THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Writ Petition No.13767 of 2016

ORDER:

This writ petition, under Article 226 of the Constitution of India, is filed by the petitioner requesting to grant a Writ in the nature of Certiorari and set aside the order, dated 16.06.2015, in Rc.No.E5/482/2014 passed by the Joint Collector, Warangal, - 2nd respondent after calling for records related to the said case. By the said orders, the Joint Collector confirmed the order, dated 07.12.2013, of the 3rd respondent – Revenue Divisional Officer, Warangal, in file in Rc.No.A/8112/2012.

2. I have heard the submissions of Sri K.S. Murthy, learned counsel appearing for the writ petitioner, of the learned Government Pleader for Revenue (TG), appearing for the respondents 1 to 4, and of Sri P.S.P. Suresh Kumar, learned counsel appearing for the respondents 5 to 14. I have perused the material record.

3. This Court, on 22.04.2016, while admitting the writ petition, granted the following interim order in WPMP.No.17194 of 2016:

> **'Pending further orders, *status quo* in all respects, including with reference to the nature of land and alienation in any manner, shall be maintained by either party.'**

4. Requesting to vacate the afore-said interim order, the unofficial respondents 5 to 14 filed WVMP.No.3966 of 2016.

5. However, when the vacate petition was taken up for hearing, a joint request was made by the learned counsel for both the sides that instead of the vacate petition, the writ petition may be heard and disposed of.

6. The case of the petitioner and the submissions made on her behalf, in brief, are as follows:

The petitioner's father is the absolute owner and possessor of the agricultural dry lands of a total extent of Ac.30.12 guntas, (that is Ac.8.32 guntas in Sy.no.689, Ac.6.31 guntas in Sy.no.699, Ac.10.38 guntas in Sy.No.701 and Ac.3.31 guntas in Sy.no.704) situated at Ananthasagar village, Hasanparthy Mandal of Warangal District. The petitioner's father sold away the said entire land to Mohammed Ali, S/o. Mahaboob Ali, under a simple unregistered agreement of sale on 10.01.1968. The said lands were excluded from the lands owned by the petitioner's father. However, Md.Ali could not get the lands mutated in his name in the revenue records as pattadar. His name was shown as occupant in respect of Ac.17.29 guntas out of the lands in Sy.nos.699 and 701 for five years only, that is, 1971-72, 1972-73, 1978-79, 1979-80 and 1980-81. In the year 1981, the said Md.Ali sold away the entire land aggregating to Ac.30.12 guntas to the father of the petitioner citing urgent personal needs, for valid consideration and by executing a simple sale deed on 15.03.1981 in the presence of witnesses and the name of the father of the petitioner is recorded in revenue records including pahanies from the year 1981 onwards as pattedar and enjoyer till January, 2006. The said sale deed was impounded by the 2nd respondent after thorough enquiry *vide* order, dated 22.08.2007, in D.Dis.No.B/1823/2007. The said sale deed executed by Md.Ali in favour of the father of the petitioner in respect of the said land is a genuine and valid document. The petitioner's father gifted Ac.17.29 guntas out of the said total extent of land to the petitioner at the time of her marriage and delivered vacant possession thereof and executed a registered gift settlement deed, on 30.10.2006, bearing document no.216/2006. The RDO – 3rd respondent mutated the gifted property in the name of the petitioner and her name appears in respect of the said property in all revenue records concerned including pahanies. The said mutation was affected *vide* memo in Rc.No.B1/662/2006, dated 22.03.2006. The petitioner was also issued pattadar passbook and title deed document as per procedure under A.P. Rights in Lands and Pattedar Pass Book Act, 1971 ['the Act', for short]. Since the date of the said gift, the petitioner is in peaceful possession and enjoyment of the said extent of Ac.17.29 guntas as pattedar and absolute owner and continuing in such possession and enjoyment till the date of the institution of the writ petition. While so, respondents 5 to 14 filed an appeal, on 17.02.2007, under Section 5(B) of the Act before the 2nd respondent for mutation of the lands in their names in revenue records allegedly claiming the petitioner's land on the basis of sham, bogus and fabricated sale deeds, dated 08.12.1982. 25 years after the alleged execution of the sale deeds, dated 08.12.1982, by Md. Ali in favour of the respondents 5 to 14, the said respondents filed the appeal, on 17.02.2007, on the basis of fabricated documents. As per Section 4 of the Act, a person acquiring right over any land by any method shall intimate about such acquisition in writing to the Tahasildar/MRO within 90 days from the date of such acquisition. The provisions of Section 5 of the Indian Limitation Act also apply for the purpose of computation of period prescribed in Section 4 of the

