

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.17719 OF 2018

ORDER :

This Writ Petition is filed seeking writ of *certiorari* calling for records connected with orders passed by the 2nd respondent in case No.D/2439/2009, dated 29.01.2011 and consequential orders passed by the 1st respondent vide ROR Revision Case No.F2/2274/2011, dated 04.05.2018 as illegal and arbitrary and consequently to quash the same.

2. Brief facts which led to filing of this Writ Petition are as follows:

The petitioners and respondents 5 to 7 are related to each other. The petitioners and 7th respondent are sons of 6th respondent and the 5th respondent is the paternal uncle of the petitioners. The petitioners are claiming to be the owners and pattadars of land in Sy.Nos.24/AA, 28/AA, 30/AA, 32/AA, 379/AA, 380/AA, 381/AA & 382/AA to an extent of Acs.19.28 gts, situated at Thungathurthy Village and Mandal, Suryapet District. It is the case of the petitioners that originally the subject land belongs to their forefather by name Guvvadi Sethaiah and they succeeded the same through the Will executed by their grand mother by name late Guvvadi Sattemma, during her life time and that their names were mutated in records in the year 2000-2001.

3. The 5th respondent filed an appeal before the 2nd respondent under Section 5(5) of the A.P.Rights in Land and

Pattadar Pass Books Act, 1971 (for short 'the Act of 1971') in case No.D/2439/209 against the mutation of land in Sy.Nos.377, 379, 380, 381, 382, 30/A/1, 30/AA2, 30/AA, 31/A/1, 32/AA, 34, 35/E, 36/AA, 37/A, 38/AA & 41/AA to an extent of Acs.25.16 gts, which were mutated in favour of the petitioners and respondents 6 & 7. The 2nd respondent, after considering the report sent by the Tahsildar, Thungathurthy, without any power and jurisdiction, entertained the appeal and cancelled the title deeds and pattadar pass books in respect of Sy.No.24/AA, 28/AA, 30/AA, 32/AA, 379/AA, 380/AA, 381/AA & 382/AA to an extent of Acs.19.28 gts situated in Thungathurthy Village and Mandal, Suryapet District in case No.D/2439/2009, dated 29.01.2011 and remanded the matter to the Tahsildar, Thungathurthy for conducting enquiry and dispose of the same after serving notices to the all concerned, in accordance with law. Aggrieved by the orders of the 2nd respondent, the petitioners preferred ROR Revision No.F2/2274/2011, before the 1st respondent, who in turn dismissed the same by confirming the orders of the 2nd respondent. Aggrieved by the same, present Writ Petition is filed.

4. Counter affidavit is filed by the 5th respondent, denying the averments in the affidavit filed in support of the writ petition stating that he came to know about the alleged mutation in favour of the petitioners in respect of subject property only on 16.11.2009 through memo vide R.C.No.C/8289/2009 issued by

the 3rd respondent, who in turn directed him to approach the appellate authority if he is aggrieved by the said proceedings. Challenging by the same, he filed appeal before the 2nd respondent-Revenue Divisional Officer, who in turn, after considering the material on record, set aside the mutation proceedings of the 3rd respondent and remanded the matter back to the 3rd respondent for conducting fresh enquiry and to dispose of the same in accordance with law, after issuing notice to all the concerned. It is stated that the appeal filed by this respondent is within limitation, since he has filed the same from the date of his knowledge of the alleged mutation orders through memo dated 16.11.2009 issued by the 3rd respondent. That this respondent is in possession of the subject property since 1980 and he was also issued rythu pass book confirming his right, title and possession over the property and his name is also shown as owner and possessor of the subject land till it was deleted through the impugned mutation proceedings. It is stated that the records of mutation are not available with the 3rd respondent to prove that the petitioners got mutated their names in the records by way of Will, alleged to have been executed by their grand mother. The 2nd respondent, after carefully considering the report of the 3rd respondent, set aside the impugned mutation proceedings and remanded the matter back to the 3rd respondent for fresh enquiry and to pass orders, which was confirmed by the 1st respondent in the revision preferred by the petitioners.

5. Heard learned counsel for the petitioners and Sri P.Sasidhar Reddy, learned counsel for the 5th respondent.

6. Learned counsel for the petitioners, while reiterating the averments in affidavit filed in support of the writ petition submits that the 2nd respondent has no power and jurisdiction to entertain the appeal filed by the 5th respondent under Section 5(5) of the Act of 1971. He submits that even though the 5th respondent has knowledge about mutation of the names of the petitioners 1 and 2 in the year 2000-2001, he has filed appeal in the year 2009 before the 2nd respondent, that too without filing delay petition. He submits that the 2nd respondent failed to consider the aspect of mutation basing on the Will executed by the grand mother of the petitioners. He submits that the 2nd respondent has failed to consider the execution of Will in favour of petitioners, but set aside the mutation orders only on the ground that the same are not available in the office of the Tahsildar, Thungathurthy. He submits that the order passed by the 1st respondent confirming the orders of the 2nd respondent is illegal and arbitrary and against judgment of this Court in **Ratnamma v. Revenue Divisional Officer, Ananthapur District**¹.

