

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

AND

HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

W.A. M.P. No.1604 OF 2017

IN/AND

WRIT APPEAL No.818 OF 2017

COMMON ORDER (ORAL) : (Per the Hon'ble Sri Justice V. Ramasubramanian)

Aggrieved by an order passed by the learned Judge allowing the writ petition filed by respondent No.1, a third party who claims to be in possession of the property pursuant to an agreement of sale with possession, has come up with the above writ appeal along with an application seeking leave to file the above writ appeal.

2. Heard Sri K. Rathanga Pani Reddy, learned counsel for the appellant, Sri L. Harish, learned counsel appearing for respondent No.1 - writ petitioner, and learned Government Pleader for Revenue appearing for respondent Nos.2 to 5.

3. Respondent No.1 filed an application under Andhra Pradesh Record of Rights in Land and Pattadar Pass Books Act, 1971, for effecting mutation in the revenue records on the basis of a sale deed executed by her father. On an objection by the appellant herein on the ground that he is in possession of the property pursuant to an agreement of sale with possession, the Tahsildar rejected the application. Aggrieved by the same, respondent No.1 filed a writ petition in W.P. No.8026 of 2016 without making the appellant as a party to the

writ petition. Finding that the appellant was only an agreement holder who did not have any right to object to the grant of mutation, the learned Judge allowed the writ petition. Aggrieved by the said order, the appellant has come up with the above writ appeal along with the application for grant of leave.

4. To the extent that respondent No.1 ought to have impleaded the appellant as a party to the writ petition, the learned counsel for the appellant is right. It was at the instance of the appellant, whether he had absolute right or not, that the Tahsildar passed an order which was impugned in the writ petition. Therefore, respondent No.1 was expected to implead the appellant as a party to the writ petition.

5. But, that does not take the appellant any way near the goal post. The appellant admittedly was only the holder of an agreement of sale with possession. He has already filed a civil suit for specific performance of the agreement of sale and also for cancellation of the sale deed executed by the agreement vendor in favour of the respondent No.1 who is none else than his daughter. Therefore, the substantial rights of the parties have to be worked out only in the civil suit filed by the parties and the forum of the Tahsildar cannot be converted into a forum where rights of the parties can be substantially decided.

6. Therefore, leave is refused and the Writ Appeal is dismissed. It will be open to the appellant to raise all points including the one relating to Section 53A of the Transfer of Property Act, 1882, before the civil Court where the suit is pending. No order as to costs.

As a sequel thereto, Miscellaneous Applications, if any, pending including W.A.M.P. No.1602 of 2017 stand dismissed.

THOTTATHIL B. RADHAKRISHNAN, CJ

V. RAMASUBRAMANIAN, J

July 30, 2018.
PV