Act. Respondents 5 to 14 have not filed any petition under Section 5 of the Limitation Act for condonation of inordinate delay of 25 years while filing their said appeal before the 3rd respondent. Therefore, the claim of respondents 5 to 14 is clearly barred and their alleged claim cannot be entertained after long lapse of 25 years; but, the 3rd respondent without considering the said legal aspect and without considering the admissions made by the respondents 5 to 14 passed the order, dated 17.03.2008, in Rc.No.A/526/2007 admitting the appeal of the respondents 5 to 14. Aggrieved of the said order of the 3rd respondent, the petitioner filed a revision petition, on 17.04.2008, *vide* revision petition in Rc.No.E5/2382/2008 before the 2nd respondent under Section 9 of the Act to annul the said order, dated 17.03.2008 of the 3rd respondent. The 2nd respondent while dismissing the said revision by order, dated 07.07.2012, confirmed the order of the 3rd respondent. Aggrieved of the said two orders, dated 17.03.2008 of the RDO and 07.07.2012, of the Joint Collector, the petitioner filed W.P.No.24794 of 2012 before this Court. The said writ petition was disposed of modifying the orders, dated 17.03.2008, passed by RDO and confirmed by the order, dated 07.07.2012, of the Joint Collector to the effect that pattedar passbook and title deed document issued to the petitioner shall stand set aside and the matter is remanded to the Tahasildar for fresh consideration and disposal after issuing notices to the petitioner and the non official respondents therein. It is also observed in the said order of this Court that if the Tahasildar finds that the accrual of title, either to the petitioner or to the non officials respondents therein is in accordance with law and there does not exist any controversy, he shall issue pattedar passbooks to such of them, who got valid title, without undertaking any adjudication by himself and if on the other hand, he entertains any doubt in this regard, he shall pass order leaving it open to the parties to work out their remedies in a civil Court. The said order of the learned single Judge of this Court was assailed in W.A.No.1176 of 2012. A Division Bench of this Court, by a judgment, dated 18.09.2012, disposed of the said appeal setting aside the orders passed by the RDO and confirmed by the Joint Collector and remanded the matter to the RDO directing him to hear the matter afresh after giving a chance of being heard to the writ petitioner as well as non official respondents and to pass reasoned order within a period of six weeks from the date of the said order. In view of the orders of this Court in the afore-said writ appeal, the 3rd respondent – RDO issued notices in the remanded case in Rc.no.A/8112/2012 to the petitioners and the respondents 5 to 14 and disposed of the appeal, on 07.12.2013, on the same old flimsy grounds by unilaterally concluding the matter without conducting a fresh enquiry and without considering the legal aspects and real facts of the case and had set aside the mutation orders passed by the Tahasildar – 4th respondent in favour of the petitioner, on 22.03.2006, and cancelled the pattedar passbook and title deed document of the petitioner. As the said order is not a reasoned order, the petitioner filed revision petition *vide* Rc.no.E5/482/2014, on 27.12.2013, before the 2nd respondent – Joint Collector. The 2nd respondent disposed of the revision petition, on 16.06.2015, and confirmed the order of the 3rd respondent, however without considering the legal aspects and true facts. Aggrieved of the said two orders, the present writ petition is filed. The petitioner filed OS.No.785 of 2013 against the non official respondents 5 to 14 on the file of Principal Senior Civil Court, Warangal, for grant of permanent injunction and obtained an interim injunction *vide* orders in IA.No.690 of 2013 in respect of her lands in an extent of Ac.17.29 guntas well before the disposal of the revision petition by the 2nd respondent. The said injunction orders were obtained in October, 2013 and were in force till February 10, 2016. The said Md.Ali, who was said to have sold the lands to the respondents 5 to 14 under registered sale deeds, dated 08.12.1982, had no right, title and interest in the property as he had already sold the said lands in the said survey numbers to the petitioner's father, on 15.03.1981, in the presence of witnesses much earlier to the alleged sales. The sale deeds of respondents 5 to 14 are sham, bogus and created in collusion with Md.Ali. In the alleged sale deeds of the respondents 5 to 14, there is no mention about his title and ownership. The claim of the respondents 5 to 14 is clearly barred by time. Their alleged claim ought not to have been entertained after 25 years. Respondents 5 to 14 have admitted in their counter affidavits filed in the revision petition that the impounded sale deed executed, on 15.03.1981, in favour of the petitioner's father by Md.Ali is a forged one. Once the execution of the document is disputed, its genuineness has to be decided by a civil Court after full fledged trial. The RDO and the Joint Collector have no jurisdiction to decide the dispute of title in respect of the subject property between the petitioner and the respondents 5 to 14. The petitioner's father's simple sale deed, dated 15.03.1981, which is impounded sale deed, is valid and genuine. This Court also observed in its order and alternatively directed the Tahasildar to pass orders leaving it open to the parties to work out their remedies in civil Court. The 3rd respondent has no power to cancel the petitioner's pattedar pass book and title deed documents arbitrarily in respect of her lands and the 2nd respondent has no power or authority to confirm the said orders. The Division Bench has passed orders in WA.No.1176 of 2002 to continue the pattedar passbook and title deed in respect of her lands till the disposal of the revision petition and the said orders continued till the disposal of the revision petition. As there is no efficacious alternative remedy, the present writ petition is filed.

