

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Writ Petition No.1135 of 2012

ORDER:

This writ petition, under Article 226 of the Constitution of India, is filed by the petitioner requesting to issue a writ in the nature of Mandamus declaring the proceedings in Roc.No.1256/2011/G, dated 31.12.2011, of the 2nd respondent as illegal, arbitrary, devoid of jurisdiction, violative of the principles of natural justice & Article 14 of the Constitution of India. A consequential relief to set aside the said proceedings is also sought in this writ petition.

2. I have heard the submissions of *Sri S.D. Goud*, learned counsel appearing for the writ petitioner, of the learned Government Pleader for Revenue appearing for the respondents 1 & 2, and of *Sri T.N.M. Ranga Rao*, learned counsel appearing for the 3rd respondent. I have perused the material record.

3. This Court, on 20.01.2012, while admitting the writ petition, passed the following interim order in WPMP.No.1406 of 2012.

‘The impugned proceedings dated 31.12.2011, prima facie, demonstrate that the Revenue Divisional Officer, Jangareddigudem, entertained the application made by the third respondent and passed orders in her favour. In consequence, he directed the Tahsildar, Jangareddigudem, to enter the third respondent’s name in the revenue records in respect of the subject property. Under the A.P Rights in Land and Pattadar Pass Books Act, 1971, the Tahsildar is the primary authority under Section 5(2) and the Revenue Divisional Officer is the appellate authority under Section 5(5). Losing sight of the scheme of the Act, it appears that the Revenue Divisional officer, Jangareddygudem, directly entertained the complaint of the third respondent and passed orders in the matter.

The impugned proceedings dated 31.12.2011 shall accordingly stand suspended pending further orders.’

4. The respondents 1 & 2 and the 3rd respondent respectively filed WVMP.No.617 of 2012 and WVMP.No.3372 of 2013 seeking to vacate the afore-said interim order.

5. However, a joint request was made to dispose of the writ petition instead of the vacate petition.

6. The facts, which are necessary to be stated as a prelude to the order, in brief, are as follows: - 'The 3rd respondent submitted a complaint to the 2nd respondent – Revenue Divisional Officer for grant of pattadar passbooks in her name with regard to the lands in Sy.No.81/2 of an extent of Ac.3.94 cents and in Sy.No.85/4 of an extent of Ac.0.58 cents in Srinivasapuram Village, Jangareddigudem Mandal of West Godavari District, *inter alia*, stating therein as follows: - 'Her native place is Yadavolu Village of Devarapalli Mandal; her husband is Suryachandram, S/o.late Pragada Subbanna, resident of Srinivasapuram Village; her said husband has one daughter by name Ramana, through his first wife; she gave birth to a stillborn male child in the year 1988; her husband died in the year 1989; by the time of the death of her husband, she was pregnant; later, she gave birth to a stillborn female child; she and her step daughter, Ramana, are looking after the properties of her husband; she performed the marriage of said Ramana with her brother, T. Krishna; that is, the writ petitioner; they both lived along with her in her house; with a view that her brother, the writ petitioner, will assist her, she entrusted the family affairs to him; after some time, he developed evil intentions; he intended to grab the property by necking her out of the property and stopped taking proper care of her and even failed to get her treated when she fell ill; having been afraid of the evil deeds of her brother, she went away and lived in her parents house for some time and relatives houses for some more time.' Finally, she prayed in the complaint for issuance of pattedar passbooks in her name in respect of the lands of her husband. She further stated in her complaint that if pattedar passbooks are granted in her name, she would obtain

bank loans for her medical treatment. The 3rd respondent's said complaint was taken on file by the 2nd respondent as case in R.O.C.No.1256/2011/G. After conducting enquiry and recording the statements of the 3rd respondent and one Rajanala Ramakrishna, who appeared as a witness for the 3rd respondent, and that of the petitioner herein and his witness by name Balle Veeranna, and after considering the said statements of the witnesses and also the documents viz., exhibits A1 to A6 and B1 to B3 exhibited during the course of enquiry conducted by him, the 2nd respondent passed the impugned orders. By the said impugned orders, the 2nd respondent held that as per Hindu Succession Act, the 3rd respondent is having an equal half share along with Ramana in the above mentioned landed property of Srinivasapuram Village and declared accordingly that the 3rd respondent is entitled to an equal half share in the property of her husband and that her step daughter is entitled to the remaining half share and that the 3rd respondent is having absolute rights over her share including right of alienation and/or transfer by gift and that accordingly rights are created in her favour. In the said orders, he further directed for mutation of her half share of the property in her name, in the revenue records in respect of her half share of the property. Aggrieved thereof, the petitioner filed this writ petition.'

7. The main grievance of the writ petitioner is that the RDO usurped the jurisdiction of a common law Court and decided the rights & title of the parties over the disputed property without any jurisdiction and passed a declaratory order declaring that the 3rd respondent is entitled to a half share and that the wife of the petitioner is entitled to a half share and that therefore, the said order which is passed without jurisdiction is unsustainable under facts

and in law. The writ petitioner, therefore, prayed for allowing the writ petition after setting aside the impugned order.

8. All the respondents, having supported the orders of the RDO, contended that the petitioner has no *locus standi* to file the writ petition and question the order of the RDO and stated that the party aggrieved, if any, is Ramana, the wife of the writ petitioner, and that the writ petitioner is admittedly not having right, title and interest in either a part or entire property and hence, he has no *locus standi* and that therefore, the writ petition filed by the writ petitioner is liable for dismissal.

