

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

C.R.P. No.2226 of 2012

ORDER:

The Civil Revision Petition is filed against the order dated 10.04.2012 passed in I.A. No.176 of 2012 in A.S. No.28 of 2012 by the II Additional District Judge, Kurnool.

2) The revision petitioner is the appellant and the respondents herein are the respondents in A.S. No.28 of 2012 on the file of the II Additional District Judge, Kurnool at Adoni.

3) The revision petitioner herein filed O.S. No.127 of 2006 on the file of the Senior Civil Judge, Adoni, for declaration of title and consequential injunction against the respondents viz., 1)the State of Andhra Pradesh, represented by District Collector, Kurnool and 2)the Mandal Revenue Officer, Adoni, with a claim that she purchased the plaint schedule property consisting of Ac.20.42 cents in S.No.135/1 situated at Pandavagallu Village by registered sale deed dated 20.03.1990 from her vendor Smt.Adilakshamma, Smt.Yenkamma and P.Venkatesulu of Pandavagallu Village. Originally, it was Bhatavruthi Inam land in S.No.135/1, abutting to Peddacheruvu and plaintiff's predecessors have obtained Ryotwari Patta under A.P Inams (Abolition and Conversion into Ryotwari) Act, 1956 (for short 'the Act, 1956') and pursuant to the said title and conversion of Inam land

into Ryotwari and granting of Ryotwari patta in favour of her predecessors, from whom the plaintiff got purchased the suit land under Exs.A1 to A4 respectively. The plaintiff dug bore wells and invested huge amount and cultivated the lands by raising seasonal crops. Payment of land revenue, Adangal Pahanies i.e., Exs.A7, A8 and A9 by the plaintiff also establishes her possession and enjoyment by cultivating the lands by paying electricity bills and bank loans, etc., which were obtained on the basis of pass books and revenue 10(1) account. The defendants falsely claiming as if the plaint schedule property is also part of Peddacheruvu and is a communal property vested in Government and the patta obtained from the Tahsildar is not valid but for Settlement Officer to issue.

4) In the course of trial, from the evidence of PWs.1 and 2 and DW.1 and also with reference to Exs.A1 to A16, it is evident that Ryotwari patta was issued in the name of plaintiff's predecessors and it is transferred to the LRs of the predecessors and the plaintiff claiming right and title therefrom as she has been paying land revenue having possession and enjoyment and also having 10 (1) account and adangals in number 2.

5) Whereas defendants in their evidence claimed that the suit land is communal property, and the Government took possession of the same under panchanama by saying that the

said land is classified as Peddacheruvu and collecting water cess from the ryots. Questioning the same, earlier plaintiff's predecessor filed O.S. No.77 of 1971 (O.S. No.188 of 1967) before the District Munsif Court, Adoni for sharing the water cess and that was ended in dismissal. Aggrieved by the same, A.S. No.5 of 1973 and A.S. No.45 of 1975 were filed by the LR's of the petitioners and the same were dismissed on 21.12.1974 and 03.09.1976 respectively. After dismissal of the said appeals, they filed W.P. No.12364 of 1996 and the same was withdrawn. The plaintiff and her predecessors have went unsuccessful in the lis maintained by them as the claim is not sustainable. The trial Court from the above saying that the patta granted is not valid, plaintiff cannot claim title thereunder with reference to the pattas in favour of her vendors and sale deed in favour of plaintiff and the entry in Ex.A8 of Bhatavruithi Personal Inam land might be a wrong entry and dismissed the suit. Impugning the same, A.S. No.28 of 2012 is filed and pending the appeal from the temporary injunction in favour of the plaintiff during suit period till trial Court's judgment sought for temporary injunction in I.A. No.176 of 2012 in pending A.S. No.176 of 2012 and that was ended in dismissal on 10.04.2012 by the learned II Additional District Judge, Adoni. Impugning the same, the present revision is filed.

6) The contentions in the grounds of revision vis-à-vis oral submissions of the learned counsel for the petitioner

are that the impugned order is contrary to law, illegal and unsustainable and in ignorance of Exs.A1 to A16 which clearly establishes not only title but also possession and enjoyment of the petitioner and that makes out prime facie case, balance of convenience and unless the direction is not granted, plaintiff suffers irreparable injury and that too when there is temporary injunction in favour of the plaintiff throughout the suit till its disposal by trial Court's judgment and the lower Court should have given due weightage to the ryotwari patta granted by the Tahsildar to the plaintiff's predecessors even covered by Exs.A2 to A4 and revenue adangal and revenue record regarding possession with reference to title and lower Court should have seen that the Peddacheruvu is in S.No.135/2, which is different from the Inam land converted into ryothwari patta of plaintiff and her predecessors in S.No.135/1.

7) The judgment and decree in O.S. No.188 of 1967 (77 of 1971) confirmed in the appeal and second appeal is only in relation to share in the water cess no way operates as resjudicata and withdrawal of W.P. No.12364 of 1996 has no bearing on the lis and thereby sought for dismissal of the revision by setting aside the impugned order.

8) Whereas it is the contention of the learned Government Pleader for Revenue on behalf of the respondents that the order of the lower Court holds good and for this

Court while sitting in revision, there is nothing to interfere against the impugned order and sought for dismissal of the revision.

9) Heard both sides and perused the material on record.

10) This Court by an order dated 11.05.2012 granted temporary injunction as prayed for in C.R.P. M.P. No.2993 of 2011, pending disposal of A.S. No.28 of 2012. The lower appellate Court mainly referring to the evidence of DW.1 in the suit. The same is holding good although. The main issue in the case is on the legality and correctness of the Ryotwari pattas granted in favour of plaintiff's predecessors under Exs.A2 to A4 and the land holding certificate in favour of the plaintiff pursuant thereof under Ex.A8 based on Ex.A1—registered sale deed dated 20.03.1990 claiming possession and enjoyment of plaintiff with reference to Ex.A7—land revenue receipts, Exs.A9, 10, 15 and 16—revenue adangals, Ex.A14—10 (1) account besides electricity charges, bank loan, pass books etc.

11) The earlier round of litigation in O.S. No.77 of 1971 (O.S. No.188 of 1967) plaintiff's predecessor in relation to the claim of the share in the water cess collected from the lands abutting to the Peddacheruvu Village in question, and went unsuccessful by the plaintiff's predecessors by trial Court judgment dated 29.11.1972 and confirmed in A.S. No.5

of 1973 dated 21.12.1974, the LRs of the plaintiffs' predecessors along with others have approached this Court by filing S.A No.45 of 1975 and the same was also dismissed on 03.09.1976. The other document placed reliance on attested copy of panchanama and the so-called resumption of possession of the land in the claim and whether the judgment in the earlier suit with O.S. No.77 of 1971 confirmed by both the appellate Courts operates as resjudicata to the suit claim herein is a matter to be decided in A.S. No.28 of 2012 pending disposal before the lower appellate Court.

12) Having regard to the above, the revision is disposed of by continuing the interim order granted on 11.05.2012 in C.R.P. M.P. No.2993 of 2012 with a direction to the lower appellate Court, uninfluenced by the trial Court's dismissal judgment, lower appellate Court's order refusing injunction and the injunction order granted by this Court pending revision in its continuation, to decide A.S. No.28 of 2012 on its own merits, as early as possible, preferably within six months from the date of receipt of copy of this order. No order as to costs.

13) Consequently, Miscellaneous petitions, if any pending in this revision, shall stand closed.

JUSTICE Dr. B.SIVA SANKARA RAO

Date:22.01.2018
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HON'BLE DR. JUSTICE B. SIVA SANKARA RAO



Date: .01.2018

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