

HON'BLE THE CHIEF JUSTICE  
SRI THOTTATHIL B. RADHAKRISHNAN  
AND  
HON'BLE SRI JUSTICE S.V.BHATT

WRIT APPEAL No.1092 OF 2016

JUDGMENT: *(Per the Hon'ble Sri Justice S.V.Bhatt)*

Heard the learned counsel for appellant, learned Government Pleader for respondents 1 to 3 and learned standing counsel for respondent No.4.

The writ petitioner is the appellant. She challenges the order dated 01.09.2015 dismissing W.P.No.2928 of 2011. The appellant filed W.P. No.2928 of 2011 for Mandamus declaring the action of Tahsildar, Ibrahimpatnam Mandal/3<sup>rd</sup> respondent in both threatening and trying to dispossess the petitioner from Acs.1-10 gts. of land in Survey No.124/3 at Mangalampalli, Ibrahimpatnam Mandal, R.R. District (for short 'the subject matter'), as illegal and unconstitutional.

The case of appellant is that she is the owner and possessor of subject matter having acquired through registered sale deed No.6753/1979 dated 15.11.1979 from Faiz Mohammed Habeeb. The appellant claims actual physical possession and enjoyment of the subject matter. The appellant relies on Pahani of Mangalampalli for the years 1956-58 etc., in support of the assertion of actual enjoyment of subject matter.

The respondents opposed the writ prayer and the foremost objection raised by respondents is that the total extent of land in Survey No.124 is recorded as Acs. 172.18 gts and the respondents granted assignment to landless poor persons in Survey No.124.

An extent of Acs.2-15 gts. In Survey No.124/23 was assigned to one Mohd.Hussain. The said assignment was cancelled through proceedings No.B/ 1549/2005. Therefore, respondents assert to have resumed possession of land in Survey No.124/23 from the assignee. It is in this background the respondents join issue with petitioner on right, title and also identity of the property. In other words, the respondents contend that the entire basis of writ prayer is false and untenable .

The learned Single Judge, upon consideration of the rival pleas and examining the record, rejected the writ petition by holding that the case presents serious disputes on title and identity of the subject matter with reference to the documents on which the petitioner relies. The writ Court, it is further held, in its jurisdiction under Article 226 of the Constitution of India ought not to appreciate or examine the disputed facts which are otherwise considered and established in trial by contesting parties before competent civil Court.

Learned counsel for appellant contends that the appellant has right, title and possession to subject matter. The limited prayer seeking protection from threatened action of dispossession of appellant from the subject matter ought not to have been negatived by the learned Single Judge. By drawing the attention of the Court to Pahanis, he contends that the Writ Court to meet the ends of justice ought to have considered disposing of the writ petition restraining the respondents from dispossessing the appellant, except in accordance with law. He prays for allowing the appeal.

The learned counsel appearing for the respondents contend that the subject matter of the writ petition is Survey No.124/3. The sale deed dated 15.11.1977 relied on refers to different survey number. Therefore, the basic document on which the claim is made by appellant does not conform to the pleadings. The counsel rely on the findings recorded in the order under appeal and pray for dismissing the writ appeal.

We have taken note of the rival submissions and perused the record. The short point for consideration is whether the appellant has made out case for interference in this appeal against the order in W.P.No.2928 of 2011. For brevity, we refrain from referring to the averments made by both the parties in the affidavit and the counter affidavit. The subject matter is stated as Survey No.124/3 measuring Acs. 1-10 gts. The document relied on by appellant deals with Survey No.124/23. The appellant claims sub-division of Survey No.124/23 whereunder sub-division is carved out and the appellant is in possession of Acs. 1.10 gts. The plea of appellant is not supported by the very documents on which the relief is made or alternatively the petitioner seeks protection from the threatened action of respondents dispossessing her. We are satisfied that the order under appeal is just and correct; the learned Single Judge with right reasons declined to exercise the jurisdiction under Article 226 of the Constitution of India, having regard to the disputed questions of fact on title, identity etc.

The writ appeal fails and is, accordingly, dismissed. No order as to costs.

As a sequel thereto, miscellaneous petitions, if any, pending stand closed.

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THOTTATHIL B. RADHAKRISHNAN, CJ

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S.V.BHATT, J

Date:27.08.2018  
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