

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Writ Petition No.16262 of 2013

ORDER:

This writ petition, under Article 226 of the Constitution of India, is filed requesting to issue a writ of Mandamus declaring the action of the 1st respondent/ Commissioner, Municipal Corporation, Kadapa, in allotting D.Nos.39/ 25-12, 39/ 25-13, 39/ 25-14, vide Assessment No.1013079651, 1013079651, 101379652, 1013079653, in favour of respondents 3 to 5 in respect of land in Sy.nos.665/ 1-C situated at Chinnachowk village, Kadapa, despite the fact that the property in question is the subject matter of a suit for partition in O.S.no.120 of 2011 which is pending on the file of the I Additional District Court, Kadapa, as arbitrary, illegal and violative of Articles 14, 19 & 21 of the Constitution of India and to consequently direct the 1st respondent to cancel the above mentioned door numbers assigned to the said property/properties and in favour of respondents 3 to 5.

2. I have heard the submissions of *Sri K.R.Sasidharan Nair*, learned counsel appearing for the 1st writ petitioner; of *Sri K.Sudharshan Reddy*, party-in-person/ 2nd petitioner; of *Sri P.Kamalakar*, learned counsel appearing for the 2nd respondent; and, of *Sri P.Veera Reddy*, learned senior counsel appearing for *Ms.S.Anvesha*, learned counsel appearing for respondents 3 to 5. I have perused the material record.

3. To begin with it is to be noted that a suit O.S.no.120 of 2011 filed by the 2nd respondent-K.Bhaskar Reddy against K.Aivelamma and others including the writ petitioners 1 and 2 [defendants 1 & 2] is pending on the file of the Court of the learned I Additional District Judge, Kadapa. It appears from the copy of

the plaint that the said suit for partition was filed seeking the reliefs mentioned infra:

“i) Dividing items 4, 5, 6, 7, 12,14, 16, 17, 18,20, 23, 26, 27, 28 and 29 of ‘A’ schedule properties into two shares and delivery of one such share to the plaintiff;

ii) Dividing items 1, 10, 21 and 22 of ‘A’ schedule properties in to three shares and delivery of two such shares to the plaintiff;

iii) Dividing item no.3 of the ‘A’ schedule properties into five rooms and three rooms and deliver 5 rooms to the plaintiff;

iv) Dividing item 11 of ‘A’ schedule properties into extent of 40, 50 and 60 cents and deliver 40 + 50 cents (90 cents) to plaintiff”

4. Be that as it may. Shorn of unnecessary details, the case of the writ petitioners, in brief, is this: “The 1st petitioner’s father-in-law, K.Narasimha Reddy, owned and possessed properties in and around Kadapa Town. Amongst the said properties, an extent of Ac.3.32 cents in S.Nos.665/ 1 and 665/ 2 is situated at Chinnachowk village, Kadapa Town. The said Narasimha Reddy had two sons, K.Ramachandra Reddy (husband of the 1st petitioner) and K.V.Ramana Reddy. On 23.08.1983, he partitioned all his properties into two shares in the presence of his two sons. A total extent of Ac.3.32 cents, which is called as “Road Autula Chenu” (or) “Satramkada Moola Chenu” is also the subject matter of the said partition. In the said extent, each son has got Ac.1.66 cents. Thus, the husband of the 1st petitioner got to his share Ac.1.66 cents on the Southern side and his brother, K.V.Ramana Reddy, has got Northern side half share. After the said partition, K.V Ramana Reddy started selling his share of properties to third parties from the year 1984 onwards. As on the date of the institution of the suit, he is having only an extent of Ac.0.60 cents; whereas, the husband of the 1st petitioner retained his share in tact till the date of filing of the writ petition. On 06.11.2005, the husband of the 1st