7. On the other hand, learned counsel appearing for the 5th respondent reiterating the averments in the counter affidavit submits that he has filed appeal before the 2nd respondent, soon after receiving memo issued by the 3rd respondent about

¹ 2015 (6) ALT 228.

mutation of the names of the petitioners in revenue records, in respect of subject property, as such, no delay occurred in filing the appeal. He submits that the 5th respondent succeeded the property through his grandmother in the year 1980 and he was also issued rythu pass book confirming his right, title and possession. He submits that he was also issued pahanies for the years 1980-81 till 2009-10 including Form-I of ROR prepared during 1984 as cultivator of the subject land. He submits that the records of mutation are not available in the office of the 3rd respondent-Tahsildar, as there are no orders of mutation in favour of petitioners. He submits that there is no Will alleged to have been executed in favour of petitioners to succeed the subject land from late Sattemma, which was concluded by the 2nd respondent and same is confirmed by the 1st respondent, as such, no interference is called for and sought for dismissal of the Writ Petition.

8. In this case, it is to be seen that the whole controversy involved with regard to existence of Will, which is alleged to have been executed by the grandmother of the petitioners, basing on which, they got mutated their names in revenue records in the year 2000 in respect of subject property. Admittedly, petitioners and respondent No.7 are brothers and sons of 6th respondent and 5th respondent is the brother of 6th respondent. It is the specific contention of the learned counsel for the petitioners that the 2nd respondent has no jurisdiction and power to cancel the pattadar pass books and title deeds

under Section 5(5) of the Act of 1971 in view of judgment of this Court in **Ratnamma** (supra). As rightly contended by the learned counsel for the 5th respondent that the aforesaid judgment is with regard to maintainability of appeal under Section 5(5) of the Act against the issuance of pattadar pass books and title deeds, but in this case, appeal is not only for cancellation of Pattadar Pass books and title deeds issued in favour of petitioners, but also for rectification of entries in the revenue records viz., pahanies, ROR & 1-B register and also for issuance of fresh pattadar passbooks and title deeds.

9. It is pertinent to note that in the counter affidavit it is specifically stated that during the pendency of appeal, the 1st petitioner made representation before the District Collector, Nalgonda on 26.10.2010 for cancellation of pahani extract issued by VRO Thungathurthy for the year 2009-10, which was forwarded to the 3rd respondent. Subsequently, 3rd respondent issued notice on 31.01.2011 for attending enquiry and after considering the fact of pendency of appeal before the 2nd respondent, the 3rd respondent issued proceedings No.C/12847/2010, dated 15.03.2011 to delete the name of the 5th respondent from occupant column and replace it with words 'dispute'. Challenging the same, the 5th respondent preferred appeal in case No.D2/1165/2011 u/s.158(1) of the A.P.(T.A) Land Revenue Act, 1317 fasli before the 2nd respondent and got the order of stay on 13.05.2011, which was implemented by the 3rd respondent and issued proceedings dated 25.06.2011 to

restore the name of the actual possessor and enjoyer in occupant column of the pahanies in respect of the subject lands. Subsequently, the 2nd respondent, after hearing the 1st petitioner and the 5th respondent, passed orders allowing the appeal by setting aside the impugned proceedings dated 15.03.2011 issued by the 3rd respondent, which has become final. The aforesaid fact is neither brought to the notice of this Court by the learned counsel for the petitioner nor any reply filed by the petitioners rebutting the same. As such, this writ petition is liable to be dismissed on the ground of suppression of material facts.

10. That apart, a perusal of the impugned proceedings passed 2nd respondent dated 29.01.2011 goes to show that the mutation orders of the 3rd respondent were set aside, without disturbing the physical possession over the subject property, basing on the report of the 3rd respondent that the names of the petitioners were recorded as Fouthi succession, but not on the Will produced by the petitioners in their favour by their grandmother in respect of subject property. Moreover, the matter was remitted back to the Tahsildar-3rd respondent for conducting enquiry and dispose of the same, after serving notices to all the concerned duly following the prescribed in Rule 19 & 20 of the AP Rights in Land and Pattadar Pass Books Rules, 1989, within a period of three months. Even the 1st respondent also confirmed the orders passed by the 2nd respondent vide impugned proceedings, dated 04.05.2018.

Since the specific case of the petitioners that they got mutated their names in the revenue records basing on the Will, alleged to have been executed by their grand mother and same is disputed by the 5th respondent, who claims inheritance through succession from his grand mother and that the 5th respondent disputes the very existence of 'Will', the aforesaid aspects can be considered by the 3rd respondent, at the time of disposal of the main case between the parties.

In view of above facts and circumstances, without expressing any opinion on the merits of the case, this writ petition is disposed of confirming the orders passed by the 1st and 2nd respondents, directing the 3rd respondent to consider the case of the petitioners, after issuing notices to the parties, and pass appropriate orders, in accordance with law.

No order as to costs. As a sequel thereto, miscellaneous petitions, if any, pending in the writ petition, shall stand closed.

14.11.2018
kvs

A.RAJASHEKER REDDY, J

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

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