7. The averments in the counter affidavit filed by the General Power of Attorney holder of respondents 5 to 14 and the case of the said respondents, in brief, is this:

The material allegations in the affidavit of the writ petitioner are false. The same are denied. The petitioner's father was the absolute owner and possessor of Ac.30.12 guntas of land mentioned in the writ petition is absolutely false. The alleged purchase of lands from Md.Ali by way of simple sale deed, on 15.03.1981, by the father of the petitioner is absolutely false and the said purchase is not valid. The impounding of simple sale deed, dated 15.03.1981, by the 2nd respondent, on 22.08.2007, will not cure the defect of non registration. The impounding of a document may cure the defect of deficit stamp duty. The impounding of simple sale deed shall not make the sale complete unless it is regularized as per the provisions of Section 5-A of the Act. Section 17 of the Indian Registration Act and the provisions of the Transfer of Property Act require documents to be registered to make the documents valid. Since the petitioner's father has no valid title over the subject lands, the alleged gift deed, dated 30.10.2006, executed in favour of the petitioner is also not valid in the eye of law. Therefore, the alleged mutation in revenue records based on such invalid gift deed is also not valid under law.

The petitioner contended that the gift settlement deed was executed on 30.10.2006 and that the property was mutated in her name on 22.03.2006 which is prior to the gift deed. Thus, from the averments in the writ petition it appears that the mutation was affected even before the alleged gift is executed and registered. This fact is also evident from the pahani papers of 2004-05 and 2005-06 wherein name of the petitioner was incorporated even prior to the execution of the gift deed. Therefore, it shows that the name of the petitioner is entered without following the procedure established by law. The unregistered sale deed was validated on 22.08.2007. However, the alleged gift deed was executed on 30.10.2006. Hence, on the date of execution of the gift deed, simple sale deed, dated 15.03.1981, was neither impounded nor regularized. Hence, the father of the petitioner has no valid title over the subject land at the time of execution of the gift deed. Hence, it is also clear that the petitioner is also not having valid title over the subject land. The allegation that the sale deeds of these respondents are sham, bogus and fabricated is false. The details of the purchases made by these respondents from Md.Ali are as under:

Sl.No.	Name of the purchaser	Sy.No.	Extent (Ac.Gts)	Document no.
1.	Mandala Laxminarayana	698 699	0.03 0.37	2686/82
2.	Sjida Bashjeer	698 699	1.38 0.02	2687/82
3.	Sidhartha Industrial Development Co.Op Soceity	699 701	1.00 7.20	2688/82
4.	Pingili Hemalatha	699 701	0.22 1.08	2688/82
5.	Kethireddy Bhaskar Reddy	698	1-00	2690/82

