

HIGH COURT FOR THE STATE OF TELANGANA
THE HON'BLE THE CHIEF JUSTICE SRI RAGHVENDRA SINGH CHAUHAN
AND
THE HON'BLE DR. JUSTICE SHAMEEM AKTHER
WRIT APPEAL No.652 of 2019
07.08.2019

Between:

Mirza Mukaram Ali Baig and others

...Appellants

and

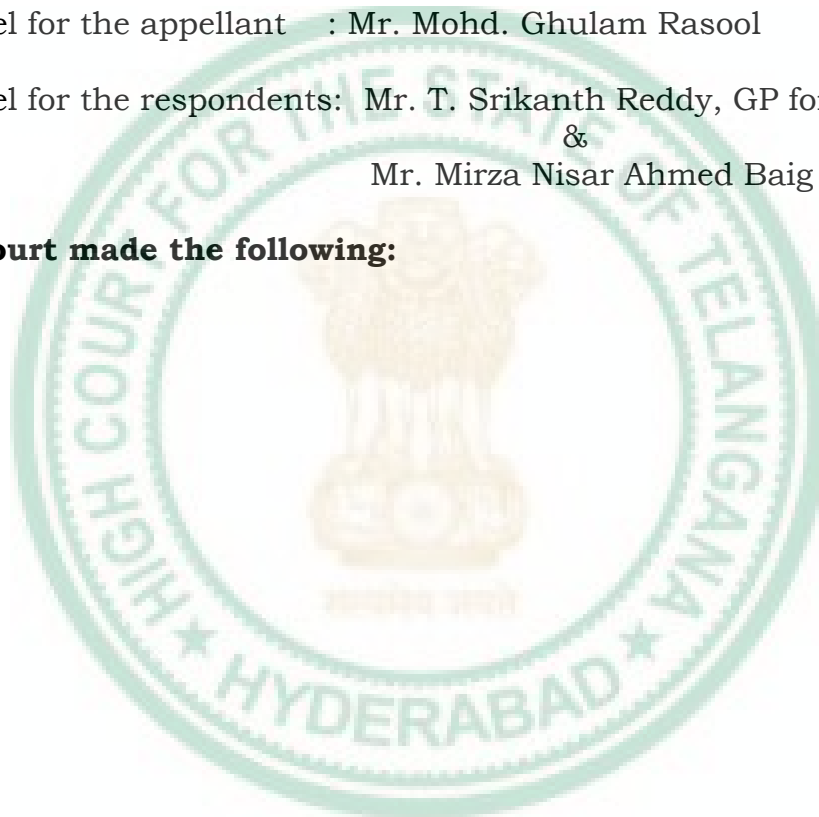
Mr. Mirza Farooq Ali Baig and others

...Respondents

Counsel for the appellant : Mr. Mohd. Ghulam Rasool

Counsel for the respondents: Mr. T. Srikanth Reddy, GP for Home
&
Mr. Mirza Nisar Ahmed Baig

The Court made the following:



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

This writ appeal is filed by the appellants-respondents 8 to 11, aggrieved by the order dated 26.06.2019 passed by a learned Single Judge in W.P.No.8979 of 2019, whereby the respondents-police officials were directed to take necessary action for restoration of possession of a house bearing H.No.23-1-342/2 situated at Jafri Lane, Kotla Ali Jah, Hyderabad, to the first respondent-writ petitioner.

In brief, the facts of the case are that the first respondent-writ petitioner has filed the writ petition before the learned Single Judge contending that he is the owner of the house bearing H.No.23-1-342/2 situated at Jafri Lane, Kotla Ali Jah, Hyderabad and that the appellants-respondents 8 to 11, being his child, daughter-in-law and grand children, have illegally occupied one of the portions in the aforementioned house, and ultimately, prayed to restore possession of the subject house in his favour.

The learned Single Judge was pleased to pass the impugned order, directing the respondents-police officials to take necessary action for restoration of possession of the subject house in favour of the first respondent-writ petitioner. Hence, this writ appeal.

Heard the learned counsel for the parties and perused the record.

Mr. Mohd. Ghulam Rasool, the learned counsel for the appellants-respondents 8 to 11, would contend that the first appellant-respondent No.8 had contributed for the construction of the subject house. The learned counsel would also contend that the said house was orally gifted by the first respondent-writ petitioner in favour of the first appellant-respondent No.8, by way

of Hibanama on 15.02.2017 in the presence of witnesses. Therefore, the learned Single Judge is unjustified in passing the impugned order and, ultimately, prayed to set aside the same by allowing the writ appeal.

Mr. Mirza Nisar Ahmed Baig, the learned counsel for the first respondent-writ petitioner, would contend that no document has been filed by the appellants-respondents 8 to 11 to substantiate the fact of oral gift, as pleaded by them. The learned counsel would also contend that the first respondent-writ petitioner is aged about 75 years and there is no one to protect him and, ultimately, prayed to dismiss the writ appeal by sustaining the impugned order.

Having considered the submissions made by both the parties, and as the first respondent-writ petitioner has, *prima facie*, title and possession over the subject property, this Court is of the opinion that the learned Single Judge is justified in directing restoration of possession of the subject house in favour of the first respondent-writ petitioner.

However, it is contended that the impugned order is coming in the way of the appellants-respondents 8 to 11 to pursue the legal remedies, with regard to their entitlement, before the competent Court. Since there is no determination of title to the subject house in the impugned order and since the learned Single Judge has merely directed restoration of possession of the subject house to the first respondent-writ petitioner, it is hereby clarified that the findings recorded in the impugned order as well as in this order would not have any bearing in determining the title to the subject house between the parties to the litigation. In the event of

the appellants-respondents 8 to 11 filing a suit seeking appropriate relief, the competent Civil Court shall adjudicate the same independently, without being influenced by the findings recorded in the impugned order as well as in this order.

With the above observations, the Writ Appeal stands dismissed. There shall be no order as to costs.

The miscellaneous petitions pending, if any, shall stand closed.

RAGHVENDRA SINGH CHAUHAN, CJ

DR. SHAMEEM AKTHER, J

07th August, 2019
JSU



High Court for the State of Telangana**THE HON'BLE THE CHIEF JUSTICE SRI RAGHVENDRA SINGH CHAUHAN****AND****THE HON'BLE DR. JUSTICE SHAMEEM AKTHER****WRIT APPEAL No.652 of 2019****(Per the Hon'ble Dr. Justice Shameem Akther)****Date: 07.08.2019****JSU**