petitioner executed a partition list in the presence of his two sons, viz., K.Sudershan Reddy, the 2nd petitioner herein, and K.Bhaskar Reddy, the 2nd respondent herein and the 1st petitioner's younger brother, K.Subba Reddy, by dividing his self acquired and ancestral properties into three shares. Properties in column nos.1 & 2 were respectively allotted to the 2nd petitioner and the 2nd respondent. The property in column no.3 was kept by K.Ramachandra Reddy, the husband of the 1st petitioner. In that partition list, the said land in Sy.nos.665/ 1 & 665/ 2 is shown as "Road Autula Chenu" (or) "Satramkada Moola Chenu" at item no.7. K.V.Ramana Reddy, the brother of the 1st petitioner's husband is inimical to her family. He along with his son, K.Raghunatha Reddy, with the active support of K.Bhaskar Reddy, the 2nd respondent herein, who was addicted to bad habits, and the legal adviser, Akumalla Raja Gopal and Y.Gopal Reddy, colluded together and created an unregistered forged Will deed by forging the signature of the husband of the 1st petitioner. Based on that, the 2nd respondent filed the above said suit in O.S.No.120 of 2011 for partition. The 2nd respondent intentionally did not mention the property in Sy.no.665/ 1 of an extent of Ac.1.94 cents and also many other ancestral properties as part of the created 'A' schedule in the said suit. But, he dishonestly included the self acquired properties of the 2nd petitioner and of his maternal uncle, K.Subba Reddy, in the said schedule of the said suit. In the said suit, an interlocutory application in I.A.no.1717 of 2011 was filed for appointment of a Receiver in respect of created 'A' schedule property. The Court below having considered the facts and the partition list, dated 06.11.2005, appointed a Receiver insofar as the properties that fell to the share of the 2nd respondent and also for the properties that fell to the share of the husband of the 1st petitioner, which are mentioned in the columns of the partition list; but, granted liberty to the 2nd petitioner to enjoy his share of property as per the partition list. Another application in I.A.no.1495 of 2011 was also filed for

grant of injunction insofar as the property covered by the created 'A' schedule. By order, dated 19.03.2013, the trial Court granted injunction in respect of the share of the 2nd respondent and the share of the 1st petitioner's husband, but granted liberty to the 2nd petitioner herein to enjoy his share of property mentioned in the partition list. Thus, the 2nd respondent is seeking partition of the properties, which were in fact, partitioned, on 06.11.2005. The 2nd respondent spoiled the family reputation and good will of his father, that is, the husband of 1st petitioner. The 2nd respondent is an accused in C.C.no.108 of 2012 registered for the offences punishable under Sections 420 & 468 IPC. The said CC is related to sale of Alto car of the husband of the 1st petitioner, on 30.06.2011, to one N.Srinivasulu, by forging the signatures of the husband of the 1st petitioner in the necessary transfer forms. The 2nd respondent and his associates colluded together in order to knock away the properties in column no.3 of the partition list and introduced a fictitious person, by name, Katasani Sankar Reddy, who is a coolie and a hand cart puller; they changed his surname, his name and his father's name as Katasani Siva Sankar Reddy S/o Chinna Veera Reddy, by influencing the Mandal Revenue Officer, Markapur. They obtained a certificate, dated 26.11.2010, with regard to the change of name. After changing the name of that fictitious person, the 2nd respondent with the active support of his associates and the said person and also one Kavali Sekhar had created fake FMB showing sub divisions of Sy.nos.665/ 1 into 665/ 1-A, 1-B, 1-C and obtained pattadar passbook and title deed document, *vide* Patta No.120 for Sy.no.665/ 1-C to an extent of Ac.0.65 cents and 1-B Form for Sy.no.665/ 1-C and surprisingly for Sy.no.665/ 1-B also. The survey no.665/ 1 was never sub divided at any point of time. The 2nd respondent and his associates introduced the fictitious person to knock away the entire share of the husband of the 1st petitioner which is mentioned in the partition list and they also created the story of sub-division of the survey number. The suit filed

