

HIGH COURT FOR THE STATE OF TELANGANA

THE HON'BLE SRI JUSTICE RAGHVENDRA SINGH CHAUHAN

AND

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT APPEAL No.310 OF 2019

Dated: 24.04.2019

Between:

Mulkala Sammi Reddy and another

...Appellants

And

Mulkala Chandraiah and others.

...Respondents

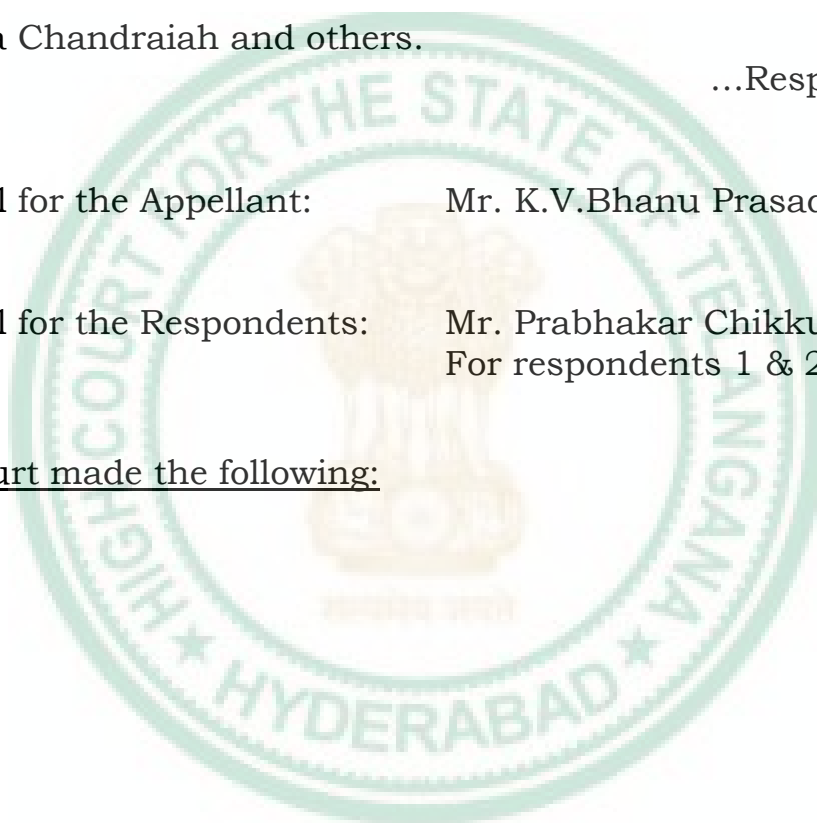
Counsel for the Appellant:

Mr. K.V.Bhanu Prasad.

Counsel for the Respondents:

Mr. Prabhakar Chikkudu,
For respondents 1 & 2

The Court made the following:



**THE HONOURABLE THE ACTING CHIEF JUSTICE
SRI RAGHVENDRA SINGH CHAUHAN
AND
THE HONOURABLE SRI JUSTICE A. RAJASHEKER REDDY
WRIT APPEAL No. 310 OF 2019**

JUDGMENT: (Per Hon'ble Sri Justice A.Rajasheker Reddy)

This appeal, under Clause 15 of the Letters Patent, is preferred against the order passed by a learned Single Judge, in W.P. No.2358 of 2019 dated 25.03.2019, whereby the learned Single Judge has allowed the Writ Petition setting aside the order dated 08.01.2019 passed by the Joint Collector, Jayashankar-Bhupalpally District, the 4th respondent herein, and restored the order dated 18.05.2013 passed by the Revenue Divisional Officer, Manthani Division, the 5th respondent herein, and also directed the respondents to give effect to the order dated 18.05.2013 within a period of four weeks from the date of receipt of a copy of the order.

2. Briefly, the facts of the case are that the respondent Nos. 1 and 2 are brothers. They inherited the agricultural land, admeasuring Acs.3.35 guntas in Sy.No.206, of Kondampet Revenue village, Malhar Rao Mandal, Jayashankar-Bhupalpally District (for short 'the subject property'). According to them, when they went to the office of the Tahsildar, Malhar Rao Mandal, in June, 2012, for the purpose of securing the copies of the revenue records for availing an agricultural bank loan, they discovered that the names of the appellants were entered in the pahanies from 1999-2000 onwards. Aggrieved by the same, they preferred an appeal before the Revenue Divisional Officer, Manthani

Division under Section 5(5) of the Telangana Rights in Land and Pattadar Pass Books Act, 1971 (for brevity 'the Act of 1971'), stating that the appellants herein, in collusion with the revenue authorities, got their names entered in the revenue records by tampering with the same. The said appeal was allowed on 18.05.2013. Aggrieved thereby, the appellants preferred a revision under Section 9 of the Act of 1971, before the 4th respondent, who passed the order 08.01.2019, setting aside the order dated 18.05.2013 of the 5th respondent. The learned Single Judge, by order dated 25.03.2019, set aside the impugned order dated 08.01.2019, passed by the 4th respondent, and restored the order of the 5th respondent. Aggrieved by the same, this appeal is preferred before this Court.

