

THE HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

WRIT PETITION No.27115 of 2013

ORDER :

Heard the learned counsel for the Petitioners and learned Government Pleader for respondents.

2. It is a case of the petitioner that the land admeasuring Ac.4-00 gts., situated in Survey No.1331 (old) 846 (new) of Qhila Warangal, Warangal District, originally belongs to N.Komaiah, who was the pattedar of the said land. He had 5 sons namely (1) Suleman (2) Samuel (3) Nawab (4) Benni and (5) Yeshaiah. After the demise of the said Komaiah, his son succeeded to the property. While so, the husband of the 5th respondent applied for passbook and title deed, alleging that he purchased the property from Late Benni.

3. It is the case of the petitioner that the joint family property was not partitioned and O.S. No. 183/2005 was filed for partition before the Court of the II Additional Senior Civil Judge, Warangal. The said Benni died on 26.08.2002 and it is the case of the petitioners that their father never alienated the property. When the 5th respondent earlier applied for the issuance of Pattadar passbook and title deed, the same was rejected on 20.07.1995, on the ground that there was no link documents.

4. However, the 3rd respondent issued proceedings on 09.05.2006, issuing pattadar pass book and title deed in favour of the 5th respondent. Challenging the same, the petitioner preferred a revision before the 1st respondent on 17.07.2009 and when the said revision

was dismissed by the Joint Collector on 18.07.2013, the present writ petition was filed.

5. The impugned order passed by the Joint Collector reads as follows:

“On perusal of the claims of both parties and after careful examination of the record, the revision petition is not maintainable U/s. 9 of ROR Act, as the dispute is civil in nature, which should be decided by a competent civil court only. Moreover, there is a partition suit in O.S. No. 183 / 2004 pending in the II Additional Senior Civil Judge at Warangal.

The Pattadar pass books were issued by the Tahsildar Warangal in favour of the Respondent No.1 & 2 in the year 2006. But the revision petition is filed after a delay of (3) years and revision petitioner had failed to show substantial reason/ground for the delay of (3) years, for condonation of delay, as per limitation Act.”

The husband of the 5th respondent claims to have purchased the property from one of the sons of the said Kommaiah – father of the petitioner, who was the original pattadar of the land.

6. It is the case of the petitioner that the family property was not partitioned and their father did not alienate the property at all. Now, O.S. No.183/2005 is pending on the file of the II Additional Senior Civil Judge, Warangal for partition. In view of the partition suit the right of the co-parceners of the property will be decided. But the decision will be with regard to the title, whereas the respondents 1 and 3 are supposed to pass orders with regard to the entries in the revenue records. They have to verify the possession of the land and *prima facie* title to the property and take a decision. Merely because the suit of partition is pending, the decision cannot be deferred.

7. In the circumstances, the impugned order Rc.No.E5/4783/2009 dated 18.07.2013, issued by the respondent No.1, confirming the order

of the 3rd respondent dated 09.05.2006 is set aside and the 1st respondent is directed to consider the appeal preferred by the petitioners, after hearing the 5th respondent and the petitioners in accordance with law.

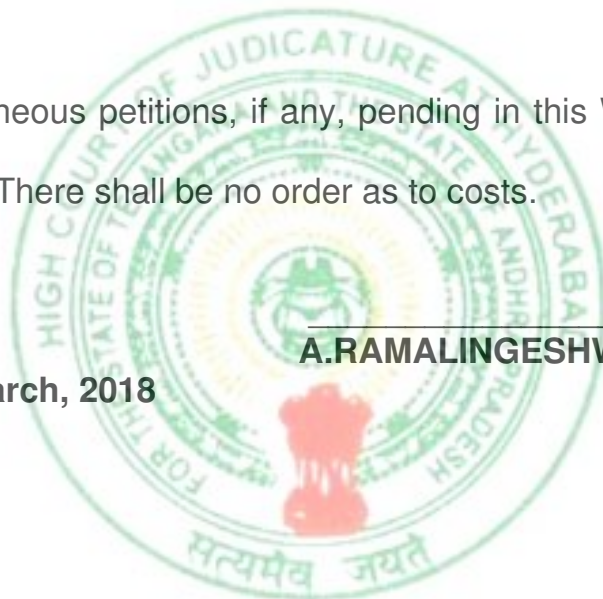
8. The Writ Petition is accordingly allowed, and the same is remanded to the 1st respondent for consideration of the case in accordance with law. Till such time, there shall be status quo with regard to the entries in the revenue records and the 5th respondent shall not alienate the property pending disposal of the proceedings by the 1st respondent.

9. Miscellaneous petitions, if any, pending in this Writ Petition shall stand closed. There shall be no order as to costs.

Dated: 15th March, 2018

JR

A.RAMALINGESHWARA RAO, J



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JR