

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF
ANDHRA PRADESH**

WRIT APPEAL No.955 OF 2017

Between:

The Government of Andhra Pradesh,
Rep: by its Prl. Secretary,
Revenue Department (Assignments),
Secretariat buildings, Saifabad, Hyderabad,
and three others.

.. Appellants

v.

T. Krishna Murthy.

.. Respondent

DATE OF ORDER PRONOUNCED: 17-09-2018

SUBMITTED FOR APPROVAL:

**HON'BLE THE CHIEF JUSTICE
SRI THOTTATHIL B. RADHAKRISHNAN**

AND

HON'BLE SRI JUSTICE S.V. BHATT

1. Whether Reporters of Local newspapers
may be allowed to see the Judgments? : Yes / No
2. Whether the copies of judgment may be
Marked to Law Reporters/Journals. : Yes / No
3. Whether Their Ladyship/Lordship wish
to see the fair copy of the Judgment? : Yes / No

*** HON'BLE THE CHIEF JUSTICE
SRI THOTTATHIL B. RADHAKRISHNAN**

AND

HON'BLE SRI JUSTICE S.V. BHATT

+ WRIT APPEAL No.955 OF 2017

% Date: 17-09-2018

The Govt. of A.P., and three others

.. Appellants

v.

\$ T. Krishna Murthy.

.. Respondent

! Counsel for the appellants : Government Pleader for Assignment

^ Counsel for respondent : Sri T.C. Krishnan

< **GIST:**

> **HEAD NOTE:**

? **CASES REFERRED:**

C/15

**HON'BLE THE CHIEF JUSTICE
SRI THOTTATHIL B. RADHAKRISHNAN**

AND

HON'BLE SRI JUSTICE S.V. BHATT

WRIT APPEAL No.955 OF 2017

JUDGMENT: (Per the Hon'ble the Chief Justice Sri Thottathil B. Radhakrishnan)

We have heard the learned Government Pleader for Assignment appearing for the appellants and Sri T.C. Krishnan, learned counsel for the respondent.

2. The sum and substance of this writ appeal, on the face of it, is covered by the judgment in Sub-Registrar, Sri Kalahasti v. K. Guravaiah¹.

3. The property involved in this litigation was put to statutory auction in terms of the provisions of the Andhra Pradesh Co-operative Societies Act, 1964, and the Andhra Pradesh Co-operative Societies Rules, 1964; hereinafter referred to as 'Rules'. In terms of Rule 52 of the Rules, sale certificate was issued in favour of Ranemma. She alienated that parcel thereafter to the writ petitioner. The jurisdictional officer refused to issue pattadar passbook and title deeds in favour of the transferee of Ranemma. He, therefore, moved the learned Single Judge for directions. The writ petition was ordered in favour of the writ petitioner. Hence, this writ appeal by the official respondents in the writ petition.

4. The learned Government Pleader very persuasively submitted that the decision in Sub-Registrar, Sri Kalahasti (supra) requires re-consideration. He elaborated by saying that the provisions of the Transfer

¹ 2009 (3) ALT 85 (D.B)

of Property Act, 1882; hereinafter referred to as 'T.P. Act'; do not regulate the transfer of lands in terms of the Andhra Pradesh Assigned Lands (Prohibition of Transfers) Act, 1977; hereinafter referred to as 'Act, 1977'; and therefore the inhibition contained in that Act should be treated as one which disentitles a mortgaged property being brought to sale under the Andhra Pradesh Co-operative Societies Act and the Rules where the property, which is mortgaged, was obtained by the mortgagor in terms of transfer by the State which was regulated by Act, 1977. He tried to draw distinction between the applicability of T.P. Act and the provisions of Act, 1977, in an attempt to plead that the ratio laid by the Division Bench in Sub-Registrar, Sri Kalahasti (supra) requires to be revisited.

5. The decision in Sub-Registrar, Sri Kalahasti (supra) was rendered holding that the provisions of Act, 1977, would not apply for sale of assigned lands which are mortgaged to Bank. The auction purchaser in that case was held to be lawful owner and, therefore, entitled to sell the property obtained in auction, to a third party.

6. The Act, 1977, creates an embargo against alienation of the assigned lands. However, the assigned land will be heritable, once it is in the hands of the assignee. The prohibition against alienation imposed on the assignee is built with the exclusion that such restriction as to alienation would not apply to creation of mortgages in favour of those entities, which are enumerated in the explanation to Section 2 (1) of Act, 1977. The purpose of such exclusion and the legislative wisdom in making such exclusion are explicit on a reading of the provisions of Act, 1977, in the backdrop of the objects sought to be achieved by that piece of legislation. As can be seen from the definition of the term 'assigned

land' under Section 2 (1) of Act, 1977, the assigned lands to which those rules apply are those lands which are assigned to landless poor persons under the rules for the time being in force. The condition of non-alienation and other matters are brought into the basket of the description of the term 'assigned land' with the explanation that mortgages in favour of the different institutions enumerated in that sub-section shall not be regarded as alienation. The purpose is to enable the landless poor persons who have assigned lands to generate funds, fundamentally for their agricultural operations and also for other purposes, by putting that lands to mortgages with institutions which are enumerated under Section 2 (1) of Act, 1977.

7. Once mortgages are created by the assignees of Government lands and when those mortgages stand with the support of the exclusionary provision in the definition of 'assigned land' in Act, 1977, it cannot be contended that the mortgagees are not eligible to bring the mortgaged property to sale for the purpose of recovering the amounts paid under the mortgage. There is no inhibition in Act, 1977, or is there any principle referable to the provisions of the T.P. Act, which results in any such embargo. That being the position, the eligibility of the mortgagee to bring the property to sale leads to the resultant issuance of the sale certificate in terms of Sub-Rule 14 (v) of Rule 52 of the A.P. Co-operative Societies Act, which enjoins, among others, that such certificate of sale shall be conclusive evidence of the fact of purchase, in all courts and tribunals where it may be necessary to prove it and no proof of the seal or signature of the Registrar of the district shall be necessary unless the authority before whom it is produced shall have reason to doubt its genuineness. The said statutory provision making the sale certificate as

conclusive proof necessarily obliges the statutory authorities under the different provisions of law to act upon such sale certificates.

8. In the light of what is aforesaid, a view different from that taken by the Division Bench in Sub-Registrar, Sri Kalahasti (supra) is not called for. We concur with the said judicial precedent.

9. In the result, this Writ Appeal is dismissed. No order as to costs.

As a sequel thereto, Miscellaneous Applications, if any, pending in the Writ Appeal stand dismissed.



THOTTATHIL B. RADHAKRISHNAN, CJ

S.V. BHATT, J

September 17, 2018.

Note: L.R. Copy to be marked

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