6.	Pingili Kamala Devi	699 701	0.06 0.34	26981/82
7.	Pingili Praveena	699 701	0.07 0.33	2692/82
8.	Mohd.Afzaluddin	698	1-00	2693/82
9.	Pingili Anil Reddy	698 699	0.33 0.07	2694/82
10.	Bommoju Krishnama Chary	698 699	0.18 0.22	2695/82

In the sale deeds of these respondents namely documents bearing no.2686/82 to 2695/82, the father of the petitioner signed as a witness before the sub-registrar. The petitioner has no *locus standi* to question the sale deeds of these respondents. These respondents acquired title by way of registered sale deeds and hence, the provision of limitation has no application. Section 4 is applicable only to persons acquiring rights by succession, survivorship, inheritance, partition, Government patta, decree of a court or otherwise. Any right as owner, pattedar, mortgagee, occupant or tenant of land and any person acquiring any right as occupant of a land by any other method shall intimate in writing his acquisition of such rights to the MRO within ninety days. Whereas Section 4(2) states as follows: 'Notwithstanding anything contained in the registration Act 1908 every registering officer appointed under the Act and registering a document relating to a transaction in land, such as sale, mortgage, gift, lease or otherwise shall intimate the MRO of the Mandal in which the property is situate of such transaction.' Thus, the duty to send information of registration of sale deeds to the MRO is with the sub-registrar. Mutation of properties in the name of a person in revenue record does not create or extinguish title and such entries do not have presumptive value of any title.

Hence, the petitioner cannot contend that she is having title to the property. The petitioner filed OS.No.785 of 2013 for perpetual injunction and IA.no.690 of 2013 for temporary injunction in the said suit. The learned Principal Senior Civil Judge, Warangal, dismissed the said petition by clearly observing that the documents relied upon by these respondents show that they are purchasers of the subject land and the petitioner suppressed material facts about the proceedings before the revenue authorities including the orders of this Court. The Land Reforms Tribunal, Warangal, in its common judgment in CC.Nos.3885/Wgl1975, 3880Wgl/75, 3889/Wgl/75 and 3888/Wgl/75, 3879/Wgl/75, 3866/Wgl/75, 3887/Wgl/75, dated 17.08.1979, held that the lands in sy.No.698 (Ac.8.32 guntas) Sy.no.699 (Act.6.31 guntas) Sy.no.701 (Ac10.38 guntas) and Sy.no.704 (Ac.3.31 guntas) situated at Ananthasagar Village, Hasanparthy Mandal, Warangal District, belong to Md.Ali and ordered to exclude those lands from the holding of Ch. Sudheer Reddy, the father of the petitioner. As such, there is no dispute with regard to ownership of Md.Ali in respect of the subject property. In the sale deeds executed by Md.Ali, which are registered sale deeds, the father of the petitioner is a witness. The purchase of lands from Md.Ali, on 15.3.1981, by the father of the petitioner under unregistered and unstamped sale deed is invalid. The petitioner's claim based on the simple sale deed of her father is not valid. In the impugned orders, the respondents 2 & 3 pointed out the irregularities committed by the Tahasildar and had rightly set aside the pattedar pass book and title deed documents of the petitioner. The said officers passed orders on consideration of facts and circumstances and based on documentary evidence. The respondents 2 & 3 have not at all decided title and they discussed the merits of the case and held that the petitioner failed to prove that she has valid title. The said officers were well within their jurisdiction while passing the orders impugned. Hence, the writ petition is liable to be dismissed.

8. From the narration of the pleadings itself, it is clear that complex questions of fact are raised in the writ petition. Be that as it may. Both the parties admit that the property of a total Ac.30.12 guntas originally belonged to the father of the petitioner. The writ petitioner also admits that her father sold the entire extent of land to Md.Ali under a simple unregistered agreement of sale, on 10.01.1968, and that the said land was excluded from the lands of her father. However, the petitioner claims that in the year 1981, the said Md.Ali again sold the land in an extent of Ac.30.12 cents to her father citing urgent personal needs and that Md. Ali executed a simple unregistered sale deed, dated 15.03.1981, in favour of her father for the entire extent of Ac.30.12 guntas. However, the said sale deed was not impounded till 22.08.2007 even according to the case of the petitioner. Respondents 5 to 14 submit that the said Md.Ali sold to them, the property purchased by him from the father of the petitioner and that they accordingly purchased the property from Md. Ali under registered sale deeds, dated 08.12.1982 bearing document nos.2686/82 to 2695/82. The said sale transactions, which are being disputed by the writ petitioner as false and fabricated, are under regular registered sale deeds. Be that as it may. Though Md. Ali purchased the land from the father of the petitioner under a sale agreement, the said transaction is of the year 1968. Further, it is borne out by record that even by the year 1982, Md.Ali sold the land purchased by him to the respondents 5 to 14 under regular registered sale deeds, the details of which are stated in a table, which is extracted supra. The petitioner claims that her