9. The reply contentions of the petitioner are as under: 'Since he was alone arraigned as a party in the proceedings before the RDO, his wife is not bound by the said order, she not being a party therein. He alone is entitled to file the writ petition, as by making him a party an adverse order was passed detrimental to the interests of his wife.' Precisely, his submission is that the 3rd respondent made a complaint only against the writ petitioner and that the RDO also decided her alleged rights by showing the writ petitioner as a party respondent in the case before him without arraying the wife of the petitioner, Ramana, who is the step daughter of the 3rd respondent, as a party to the case and that the RDO/2nd respondent passed the impugned order without affording an opportunity of hearing to her and that, therefore, the order is one passed in violation of the principles of natural justice. He would also submit that since the impugned order was obtained by the 3rd respondent by impleading the petitioner and not his wife as a party to the case and the RDO also proceeded to pass orders by arraying the petitioner as a respondent in the case, the petitioner has *locus standi* to question the order. It is also the submission that though the said order is not binding on his wife Ramana, if

the said order is allowed to stand, the revenue authorities are likely to pass consequential orders and, therefore, such an order shall not be allowed to stand and hence, the writ petition, which is filed to set aside such erroneous order, which is passed without jurisdiction, is maintainable.

10. This Court, taking into account the facts and circumstances of the case, is in agreement with the said submission of the writ petitioner as the same merits consideration and accordingly holds that the petitioner has got *locus standi*.

11. During the course of hearing, it is submitted by the learned counsel for the 3rd respondent that the 3rd respondent had already instituted a suit in OS.No.73 of 2012 on the file of Senior Civil Court, Kovvur, against the wife of the writ petitioner and that the said suit is pending. Be that as it may.

12. The next question is as to whether the order impugned is sustainable under facts and in law.

13. Learned counsel for the 3rd respondent contended that by the impugned order no title and right in respect of the half share of the property of the husband of the 3rd respondent is declared by the 2nd respondent and that he only decided her right to succeed to a half share in the properties of her late husband as per the provisions of the Hindu Succession Act, 1956, and that the said Officer is having jurisdiction to do so and that therefore, the order is sustainable. In support of his contentions, he placed reliance on Sections 4 and 5 of the A.P. Rights in Land And Pattadar Pass Books Act, 1971, and Rule 9(1) of A.P. Rights in Land And Pattadar Pass Books Rules, 1989. Be that as it may.

14. Admittedly, and as fairly conceded before this Court, the RDO, the 2nd respondent herein, has decided the right of succession of the 3rd respondent related to the property said to be of her husband and declared that the 3rd respondent is entitled to a half share and that her step daughter Ramana, who is the wife of the writ petitioner, is entitled to the remaining half share in the said properties as per Hindu Succession Act and gave further directions notwithstanding the fact that Ramana, the step daughter of the 3rd respondent, is not a party to the proceeding before him and that she has a right to be heard in the matter before any order is passed against her interests. Since the said Ramana is not made a party to the impugned proceedings and an order against her interests was passed by arraigning her husband/the writ petitioner as a party to the proceeding, the writ petitioner, who is the husband of the said Ramana, filed this writ petition, *inter alia*, contending that his wife, Ramana, whose rights are affected by the impugned order, is a necessary party to the proceeding in which the impugned order is passed and that the said order, which is passed behind her back, is not binding upon her and yet he is constrained to file the writ petition as the said order, if not challenged and is allowed to remain, the revenue officers are likely to pass further adverse orders for mutation of the properties pursuant to the impugned order.

15. On the above analysis, this Court finds that the impugned order, which is detrimental to the interests of the wife of the writ petitioner and which was passed against her in a proceeding to which she was not a party, is unsustainable being violative of principles of natural justice and the statutory mandate. Further, the Tahasildar is the primary authority under Section 5(2); and, the RDO is the appellate authority under Section 5(5) of the A.P. Rights in Land and Pattadar Passbooks Act, 1971. Nonetheless, the impugned order

was passed on the 3rd respondent directly approaching the RDO- 2nd respondent who is the appellate authority. In that view of the matter also, the order impugned is liable to be set aside.

16. In the result, for the reasons above mentioned, the Writ Petition is allowed; and, the impugned order is set aside. It is made clear that this court did not express any opinion much less a final opinion on the merits of the matter and, therefore, the learned Principal Senior Civil Judge, Kovvur, shall decide the suit, OS.No.73 of 2012, strictly on its merit, uninfluenced by observations, if any, made in this order. Since the suit is of the year 2012, it is needless to state that the learned Principal Senior Civil Judge, Kovvur, shall endeavor to dispose of the said suit as expeditiously as possible, and in any event within two months from the date of receipt of a copy of this order, in case the suit is not already disposed of. Suffice if it is mentioned that the judgment of the civil Court in the afore-said suit will finally resolve the controversy notwithstanding the fact that the impugned order is set aside. There shall be no order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

M.SEETHARAMA MURTI, J

30.08.2018

Note: 1. Registry is directed to communicate a copy of this order to the learned Principal Senior Civil Judge, Kovvur.

2. Issue CC by 10.09.2018.

[B/o]
Vjl