by the 2nd respondent is still pending and in that suit, property in Sy.no.665/ 1 is the subject matter. Based on fake title deed with patta no.120 and by creating sub-divisions of Sy.no.665/ 1 into three sub divisions, that is, Sy.no.665/ 1-A, B, C, a General Power of Attorney was got executed by the fictitious person, Katasani Sankar Reddy, in favour of Kavali Sekhar, on 17.02.2012. Basing on the said General Power of Attorney, the said Kavali Sekhar executed registered sale deeds in favour of respondents 3 to 5 in violation of the orders passed in the partition suit filed by the 2nd respondent. Basing on the said sale deeds, the respondents 3 to 5 influenced the 1st respondent, Commissioner, Municipal Corporation, Kadapa, and got sanctioned D.Nos.39/ 25-12, 39/ 25-13, 39/ 25-14 in their favour in respect of land in Sy.no.665/ 1-C though no such sub-division exists. The 1st petitioner made several representations, including the representations dated 21.02.2013 and 18.05.2013, to the 1st respondent herein, stating about the pendency of the partition suit and made requests not to assign any door number or approve any plan for construction basing upon the above mentioned forged documents. But, the 1st respondent turned a deaf ear and carelessly assigned door numbers to the above said property. If the door numbers assigned are not cancelled, there is a likelihood of the respondents 3 to 5 obtaining building permission and in which case and in the event of allowing the property to change hands, these petitioners would suffer irreparable loss and hardship. Hence, the writ petition is filed.

5. The 2nd respondent filed a counter affidavit denying all the allegations made in the affidavit filed in support of the writ petition. However, he supported the writ petitioners and prayed for allowing the writ petition. In his affidavit, he stated that due to lack of knowledge of all the joint family properties, he included only land in Sy.no.665/ 2 of an extent Ac.1.50 cents in the plaint schedule property, and that he filed I.A.no.434 of 2017 for

amendment and sought permission to add Sy.nos.665/ 1 before Sy.no.665/ 2 at item no.11 of plaint 'A' schedule and delete the extent of Ac.1.50 cents and include in its place Ac.1.66 cents and that the said interlocutory application was dismissed, by order, dated 23.06.2017, and that questioning the said order, he had preferred C.R.P.no.4353 of 2017 before this Court and that the said CRP was allowed by this Court by an order, dated 12.12.2017, permitting the amendment of the plaint and that the Special Leave Petition filed against the said orders, was dismissed by the Supreme Court, by order, dated 26.03.2018. He *inter alia* claimed that he is the co-owner of Sy.nos.665/ 1 and 665/ 2 of Chinnachowk, Kadapa, which is the subject matter.

6. The 3rd respondent filed a counter affidavit on behalf of respondents 3 to 5, who are the contesting respondents. Apart from the denial of the case stated in the affidavit filed in support of the writ petition, the case of the respondents 3 to 5, as stated in the counter affidavit of the 3rd respondent, in brief, is this: 'Originally, the subject property in Sy.no.665/ 1C admeasuring Ac.0.65 cents belonged to the ancestors of one Kadasani Siva Sankar Reddy. He has been in peaceful and continuous possession of the subject property. He was given pattadar passbook and title deed document bearing patta no.120. after following due procedure prescribed under the A.P. Rights in Land and Pattadar Passbooks Ac, 1971 ('Act, 1971'). The property is mutated in the revenue records including Adangal 1-B and pahanies accordingly. The revenue records reflect the sub-divisions that took place in Sy.no.665/ 1. It is false to say that there was no such sub division. Kadasani Siva Sankar executed a registered GPA agreement, dated 17.02.2012, in favour of one K.Sekhar empowering him to execute all deeds on his behalf in respect of the above said property. Thereafter, K.Sekhar, in the capacity of GPA holder of the property, sold an extent of Ac.0.25 cents out of Ac.0.65 cents to the 3rd respondent, under registered sale deed, dated 31.10.2012, an extent of Ac.0.20 cents to

the 5th respondent under a registered sale deed, dated 31.10.2012, an extent of Ac.0.05 cents to the 4th respondent under a registered sale deed dated 05.11.2012, and an extent of Ac.0.15 cents to one K.Balakrishna under a registered sale deed, dated 05.11.2012. The said purchasers are in peaceful and continuous possession. The respondents 3 to 5 acquired right, title and interest over the properties. The petitioners are making false claim without any right over the same. Immediately thereafter, respondents 3 to 5 constructed three small temporary rooms bearing Door numbers. They were worn out. The structures are not in existence. The said door numbers are not being claimed by them any longer. The question of cancellation of door numbers does not arise. The relief claimed in the writ petition does not survive. A partition suit is filed and is pending. All the other allegations which are contrary are false and are denied.