3. Heard Mr.K.V.Bhanu Prasad, the learned counsel for the appellants, and Mr. Prabhakar Chikkudu, the learned counsel for the respondents 1 and 2.

4. Mr. K.V.Bhanu Prasad, learned counsel for the appellants, while reiterating the averments in the grounds of appeal, submits that the 5th respondent entertained the appeal filed by the respondent Nos. 1 and 2 after a period of 12 years, though they failed to offer any satisfactory explanation as to why the appeal was filed after a period of 12 years when statutory period of limitation is only 60 days. He also submits that since the respondent Nos. 1 and 2 maintained silence for a period of 12 years, the 5th respondent should not have allowed the appeal filed by them, and that the 5th respondent should have directed them to approach Civil Court, since the appellants filed civil suit in OS No.27 of 2013,

which is pending before the Subordinate Judge at Manthani, wherein interim injunction was granted in favour of the appellants. He submits that if the order of the 5th respondent is restored, the suit filed by the appellants would become infructuous. He further submits that an application for validation in Form No. X was filed for regularization and validation of simple sale deeds under Section 5-A of the Act; basing on the same, the Joint Collector-4th respondent, allowed the revision petition filed by the appellants. He submits that the revisionary authority allowed the revision basing on the status report prepared by the revenue authorities, wherein it shows that the appellants are in possession of the subject property. In support of his contention, he relied on the judgments reported in **Thripuravaram Krishna Reddy v. Joint Collector, Cuddapah¹**, **Basireddy Rukminamma v. Joint Collector, Kadapa²** and **Vutukuru Subba Rao v. The State of Andhra Pradesh, rep. by its Revenue Secretary and others [W.P.Nos.23254/2012 & 19519/2010]**.

5. On the other hand, learned counsel for the respondent Nos. 1 and 2 submits that they became aware of the change of entries in the revenue records only in the month of June, 2012 when they went to apply for an agricultural loan. Immediately they filed appeal on 05.07.2012. As such, the appeal was within the limitation from the date of knowledge. He also submits that there is no order validating the so-called simple sale deeds, as such, unless the simple sale deeds are validated, the names of the appellants could not have been entered in the revenue records. He submits that at the time of entering the names of the appellants, no notice

¹ 2009 (1) ALD 248

² 2014(1) ALT 365

was issued to the respondent Nos. 1 and 2, which is in violation of Rule 22 of the Telangana Rights in Land and Pattadar Pass Books Rules, 1989 (for short, the Rules of 1989'), wherein it requires the Mandal Revenue Officer to issue notice to the alienor in Form XI specifying the date and time proposing to conduct an enquiry into the application. He also submits that Sub-rule (4) of Rule 22 requires the Mandal Revenue Officer to hear all the parties and examine the documents and witnesses, if any, and take such further evidence as he may consider necessary. He further submits that the appellants failed to produce certificate under Form XIII-B either before the Revenue Divisional Officer, or the Joint Collector, as such, the Joint Collector cannot assume that regularization was effected, and that the so-called unregistered document of title of the appellants had been validated. He submits that since the procedure envisaged under the Rule 22 of the Rules of 1989 has not been followed, the learned Single Judge, after calling for the record and after verifying the same, allowed the Writ Petition, by setting aside the order passed by the revisionary authority. In support of his contention, he relied on the judgment reported in **Konkana Ravinder Goud v. Bhavanarishi Co-operative House Building Society**³.

6. In view of rival contentions of both the learned counsel, the point that arises for consideration is whether the learned Single Judge was right in allowing the Writ Petition by setting aside the impugned order dated 08.01.2019 passed by the revisionary authority, the 4th respondent,

³ 2003(5) ALD 654; 2003(6) ALT 1

by restoring the order of the appellate authority-Revenue Divisional Officer, dated 18.05.2013 or not?

7. With regard to limitation aspect, the respondents 1 and 2, pleaded before the appellate authority-Revenue Divisional Officer, as follows:

“They further submitted that as and when appellants gone to the office one week back i.e., on 29.06.2012 to take the Pahani extract for agriculture loan the name of respondents reflecting 1999-2000 till date. On being seen the appellants shocked and surprised with the tampered records in the circumstances the appellants have got no other efficacious remedy excepting to prefer this appeal. The appeal is within time from the date of knowledge i.e., 25.06.2012 they obtained pahanies on 29.06.2012 filed the appeal on 5-7-2012. Hence, the appeal.”

