

**HON'BLE THE CHIEF JUSTICE
SRI THOTTATHIL B. RADHAKRISHNAN**

AND

HON'BLE SRI JUSTICE S.V. BHATT

WRIT APPEAL No.1456 OF 2018

JUDGMENT (ORAL): (Per Hon'ble Sri Justice S.V. Bhatt)

Heard Sri P. Venugopal and Sri C.V. Mohan Reddy, learned senior counsel for the appellant - respondent No.6 and respondent No.1 - writ petitioner; Ms. A. Jayanthi, learned Government Pleader for Revenue.

2. The intra Court appeal is directed against the interlocutory order dated 11.10.2018 in W.P. No.37088 of 2018. The operative portion of the order reads thus:

“In view of the earlier order passed by this Court in W.P.No.18940 of 2017, and since the jurisdiction of the Revenue Divisional Officer in entertaining the appeal, prima facie, appears to be contrary to the judgment of this court, hence status quo as on today to be maintained with regard to the entries in the revenue records. Further, neither of the parties shall alienate the property in dispute, until further orders.”

3. Sri P. Venugopal contends that the first premise viz., in view of the earlier order passed by this Court in W.P. No.18940 of 2017 in the order impugned is incorrect, and that against the order impugned in the writ petition, respondent No.1 herein has effective remedy of revision under Section 9 of Andhra Pradesh Rights in Land and Pattadar Passbooks Act, 1971 (for short 'Act'). Therefore, the writ petition ought

not to have been entertained by this Court. According to him, the competence of appellate authority - Revenue Divisional Officer is questioned after inviting adverse findings on merits from the appellate authority. This is not a case for granting interim order. The appellant herein ought to have been heard and opportunity to file counter affidavit given by the learned single Judge. He prays for setting aside the order under appeal.

4. Sri C.V. Mohan Reddy contends that merits of the case justify the order under appeal and that the appellant ought to have filed counter and petition to vacate the interim order and the writ appeal against the interlocutory order ought not to be entertained by this Court.

5. The learned Government Pleader submits that the appellant authority - Revenue Divisional Officer examined all relevant facts and circumstances, and, therefore, the person aggrieved by the order of the Revenue Divisional Officer ought to prefer revision under Section 9 of the Act, instead of filing writ petition.

6. We have perused the record particularly the order dated 16.08.2018 of respondent No.5 herein. The issue arises under the Andhra Pradesh Rights in Land and Pattadar Passbooks Act, 1971. The order under appeal is an interlocutory order. Though the counsel appearing for the parties, in support of their respective submissions, have made a few submissions on merits, for the view we are proposing to take, these contentions are not adverted to. The order under appeal is based on the premise that there is an order in W.P. No.18940 of 2017.

The premise appears to be incorrect. Further, there are assertions and serious denials on pleadings in the writ affidavit. The effect of earlier adjudication vis-à-vis the subject matter of the writ petition is one of the contentions between the parties.

7. For the above reasons, we are of the view that the learned single Judge instead of passing interim order under appeal, ought to have afforded opportunity to the appellant to file counter affidavit or produce the record to the extent required, heard all the counsel and disposed of the interlocutory prayer made by respondent No.1 herein.

8. We are of the view that the order under appeal, though is an interlocutory order, is unsustainable for the reasons referred to above. Hence, the order under appeal is set aside. The Registry is directed to list W.P. No.37088 of 2018 in the third week of November, 2018. The appellant is given liberty to file counter affidavit within two (2) weeks from today.

9. The Writ Appeal is ordered as indicated above. No order as to costs.

As a sequel thereto, Miscellaneous Applications, if any, pending in the Writ Appeal stand closed.

THOTTATHIL B. RADHAKRISHNAN, CJ

S.V. BHATT, J

November 1, 2018.
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