HON'BLE THE CHIEF JUSTICE SRI RAGHVENDRA SINGH CHAUHAN
AND
HON'BLE Dr. JUSTICE SHAMEEM AKTHER

WRIT APPEAL Nos.478 and 479 of 2019

COMMON JUDGMENT: *(Per Hon'ble Dr.Justice Shameem Akther)*

Since these two writ appeals are interrelated and arise out of a common order, they are being taken up together and disposed of by way of this common judgment.

2. These appeals, under Clause 15 of Letter Patents Act, are filed aggrieved by the common order dated 01.04.2019 passed by a learned Single Judge of this Court in Writ Petition Nos.16531 and 16548 of 2018.

3. The appellants herein are the petitioners and the respondents herein are respondents, in the writ petitions and for convenience sake, the parties in these appeals are arrayed as appellants and respondents.

4. The brief facts that led to filing of these writ appeals are that Mr.Mahabub Ali, the father of appellants, purchased Ac.2.14 guntas in Survey No.1429, Ac.2.22 guntas in Survey No.1430, Ac.2.21 guntas in Survey No.1431 and Ac.3.04 guntas in Survey No.1432 of Quilashapuram Village, in all an extent of Ac.10.21 guntas under unregistered sale deeds dated 17.01.1975 and 05.06.1975 and under unregistered sale deed dated 15.09.2008 an extent of Ac.1.05 guntas in the name of their mother, Jamal Bee. Due to ignorance, neither their father nor elder brother Mr.Mohmmad Jaffar took steps for regularization and validation of

these unregistered documents under Section 5A of the Telangana Rights in Land and Pattadar Pass Books Act, 1971 (for short "ROR Act") and for mutation in the revenue records. While so, Mahabub Ali, the father of appellants, died in the year 1981 and it is the claim of the appellants that they along with their another brother partitioned the lands equally amongst themselves in the year 2010 and their individual names were entered in the pahanies in the possession column also. The appellants further stated that they made an application in Form X of the Rules framed under the ROR Act, to the Tahsildar, Raghunathpally Mandal, Jangaon District, for regularization of the lands that fell to their share, whereupon regularization was effected and a certificate in Form XIII(B) was issued, regularizing and validating the subject lands purchased by their father under unregistered sale deeds and also the share that fell to the lot of the appellants in the partition effected amongst the three brothers. While things stood thus, the fourth respondent/Saida Begum, their sister, filed an appeal under Section 5B of the ROR Act, claiming half-share in the total extent of Ac.10.12 guntas. According to the appellants, she did not make a mention about the document dated 15.02.1980 allegedly executed by their father in her favour. The said appeal, after due contest, was allowed by the Revenue Divisional Officer directing cancellation of the pattadar pass books and title deeds issued to the appellants and their another brother. The appellants alleged that the fourth respondent brought into existence the document dated 15.02.1980 after filing of the appeal but the Revenue Divisional Officer accepted and acted upon the same. The appellants pointed out that their sister did not choose to take steps to claim her share for the last 37 years and suddenly came out with the so-called document executed in her favour by their father, giving her a half-share in the lands. The appellants further stated that there was no necessity for the Tahsildar to even put the fourth respondent on notice as she could not be treated as a person who was believed to be interested in the lands as she had no semblance of a vested interest in the lands in question. The appeal filed by the fourth respondent is beyond the period of prescribed 30 days and despite the same the Revenue Divisional Officer not only took on file the belated appeal but also allowed the same on 07.04.2018, and ultimately prayed to dismiss the said appeal.

5. The fourth respondent filed counters in the subject writ petitions and asserted that she had a semblance of interest in the said land and the plea of the appellants to the contrary was denied. With regard to the claim of the appellants that her appeal under Section 5B of the ROR Act was belated, the fourth respondent stated that she came to know about the issuance of certificates in Form XIII(B) only on 05.09.2017 and as no order was ever communicated to her directly by the Tahsildar, Raghunathpally Mandal, the question of limitation commencing from an earlier date does not arise. She further pointed out that the aspect of limitation was never raised before the Revenue Divisional Officer, Jangaon Division. According to her, the eldest brother, Mohmmed Jaffar, was cultivating the lands and handing over her share of the proceeds every year as she was residing at Hyderabad. The fourth

respondent, therefore justified the appellate order dated 07.04.2018, whereby the Revenue Divisional Officer, Jangaon Division, directed the Tahsildar, Raghunathpally Mandal, to undertake a *denovo* enquiry, duly setting aside the earlier order dated 04.07.2017 passed by him. Lastly, she pointed out that the statutory remedy of revision was available to the appellants under Section 9 of the ROR Act but circumventing the same, they approached this Court by way of the subject writ petitions and ultimately prayed to dismiss the writ petitions.