father executed a gift deed, on 30.10.2006, in respect of Ac.17.29 guntas out of the total extent of Ac.30.12 guntas and gifted the said property to her and that later the property was mutated in her name; but, admittedly by that date the unregistered sale deed, dated 15.03.1981, said to have been executed by Md.Ali in favour of her father was not impounded and validated. It was admittedly impounded on 22.08.2007. Thus, the impounding of the unregistered sale deed, dated 15.03.1981, said to have been executed by Md.Ali in favour of the father of the petitioner and the gift deed, dated 30.10.2006, said to have been executed by the father of the petitioner in favour of the petitioner are long after the execution of the regular registered sale deeds in the year 1982 by Md. Ali in favour of the respondents 5 to 14. Respondents 5 to 14 also submit that in the land ceilings declarations filed by the father of the petitioner the subject land was excluded from his holding as he has sold away the property to Md. Ali under the agreement of sale on 10.01.1968. Copies of documents related to land ceiling cases are filed with material papers before this Court. The petitioner also has not disputed the fact before this Court that in the land ceiling proceedings, the subject land was excluded from the holding of her father. The copy of the proceedings of the Land Reforms Tribunal, Warangal-I, in C.C.No.3889/Wgl/75 would reflect that the father of the petitioner, Ch.Sudheer Reddy, declared in his declarations, the extents of lands held by him in the capacity of managing member of the family unit and that the Tribunal held that the total holding of the said declarant is 6.6474 standard holding and that he held 5.6474 holding in excess of ceiling as on 01.01.1975. The Joint Collector in the order impugned made a detailed reference to the documents viz., the simple agreement of sale, dated 10.01.1968, executed by the father of the petitioner, Sudheer Reddy, in favour of Md. Ali; the simple sale deed, dated 15.3.1981, said to have been executed by Md.Ali in favour of the father of the petitioner; the sale deeds of the respondents 5 to 14 executed by Md. Ali in favour of the said respondents, the details of which are already stated in the table supra; the revenue records from time to time. He took note of the further fact that the name of the petitioner was entered in the records even by the year 2004-05 and 2005-06, that is, even prior to the execution of the gift settlement deed, on 30.10.2006, in her favour by her father. He further noted as follows: - 'In the case before him two transactions took place through two unregistered documents and that under one document the purchaser Md. Ali purchased the land from the pattedar and that under another document executed by the purchaser the property reverted back to the pattedar and that the respondents 5 to 14 herein are the purchasers from Md. Ali, who is the purchaser from the pattedar, who is the father of the writ petitioner herein, and that father of the writ petitioner himself admitted in the proceedings under the Land Ceilings Act that he sold away the lands to Md. Ali and that both the unregistered sale deeds, dated 10.01.1968 and 15.03.1981 have not been regularised as per provisions of the Act'. For all the said findings and reasons and also for various others reasons, he confirmed the order of the RDO. As rightly contended, the orders of the revenue authorities, who exercise quasi judicial functions for the purpose of making entries in revenue records and for the mutation of properties in revenue records in the names of various persons, do not either confer title or give a finality insofar as title to the properties, which are subject matters of the said orders, as it is settled law that the said authorities are not entitled to declare title to the properties in dispute and it is the function of a civil Court. It is also settled law that entries in revenue records do not confer or take away existing title to the property. The petitioner has already filed a civil suit, OS.No.785 of 2013; and, in that civil suit an application for temporary injunction filed by the writ petitioner was said to have been dismissed by the trial Court. Though the petitioner now contends that the civil Courts are competent to decide title but not the revenue officers, yet, the petitioner has not filed a suit for declaration of title. She only filed a suit for perpetual injunction. It is not disputed by her that her application for temporary injunction was dismissed by the civil Court. No explanation is forthcoming as to why the petitioner failed to file a suit for declaration of her title to the property even after coming to know that the respondents 5 to 14 claimed that Md. Ali executed regular registered sale deeds in their favour even by the year 1982 and further stated that the father of the petitioner figured as a witness and signed in their sale deeds as a witness.

