

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

Writ Appeal No.1024 of 2016

JUDGMENT: {Per the Hon'ble the Acting Chief Justice Ramesh Ranganathan}

This appeal, under Clause 15 of the Letters Patent, is preferred against the order passed by the Learned Single Judge in W.P.No.33459 of 2014 dated 21.07.2015. The appellant herein filed the said writ petition seeking a mandamus to direct the District Registrar, Karimnagar to declare the proceedings initiated by the Sub-Registrar, Jagitial Mandal, vide proceedings dated 28.08.2014, refusing to register the subject property, as illegal, arbitrary and violative of Articles 14 and 300-A of the Constitution of India.

In the order under appeal the Learned Single Judge observed that the appellant-writ petitioner had an alternative remedy of an appeal under Section 72 of the Registration Act, 1908 (for short "the Act"), against the impugned proceedings, before the District Registrar, Karimnagar; normally this Court would not entertain the writ petition when there is an effective alternative remedy; it was not the case of the appellant-writ petitioner that the impugned order was without jurisdiction, and was in violation of principles of natural justice; the reason for refusal of registration of the document was that the vendor of the appellant-writ petitioner had no right to sell the property, as he had acquired the property through a perpetual lease and a lessee cannot be said to be the owner of the property; the impugned proceedings specifically spoke about availability of an alternative remedy of appeal before the District Registrar, Karimnagar against the refusal order; and whether the vendor of the appellant-writ petitioner had a right to sell the property was a question of fact which could be decided by the

appellate authority. While expressing his disinclination to entertain the writ petition, in view of the availability of an alternative remedy of an appeal against the refusal order, the Writ Petition was dismissed.

Before us Sri T.Surya Satish, learned counsel for the appellant-writ petitioner, would question the validity of the order passed by the sub-registrar on its merits. Learned counsel would submit that, having relegated the appellant-writ petitioner to the alternative remedy of an appeal, the Learned Single Judge had erred in recording his opinion on merits and, therefore, the order under appeal necessitated being set aside; and the finding recorded by the Learned Single Judge, that the question whether the vendor of the appellant-writ petitioner had a right to sell the property was a question of fact which could be decided by the appellate authority, necessitated being set aside, as the appellate authority cannot decide questions of title.

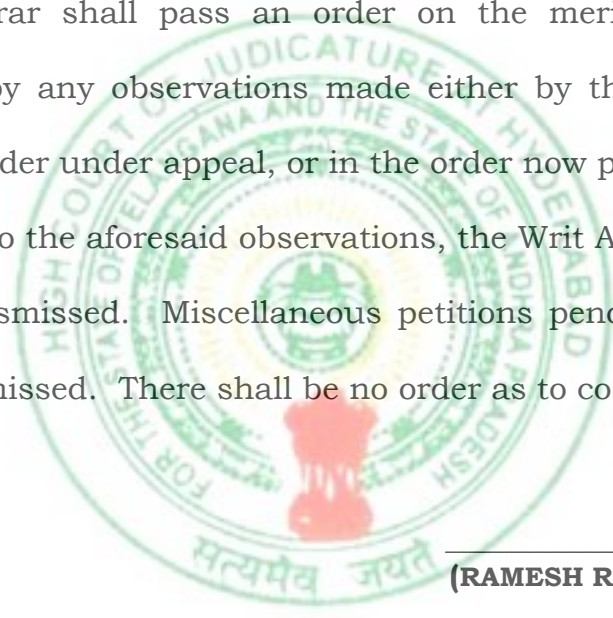
We must express our inability to agree. While existence of an alternative remedy, by itself, is not a bar for a writ petition to be entertained, it is in the discretion of the Learned Single Judge either to entertain the writ petition, or relegate the petitioner to avail the alternative remedy of an appeal. In the case on hand, the Learned Single Judge has exercised his discretion to relegate the appellant-writ petitioner to the remedy of an appeal under Section 72 of the Act. Once it is admitted that Section 72 of the Act provides for an appeal, against the order of the sub-registrar, exercise of discretion by the Learned Single Judge would, ordinarily, not be a matter for scrutiny in an intra-Court appeal, under Clause 15 of the Letters Patent, as jurisdiction, under Clause 15 of the Letters Patent, is exercised only if the order under appeal suffers from a patent illegality. Exercise of jurisdiction by the Learned Single Judge, in relegating the appellant-writ petitioner to

the remedy of an appeal under Section 72 of the Act, does not suffer from any such infirmity.

We must also express our inability to agree with the submission of Sri T.Surya Satish, learned counsel for the appellant-writ petitioner, that the Learned Single Judge has expressed his opinion on merits. As noted hereinabove, the Learned Single Judge has merely recorded the submission urged on behalf of the appellant-writ petitioner, and has not recorded any finding on merits.

Suffice it, to protect the interests of the appellant-writ petitioner, to make it clear that, on his appellate jurisdiction being invoked, the District Registrar shall pass an order on the merits of the appeal uninfluenced by any observations made either by the Learned Single Judge in the order under appeal, or in the order now passed by us.

Subject to the aforesaid observations, the Writ Appeal fails and is, accordingly, dismissed. Miscellaneous petitions pending, if any, shall also stand dismissed. There shall be no order as to costs.



(RAMESH RANGANATHAN, ACJ)

(KONGARA VIJAYA LAKSHMI, J)

11th April, 2018
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Date: 11.04.2018