

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

WRIT PETITION NO.25578 OF 2006

ORDER:

This writ petition is filed challenging the order of the Mandal Revenue Officer, Gangavaram Mandal, East Godavari District, respondent No.1 herein, passed in Ref.D/ / /05, dated .06.2005.

2. The husband of petitioner No.1, who was ex-serviceman, was granted D.Form patta in respect of land admeasuring Ac.3-12 cents in Sy.No.217/2B, situated at Molleru Village, Gangavaram Mandal, East Godavari District, by the Deputy Tahsildar, Yellavaram vide proceedings in L.D.No.45A/8D, dated 20.04.1980. Petitioner No.1 and her husband were blessed with one son by name Venkateswara Rao and three daughters i.e., petitioner Nos.2 to 4 herein. Respondent Nos.2 and 3 are wife and son of Venkateswara Rao.

3. While so, Venkateswara Rao died on 14.02.1990. The husband of petitioner No.1 died on 23.09.1991 intestate. Thereafter, respondent No.2 filed a petition on 23.05.2005 before respondent No.1 claiming half share in the subject property. Upon the said petition, respondent No.1 passed the impugned order as follows:

“ **ORDER**

A 'D' Form patta was issued in favour of Sri Mutha Veerraju, being an Ex-Serviceman in the reference 1st cited in the year 1980 in respect of S.No.217/2B measuring Ac.3-12 cents in Molleru village of Erstwhile Yellavaram Taluk.

Later the original patta holder died leaving behind him wife Smt.Mutha Seethadevi and son Viz, Mutha Venkateswararao and three daughters.

Subsequently Mutha Venkateswararao died in an accident leaving behind him wife Viz., Smt.Mutha Suryakumari i.e. daughter-in-law of Mutha Sithadevi and one minor son viz., Mutha Subrahmanyam.

My personal enquiry reveals that the three daughters of the deceased Ex.Serviceman, were already married and living separately and all of them are doing jobs. And it has come to my notice that these three daughters, instigated by their mother, have been trying to grab the landed property of Ac.3-12 and they trying to cause harm to the petitioner, Smt.Mutha Suryakumari (the daughter-in-law of the deceased Ex-Serviceman) and her minor son Mutha Subrahmanyam.

Actually, 1.Mutha Seethadevi, 2. Smt.Mutha Suryakumari and 3.Mutha Subrahmanyam are the next heirs of the deceased.

In the circumstances stated above, and keeping in view of the welfare of the family in exercise of the powers conferred upon me, to prevent further complications in this regard, I hereby proclaim the following order.

1. Smt.Mutha Sithadevi has to enjoy one half share (1/2) i.e Ac.1.56 cents of the said property and she being an aged women, after her life it should be bequeathed to her daughter-in-law viz., Mutha Suryakumari and grand son Viz., Mutha Subrahmanyam.

2. Smt.Mutha Suryakumari W/o. (Late) Venkateswararao should take and enjoy another half share (1/2) i.e Ac.1.56 cents in S.No.215/2B of Molleru village and no one should disturb the peaceful enjoyment and occupation of the other.

These orders will come into force with immediate effect.

The Mandal Surveyor, Gangavaram is hereby directed to prepare Sub-Division record along with sketches assigning the Sub-Division Nos. as 217/2B & 217/2B2 and physically handedover possession and report compliance immediately.

Both parties should obey the orders without any deviation.”

4. It is the case of the petitioners that as the husband of petitioner No.1 died intestate, his estate would be devolved upon them equally i.e., 1/5th share along with deceased Venkateswara

Rao and that by virtue of the death of Venkateswara Rao, his 1/5th share would be devolved upon respondent Nos.1 and 2, as per the provisions of the Hindu Succession Act, 1956. Apart from the same, respondent No.1 is not having jurisdiction to decide the issue of succession.

5. A perusal of the impugned order, it is clear that upon filing of the petition by respondent No.2, respondent No.1 passed the impugned order, without having any jurisdiction, holding that petitioner No.1 and respondent No.2 are entitled to half share each in the subject property and that petitioner Nos.2 to 4 are not having any right, as they were already married and living separately by doing jobs. It is pertinent to mention here that a civil Court is having the jurisdiction to decide the issue of succession and to issue succession certificate and respondent No.1 is having no jurisdiction to do so. Therefore, on this short point, this Court is inclined to set aside the impugned order.

6. Accordingly, the writ petition is allowed, setting aside the order of the Mandal Revenue Officer, Gangavaram Mandal, East Godavari District passed in Ref.D/ / /05, dated .06.2005. The parties are liberty to approach competent civil Court for their grievance. No costs. As a sequel, miscellaneous petitions pending, if any, shall stand closed.

T.AMARNATH GOUD, J

Date: 24-08-2018
TJMR