9. Dealing further with the matter, it is to be noted that on the issuance of the pattadar pass book and title document to the petitioner, the respondents 5 to 14 preferred an appeal based on their regular registered sale deeds of the year 1982 executed by Md. Ali, who was said to have purchased the property in his turn from the father of the petitioner. That appeal was allowed by the Revenue Divisional Officer. The revision of the petitioner was dismissed by the Joint Collector. Aggrieved thereof, the petitioner is before this Court. Her first contention is that the appeal is belatedly filed and time barred. This contention is not open to the petitioner at this stage as she filed a writ petition earlier and thereafter a writ appeal and this Court eventually directed the revenue authorities to proceed with the matter in accordance with law.

Thereafter, the order by the appellate authority and the impugned order by the revisional authority have come to be passed. Her next contention is that even during the pendency of the said revision petition before the Joint Collector she filed a civil suit for perpetual injunction and that when the civil Court is seized of the matter nothing is to be decided by the said authority. Admittedly, she has not filed the suit for declaration of title. The orders of the Tahasildar, Revenue Divisional Officer and the Joint Collector will reach finality, if the orders are allowed to become final and if the person aggrieved fails to institute a suit against any person denying or interested in denying that person's title. In this backdrop, it is necessary to refer to Section 8(2) of the Act, which reads as under:

> **"8(2). If any person is aggrieved as to any rights of which he is in possession by an entry made in any record of rights he may institute a suit against any person denying or interested to deny his title to such right for declaration of his right under Chapter VI of the Specific Relief Act, 1963 (Central Act 47 of 1963) and the entry in the record of rights shall be amended in accordance with any such declaration."**

Therefore, mere institution of a suit for perpetual injunction does not preclude the authority under the Act from discharging his functions. Therefore, this contention fails. Accordingly, this Court finds that there are no fetters on the power of the statutory authorities, namely the appellate authority and the revisional authority to scrutinize the act and action of the Tahasildar.

10. In this back drop, this Court finds that since the claim of the writ petitioner in respect of the subject land being a pure and complex question of fact, this Court need not resolve the said claim by resorting to adjudication of the complex issue of fact, as a question of this nature requires detailed examination and is to be determined by a civil Court in an appropriate proceeding, after full-fledged trial. The same principle also extends to matters involving mixed questions of fact and law. A petition under Article 226 of the Constitution cannot be converted into a revenue quasi judicial proceeding or a suit to resolve the instant factual controversies. And, in general, disputed question of fact is not investigated into in a writ petition of this nature. Hence, in the considered view of this Court, there is no need to resolve the complex factual controversies between the parties to the *lis* in this writ petition and it is for the civil Court to resolve the issues which are complex factual issues. It is also trite to observe that entries in revenue records do not confer or take away the existing title and that any findings recorded by the revenue officers incidentally while arriving at decisions with regard to entitlement of one or the other party for issuance of pattadar passbook and title deed documents do not finally adjudicate the title to the property involved in such proceedings and, therefore, it is appropriate to leave the controversy to be resolved by a competent civil Court.

11. On the above analysis, this Court finds that the writ petition is liable to be dismissed leaving open the question of title to be resolved by a civil Court and reserving liberty to the petitioner to approach a civil Court, if so advised and if so desired, and seek an appropriate remedy, which the law permits. Suffice if it is observed that the order of the appellate authority as confirmed by the revisional authority will be subject to a decision of the civil Court where in a suit for declaration, the title to the property of anyone of the parties is sought to be declared.

12. In the result, the Writ Petition is dismissed with the above observations. It is needless to state that this Court did not express any opinion much less a final opinion on the title in respect of the disputed property. It is also needless to state that in the event the petitioner files any civil suit for an appropriate remedy, the civil Court shall dispose of the said suit on its merit and uninfluenced by observations/findings, if any, made in the orders of the respondents 2 & 3 herein.

There shall be no order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

M.SEETHARAMA MURTI, J

26.09.2018
Vjl