

**THE HON'BLE SRI JUSTICE RAGHVENDRA SINGH CHAUHAN
AND
THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY**

Writ Appeal No.589 of 2018

JUDGMENT: (per Hon'ble Sri Justice M.Satyanarayana Murthy)

This Writ Appeal is filed by the appellant aggrieved by the order, dated 22.02.2018, passed in W.P.No.6387 of 2017, whereby the learned Single Judge dismissed the Writ Petition filed by him.

The appellant filed the Writ Petition against the respondents 1 to 5 alleging that the land in an extent of Ac.0.05 cents, situated in Survey No.55/3 of Parnashala Village, Tarakaturu Panchayat, Guduru Mandal, Krishna District, bearing Plot No.9, within the boundaries specified in the patta, was assigned in favour of V.Ramanujamma, the original assignee, who is the great grandmother of the petitioner. She later executed a Will dated 20.11.1980 in favour of the petitioner-appellant bequeathing the property, assigned to her. It is alleged that the District Collector, Krishna District, Machilipatnam-respondent No.2, directed the Tahsildar, Guduru Mandal, Krishna District-respondent No.4, to take measurements and permitted the Project Officer, ICDS, Bandar Rural-respondent No.5, to construct a building for locating Anganwadi school. The petitioner-appellant specifically claiming right in Plot No.9 in an extent of Ac.0.05 cents situated in Survey No.55/3. Whereas, the respondent No.4 issued notice in Form-I, and approval letter, dated

04.11.2016, allotting vacant land in Survey No.55/4-A of an extent of Ac.0.03 cents for construction of Anganwadi school. But, the allegation made in the affidavit, filed along with the Writ Petition, is that the officials of the respondents came and took measurements of the land, in which the petitioner constructed a house i.e., in Survey No.55/3 in an extent of Ac.0.05 cents and for which he is paying property taxes etc. But, as per the counter-affidavit filed by the respondent No.4, the respondent No.5 had completed the construction by the date of filing of the counter-affidavit on 21.03.2017, in the land handed over to the respondent No.5. Therefore, the claim of the appellant-petitioner is over the land adjacent to the land in which construction was raised. But, the learned Single Judge passed the impugned order observing that the land assigned to the petitioner's ancestors was never disturbed; the children of the original assignees settled at different places and were working in Government Departments; since the land, which was assigned in favour of the ancestors of the petitioner, was not disturbed, the cause of action in the Writ Petition does not survive and accordingly, dismissed the Writ Petition filed by the appellant-petitioner.

Aggrieved thereby, the present appeal is preferred on the same grounds and mainly raising a contention that the appellant-petitioner is in possession of the property and the respondent Nos.4 and 5 are claiming a right over the said

property to construct Anganwadi school. But, this contention of the appellant-petitioner cannot be accepted for the simple reason that by the date of filing of the counter-affidavit before the learned Single Judge, the construction of the Anganwadi school is completed in the adjacent plot. Whether the appellant-petitioner raised a construction in the land actually assigned to V.Ramanujamma in Survey No.55/3 or in Survey Nos.55/3A or 55/4-A is a disputed question of fact, which cannot be decided by this Court, while exercising jurisdiction under Article 226 of the Constitution of India. In any view of the matter, there is a procedure prescribed under the Andhra Pradesh Lands (Prohibition of Transfers) Act, 1977 (Act 9 of 1977) and it appears from the counter-affidavit of the respondent No.4, that a notice in Form-I, under Rule 3 of the Rules framed under the A.P. Act 9 of 1973 Act, was issued and raised a construction. But, the sub-division of land in Survey No.55/3 into A, B, C etc. is a disputed question of fact. Therefore, an appeal is provided under Section 4-A of the said Act, where the grievance of the petitioner can effectively be decided. In view of the limited jurisdiction of this Court, under Article 226 of the Constitution of India, disputed questions of fact cannot be decided in the Writ Petition. Therefore, we find no merits in the Writ Appeal. However, liberty is given to the appellant-petitioner to file an appeal under Section 4-A of the Act No.9 of 1977 or any other statutory remedy available to him, in accordance with law.

In the result, the Writ Appeal is dismissed, granting liberty to file appeal under Section 4-A of the A.P. Act 9 of 1977. The Miscellaneous Petitions, if any pending, shall also stand dismissed. No costs.

RAGHVENDRA SINGH CHAUHAN, J.

M.SATYANARAYANA MURTHY, J.

Date:19.12. 2018.
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