Though, it is specifically pleaded by the respondent Nos.1 and 2 that they came to know about the change of names in revenue records only in the month of June, 2012 and filing of appeal on 05.07.2012, the appellants herein have not contested the issue seriously. That apart, the revisionary authority has not allowed the revision on the ground of limitation, but allowed the same on the ground that an application for validation was made, enquiry was conducted on the same and basing on the status report filed by the revenue authorities stating that the appellants were in possession, entries were made in 1-B register, which goes to show that no validation certificate under Form XIII-B validating the simple sale deeds, on which reliance is placed by the appellants, were produced by the appellants. As such, the plea of limitation cannot be raised in the Writ Appeal. Moreover, it is clearly observed by the learned Single Judge that in spite of eight adjournments, no counter-affidavit was filed by the appellants, which goes to show that the appellants never contested the case on the aspect of limitation.

8. It is next contended by the learned counsel for the appellants that though they have produced simple sale deeds for regularization, and validation as required under Rule 22 of the Rules, 1989 and are in possession of the subject property, but the learned Single Judge as well as 5th respondent-appellate authority, without considering the said aspect, passed the impugned orders. A perusal of the order of the learned Single Judge goes to show that the appellants relied on two unregistered documents of title, without any clarity as to which was the document under which they claimed the title. Learned Single Judge, after calling for the record and after verifying the same, found that no such validation certificate in Form XIII-B was produced by the appellants. After perusing the record, the learned Single Judge also opined that no notices were issued to the respondent Nos. 1 and 2 as contemplated under Rule 22 of Rules of 1989. As per Rule 22(6) of the Rules, only on production of the certificate issued by the Recording Authority, entries can be made in the Record of Rights in Form I-B to the effect that the person whose name has been recorded as an occupant is the owner of the property from the date of issue of the certificate. And as per Rule 22(7), after making entries in Record of Rights, a title deed and pattadar pass book should be issued to the occupant in the category of owner-pattadar. But in the instant case, in the absence of such validation certificate, entries could not have been made by the recording authority, and pattadar pass books could not have been issued in favour of the appellants. In **Konkana Ravinder Goud v. Bhavanarishi Co-operative**

House Building Society (supra), a Division Bench of this Court held as under:

“As many as five vendors were dead on the date when the applications were filed by the Society and when order was passed by the Mandal Revenue Officer. Rule 22 of the Rules required the Mandal Revenue Officer to issue notice to the alienor or transferor in Form XI specifying therein the date on which and the time on which he proposes to enquire into the application. No such notice was issued to the vendors. Notice was stated to have been published for information of the general public. It was a different notice in Form No.XII, which is required to be issued for the information of the General Public. Separate notice in Form XI was required to be issued to the vendors. Failure to issue such notice for which a finding of fact has been recorded by the Joint Collector also vitiates the order passed by the Mandal Revenue Officer being in violation of the principles of natural justice. The order was passed against those who were dead on that day and was passed by the Mandal Revenue Officer having no jurisdiction in the matter. Such an order is without jurisdiction and is a nullity. It is a fundamental principle of law that a defect of jurisdiction, whether it is pecuniary, territorial or in respect of subject-matter, strikes at the very authority of the Court to pass any decree or order and such a defect cannot be cured even by consent of parties.....”

9. According to the pleadings in the revision, the case of the appellants is that they have purchased the subject property by way of simple sale deed on 20.04.1988, and they were put in possession of the subject property. They have also filed an application in Form No. X on 25.09.1988 before the recording authorities for regularization and validation of the same under Section 5(A) of the Act of 1971 read with Rule 22 of Rules, 1989. However, the appellants have not asserted that the said sale deeds were validated in terms of Section 5(A) of the Act r/w Rule 22 of the Rules, 1989. When this is so, it is not known on what basis, the names of the appellants were entered in revenue records. If any validation certificate was issued, they would have certainly produced either before the appellate authority, or the revisionary authority, or before this Court. The learned Single Judge, while referring to the record, held that no such certificate is found. In the

absence of such certificate, the entries in favour of the appellants could not have been made by violating the provisions under Rule 22(6) of the Rules, 1989. Learned Single Judge has considered all these aspects elaborately, in proper perspective, and the said findings are based on record, which could not be assailed by the appellants. Though the learned counsel for the appellants relied on the judgments reported in **Thripuravaram Krishna Reddy v. Joint Collector, Cuddapah (supra)** and **Basireddy Rukminamma v. Joint Collector, Kadapa (supra)**, but the facts in the said cases are different from the facts in the present case on hand.

In view of above facts and circumstances, this Court in an intra-court appellate jurisdiction, is not inclined to interfere with the order of the learned Single Judge in WP No.2358 of 2019, dated 25.03.2019, and the Writ Appeal is liable to be dismissed. However, the appellants can avail remedy by filing a civil suit under Section 8(2) of the Act or amend the suit, which has already been filed by the appellants.

Accordingly, this Writ Appeal is dismissed. As a sequel thereto, Miscellaneous Applications, if any pending, in the Writ Appeal stand dismissed.

(RAGHVENDRA SINGH CHAUHAN, ACJ)

(A.RAJASHEKER REDDY, J)

24th April, 2019.

kvs

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