7. The 1st petitioner filed a reply affidavit reiterating her pleaded case and denying the case of the contesting respondents 3 to 5. The 2nd respondent also filed a reply affidavit to the counter affidavit of the 3rd respondent.

8. The 2nd petitioner/party-in-person placed reliance on the following decisions:

- i) Chandra Shasi v. Anil Kumar Verma¹
- ii) Badami (Deceased) by her L.R v. Bhali²
- iii) Javarilal and Ors. V. N.Parthasarahty and Ors.³
- iv) Zarina Siddiqui v. A.Ramalingam @R.Amarnathan⁴
- v) Reliance Granite Private Ltd., Hyderabad v. Government of AP and others⁵
- vi) S.P.Chengalvaraya Naidu (dead) by LRs. V. Jagannath (dead) by L.Rs & Others⁶

¹ (1995) 1 Supreme Court Cases 421

² (2012) 11 Supreme Court Cases 574

³ 207 (3) CCC 418 (Mad.)

⁴ (2015) 1 Supreme Court Cases 705

⁵ 2006 (2) ALD 237

- vii) Sarkaram Sthanarayana v. Kandregula Jagan Mohan Venkata REdam Naidu⁷
- viii) Osmania University rep. by the Registrar, Hyd. V. Dr. Rajeshwar Rao and others⁸
- ix) Sekar Mudaliar v. Shajathi Bi & Another⁹
- x) Dharmabiri Pana v. Pramod Kumar Sharma (D) through LRs.¹⁰
- xi) The Greater Bombay Co-operative Bank Limited v. Mr. Nagraj Ganeshmal Jail & Ors.¹¹
- xii) M/s. Latif Estate Line India Ltd. V. Mrs. Hadeeja Ammal & Ors.¹²
- xiii) Suraj Lamp and Industries Private Limited v. State of Haryana and others¹³
- xiv) Suraj Lamp and Industries Private Limited v. State of Haryana and others¹⁴
- xv) Rambhau Namdeo Gajre v. Narayan Bapuji Dhotra (dead) through LRs¹⁵
- xvi) Maya Devi v. Lata Prasad¹⁶
- xvii) Kari Hari Babu v. Maddineni Narasimham (died) per LRs and others¹⁷
- xviii) Parbatbhai Aahir @Parbatbhai Bhimsinhbhai Karmur & ors. V. State of Gujarat and another¹⁸
- xix) Ramachandra Monappa Klihal v. Sunanda Tukaram Koparde¹⁹
- xx) Asset Reconstruction Co. (India) Ltd., Mumbai v. The Inspector General of Registration, Chennai & ors.²⁰
- xxi) G.Ayyakkonar v. Inspector General of Registration, Chennai & Ors.²¹

⁶ AIR 1994 SUPREME COURT 853

⁷ 2017 (5) ALD 412

⁸ 1989 (3) ALT 192

⁹ AIR 1987 MADRAS 239

¹⁰ AIR 2017 SUPREME COURT 5431

¹¹ 2017 (3) CCC 276 (SC)

¹² AIR 2011 MADRAS 66

¹³ (2009) 7 Supreme Court Cases 363

¹⁴ (2012) 1 Supreme Court Cases 656

¹⁵ (2004) 8 Supreme Court Cases 614

¹⁶ (2015 5 Supreme Court Cases 588

¹⁷ 2015 (1) ALT 779 (D.B)