6. The learned Single Judge having examined the contentions of both the parties was pleased to dismiss both the writ petitions by way of impugned common order. Aggrieved, the writ petitioners/appellants filed the present appeals.

7. Heard Sri D.V.Chalapathi Rao, learned counsel for appellants and Sri Pushadapu Subba Rao, learned counsel for fourth respondent.

8. Learned counsel for the appellants would submit that the appropriate remedy to the fourth respondent is to file a suit before the competent civil Court. The fourth respondent ought to have worked out the remedy under Section 8(2) of the ROR Act. Learned Single Judge grossly erred in expanding the scope of Rule 22 sub-rule (3) of the Telangana Rights in Land and Pattadar Pass Books Rules, 1989 (for short "the ROR Rules"). In view of the mandate given under Section 5A of the ROR Act, the unregistered sale deed in question was rightly validated by the Mandal Revenue Officer. The impugned common order passed by the learned Single Judge

is erroneous and not in consonance with record and ultimately prayed to allow the appeals and set aside the same.

9. On the other hand, learned counsel for the fourth respondent would submit that no notice was issued to the fourth respondent before validating the sale deed by the Mandal Revenue Officer, which was done behind her back. Learned Single Judge rightly directed the Tahsildar to conduct *denovo* enquiry into the subject matter. The impugned common order passed by the learned Single Judge is neither illegal nor perverse and ultimately prayed to dismiss the writ appeals.

10. In view of the submissions made by both sides, the point for determination is:

> *"Whether the impugned common order dated 01.04.2019 passed in Writ Petition Nos.16531 and 16548 of 2018 by the learned Single Judge is liable to be set aside?"*

11. <u>POINT</u>: The main contention of learned counsel for the appellants is that under Rule 22 sub-rule (3) of the ROR Rules, no notice is required to be issued to the fourth respondent, the sister of the appellants. Therefore, it is appropriate to extract the provisions of Rule 22 sub-rule (3) of the ROR Rules:

> *"22. Regularisation of certain alienations or transfers of land:*
> *(1) x x x x*
> *(2) x x x x*
> *(3) On receipt of the application under sub-section (2) of Section 5-A of the Act, the Mandal Revenue Officer shall issue notice to the alienor or transferor in Form No.XI specifying therein the date on which and the time at which*

he proposes to enquire into the application. He shall also cause to issue a notice in Form No. XII to all other persons believed to be interested in the land specifying therein, date, time and place at which he proposes to enquire into the application. Only unregistered documents shall be considered under Section 5-A of the Act. . . . ."

Admittedly, the fourth respondent is the real sister of the appellants and the disputed property belonged to the father of the appellants. Under Muslim Law, the fourth respondent being the daughter, has a share in her father's property. Furthermore, the fourth respondent is claiming subject property to the extent of Ac.4-23½ gts under a document dated 15.02.1980. Rule 22 sub-rule(3) of ROR Rules mandates a notice to the legal representative and also to a person having substantial interest in the subject matter. As per the records, no notice was issued to the fourth respondent before issuing certificates under Form XIII(B) in favour of the appellants on 04.07.2017. So also the decision of the Tahsildar was not communicated to the fourth respondent. The whole enquiry and the issuance of certificates under Form XIII(B) in favour of the appellants was done behind her back and without her knowledge. Therefore, the learned Revenue Divisional Officer, Jangaon, is justified in passing the order vide Case No.I/1755/2017 dated 07.04.2018. The learned Single Judge while considering the subject matter, relied on the decisions reported in V.Krishnaiah v. Joint Collector[1], Nadiminti Varalakshmi v. The State of Andhra Pradesh[2], Mansingh v. Board of Revenue[3], P.Sambasiva Rao v. Joint Collector[4], Yelagani Papaiah v. Joint Collector[5] and Commercial Tax

Officer, Rajasthan v. Binani Cements Limited[6] and held that the cited judgments are of no avail to the appellants as the facts of the subject case are clearly distinguishable from the facts contained in the aforementioned judgments.

12. Under these circumstances, the learned Revenue Divisional Officer, Jangaon, is justified in ordering *denovo* enquiry and so also the learned Single Judge in confirming the same. Therefore, the impugned common order dated 01.04.2019 passed by the learned Single Judge does not suffer from any illegality or perversity.

13. In the result, both the Writ Appeals are devoid of merits and are accordingly dismissed. Pending Miscellaneous Petitions, if any, shall stand closed. No order as to costs.

RAGHVENDRA SINGH CHAUHAN, HCJ

Dr. SHAMEEM AKTHER, J

Date: 01.07.2019
grk/scs