their names and the same were

obtained by influencing the Tahasildar. On the request of this respondent, when the copies of the Wills are supplied, she came to know about the manipulations done by the petitioners. However, the 5th respondent did not take any action for cancellation of the passbooks. Then, this respondent approached respondents 2 to 4 for cancellation of the passbooks. When they failed to take action, she approached the Chief Commissioner of Land Administration, Government of Andhra Pradesh, by her representation, dated 05.10.2012. He responded to the said representation and addressed the 2nd respondent, vide proceedings, dated 14.11.2012, and directed the 2nd respondent to examine and furnish a detailed report. The 2nd respondent, in turn, directed the 4th respondent to conduct enquiry and send a report. In spite of that also, when the 5th respondent did not respond properly. Hence, the Chief Commissioner of Land Administration again sent a remainder, vide proceedings, dated 06.04.2013. Thereafter, the 5th respondent, vide his proceedings, dated 04.05.2013, brought to the notice of the 4th respondent that the passbooks were issued by the then Tahasildar in the year 2009 and that the applications and the copies of the documents were not available in the office and that therefore, he required the writ petitioners to produce the same and that they are willfully avoiding to produce the same. However, no effective action was taken even thereafter. The Chief Commissioner of Land Administration, again issued a remainder, on 21.10.2013. After all these proceedings, ultimately, the 4th respondent decided the ROR appeal, on 09.05.2014, cancelling the pattadar passbooks issued in the names of the writ petitioners and directed the 5th respondent to conduct fresh enquiry. Against the said orders, the writ petitioners preferred an appeal before the 3rd respondent and the 3rd respondent confirmed the orders of the 4th respondent. Hence, the writ petition is liable to be dismissed.

5. Learned counsel appearing for the petitioner and the 6th respondent reiterated their respective submissions.

6. I have given earnest consideration to the submissions and the contents of the material documents.

7. Both the parties fairly admitted that the property originally belonged to Buddaraju Venkatapathi Raju, who is the father of the 6th respondent and the mother of the writ petitioners. The writ petitions contend that Venkatapathi Raju died after executing two Wills and a Codicil. The 6th respondent contends that he died intestate. However, the petitioners, it appears have obtained pattadar passbooks and title deed books in respect of certain properties of Venkatapathi Raju, their grandfather, based on the said Wills and codicil. The 6th respondent contends that when she sought for partition, her sister (since died) did not cooperate. Therefore, she filed the suit for partition and the said suit is pending. According to her, having come to know of the alleged Wills and Codicil and Passbooks and Title Deeds obtained by the petitioners, she approached the revenue authorities. Be that as it may. The Tahasildar issued an endorsement, dated 26.04.2011, stating that the passbooks & title deed books issued to the writ petitioners are rightly issued based on records. Eventually, the 4th respondent, by his orders, dated 09.05.2014, held that the pattadar passbooks and title deed books were granted to the writ petitioners without examining the documents and without proper enquiry and that therefore, a detailed enquiry and proper verification of the records is necessary to establish title over the lands and therefore, he cancelled the pattadar passbooks and title deeds and directed the Tahasildar, Gollaprolu, to call back the passbooks and conduct proper enquiry with reference to the records. The aggrieved petitioners preferred a revision before the 4th respondent-Joint Collector and the Joint Collector, by his proceedings D.Dis.D9/ 5351/ 2012, dated 30.12.2014, confirmed the orders of the Revenue Divisional officer/ Appellate Authority holding that there is no need to interfere with the orders of the Appellate Authority & RDO, Kakinada.

8. The law is well settled that mere mutation of properties in the revenue records will neither confer title nor divest title existing, if any. The revenue officers have not taken a final decision in the matter; and, for the purpose of taking a final decision in the matter as per records and in accordance with the procedure established by law, the pattadar passbooks and title deed books which were earlier issued to the petitioners were cancelled; and, the Tahasildar is now required to make a detailed enquiry into the matter and determine the entitlement of the parties to have pattadar passbooks and title deed books in respect of the properties of late Venkatapathi Raju. The Civil Court is the competent Forum to decide the issue with regard to title to the property as well as the entitlement of 6th respondent to a share in the properties, which are in dispute. Since the writ petitioners place reliance on two Wills and a Codicil stating that their grandfather executed the same and as the 6th respondent, on the contrary, is denying execution of the said Wills and codicil by her father and is stating that her father died intestate, the genuineness or otherwise of the said documents is also to be decided in the said pending suit. It is needless to state that the civil Court will have to decide the issues related to the title to the property as well as the genuineness or otherwise of the Wills and codicil being relied upon by the writ petitioners without reference to the revenue entries and orders of the revenue authorities, as it is well settled that entries in revenue records do not either confer title or take away the existing title, if any. The 6th respondent and the mother of the writ petitioners are sisters and are daughters of the original owner of the property is admitted. It is pertinent to note that the rights of the parties would depend upon the determination of the issues involved in the civil suit. And, it is for the civil Court to adjudicate on the aforesaid and other issues involved in the civil suit. The complex factual issues require adjudication by a civil Court after the parties let in necessary oral and documentary evidence during the course of trial. Factual controversies cannot be taken up in the writ

petition. The parties have to work out their legal remedies either in the pending civil suit or in any other proceedings that the parties wish to institute before a civil Court. In the decision in *Kutchi Rameshwar Ashram Trust Evam Anna Kshetra Trust Thr. Velji Devshi Patel v. Collector, Haridwar and others*¹, the Supreme Court held as under: 'To allow administrative authorities of the State-including the Collector, ... to adjudicate upon the matters of title involving civil disputes would be destructive of the rule of law. The Collector is an officer of the State. He can exercise only such powers as the law specifically confers upon him to enter upon private disputes. In contrast, a civil Court has the jurisdiction to adjudicate upon all matters involving civil disputes except where the jurisdiction of the Courts is taken away, either expressly or by necessary implication.... Adjudication on title must follow recourse to the ordinary civil jurisdiction of a Court of competent jurisdiction under Section 9 of the Code of Civil Procedure, 1908.' In that view of the matter, this writ petition can be disposed of with appropriate directions.

9. In the result, the Writ Petition is disposed of directing the revenue authorities to keep the issue of entitlement to pattadar passbooks and title deed books in respect of the properties in dispute of late Venkatapathi Raju, in abeyance till the adjudication of the civil suit by the Civil Court.

There shall be no order as to costs.

Miscellaneous petitions pending, if any, in this writ petition shall stand closed.

JUSTICE M. SEETHARAMA MURTI

16.07.2018
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¹ 2017 SCC Online SC 1167