¹⁸ AIR 2017 SUPREME COURT 483

¹⁹ AIR 2016 KARNATAKA 140

²⁰ AIR 2016 MADRAS 123

²¹ LAWS (MAD)-2006-6-337

xxii) T.Vasanth and others v. A.Jayaseelam and Ors.²²

xxiii) M.Yashanth Shenoy v. Muniyappa (dead) by LRs & others²³

xxiv) Anil Kumar Gupta v. State of UP and others²⁴

8.1 Learned counsel appearing for the respondent placed reliance on the following decisions:

i) P.R.Muralidharan v. Swami Dharmananda Theertha Padar²⁵

ii) Himmat Singh v. State of Haryana & Others²⁶

iii) V.Jaya Prakash v. Commissioner of Municipality, Khapra Municipality, Kapra, R.R. District & Another²⁷

iv) T.Rameshwar v. Commissioner, Municipal Corporation of Hyderabad & Others²⁸

v) Guntuka Raja Ram v. State of Telangana & Ors.²⁹

vi) Syed Jahangir & Ors. V. District Collector, Hyderabad and others³⁰

9. I have given earnest consideration to the facts & submissions. I have gone through the decisions cited and perused all the documents filed. Though a number of decisions are cited and many documents are filed, there is no need to refer, in detail, to the same for the reasons assigned infra.

10. The crux of the dispute is with regard to assignment of door numbers to the property mentioned in the introductory paragraph of the writ petition, which is admittedly subject matter of a suit for partition. Both the parties to the *lis* are aware that the dispute stands resolved on the adjudication of the suit for partition after full-fledged trial and that when the competent Civil Court is having seisin over the matter, they are not entitled to request a writ

²² AIR 2017 (NOC) 807 (MAD.)

²³ (2016) 1 Supreme Court Cases 657

²⁴ (1995) 5 Supreme Court Cases 173

²⁵ (2006 4 Supreme Court Cases 501

²⁶ (2006) 9 Supreme Court Cases 256

²⁷ 2006 (4) ALD 807

²⁸ 2006 (3) ALD 337

²⁹ 2017 (4) ALD 415

³⁰ 2018 (1) ALT 192

Court to adjudicate the dispute involved in the suit for partition and decide the issue of title involved in the suit. A plain consideration of the pleadings of the parties particularly of the writ petitioners would make it manifest that the controversy between the writ petitioners and the contesting respondents is factual and is complex being one related to title to the property in dispute and the entitlement of the 2nd respondent to a share as claimed in the suit for partition.

11. This Court exercising the jurisdiction of issuing writs does not propose to enquire into the merits of the rival claims of title to the property in dispute. This Court is not required to enter into a field of investigation of the matter, which is more appropriate for a civil Court in the properly instituted civil suit. A writ Court refuses to exercise jurisdiction under Article 226 of the Constitution of India where the disputed facts have to be investigated and where rights claimed are not capable of being established in summary proceedings under Article 226 of the Constitution of India. A petition under Article 226 of the Constitution of India cannot be converted into a suit to resolve factual controversies. This Court cannot be converted into a trial Court while exercising its powers under Article 226 of the Constitution of India, particularly, when the party approaching this Court under Article 226 of the Constitution of India can work out its remedy by approaching the competent and jurisdictional civil Court. The dispute in this writ petition is with regard to assignment of door numbers to the properties in dispute and the sub division of the survey number. The respondents 3 to 5 are contending that the structures to which the door numbers were assigned are worn out and they are not in existence and that they are not claiming the door numbers and that in that view of the matter, the question of cancellation of the door numbers does not arise and that the cause in the writ petition does not survive for adjudication. The law is well settled that mutation in revenue records does not confer title

nor take away the existing title, if any. The same analogy applies to the entries in municipal records. Any mutation of the property either in revenue records or the municipal records, as the case may be, is always subject to the decision with regard to right, title and interest in such property of a civil Court in a comprehensive civil suit. Therefore, suffice, if it is observed that the mutation of the property and assignment of door numbers to the property by the Municipality is subject to the result of the civil suit, which is pending.

12. On the above analysis, this Court sees no reasons to exercise discretion under Article 226 of the Constitution of India to grant the relief sought for, in view of the observations supra.

13. Accordingly, the Writ Petition is dismissed. It is needless to state that this Court did not express any opinion, much less, a final opinion on the merits of the matter; and hence, the civil Court shall decide the suit on its merit and in strict accordance with law and procedure.

There shall be no order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.

12th September 2018

M. SEETHARAMA MURTI, J

Note:- Issue CC by 17.09.2018
(B/o)
RAR

