

HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD

**THURSDAY, THE TWELFTH DAY OF OCTOBER
TWO THOUSAND AND TWENTY THREE**

PRESENT

**THE HONOURABLE THE CHIEF JUSTICE ALOK ARADHE
AND
THE HONOURABLE SRI JUSTICE N.V.SHRAVAN KUMAR**

WRIT APPEAL NO: 269 OF 2009

Writ Appeal under clause 15 of the Letters Patent preferred against the Order dt. 29-8-2008 in W.P.No.9104 of 2005 on the file of the High Court.

Between:

1. Kammari Balraj S/o. Kammari Balaram, aged about 36 years, Occ: Daily Wage Worker.
2. Smt Pentavva, W/o Late Kammari Balaram, aged about 65 years, Occ: Housewife.
3. Smt Siddavva, W/o. Late Kammari Balaram, aged about 60 years, Occ: Housewife.

(P-2 to 4 are brought on record as LR's of deceased petitioner as per Court Order dated 31/12/2009 in WPMP.No.2733/2009.)

...APPELLANTS/PETITIONERS

AND

1. The District Collector, Nizamabad District.
2. The Revenue Divisional Officer, Kamareddy Taluq, Nizamabad District.
3. The Asst. Director of Survey and Settlement Land Records, Nizamabad District.
4. The Mandal Revenue Officer, Kamareddy Taluq, Nizamabad District.
5. Sri A.Bhoomalingam, S/o. Sri Rajalingam, aged about 71 years, Occ: Agriculture
6. Sri A.Ramulu, S/o. Sri A.Bhoomalingam, aged about 44 years, Occ: Agriculture
7. Sri A.Narender, S/o. Sri A.Bhoomalingam, aged about 38 years, Occ: Agriculture
8. Sri A.Mahender, S/o. Sri A.Bhoomalingam, aged about 26 years, Occ: Agriculture
9. Smt. A.Manikyamma, W/o. Sri A.Bhoomalingam, aged about 64 years, Occ: House Wife.

(Respondent No.5 to 9 are R/o. Adloor Yellareddy Village, Kamareddy Taluq, Nizamabad District)

...RESPONDENTS

I.A. NO: 2 OF 2012(WAMP. NO: 980 OF 2012)

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to direct the Respondents-1 to 4 to deliver the land admeasuring Ac.1-38 guntas in Sy.No.601/2, situated at Adloor Yellareddy village, Sadashivanagar Mandal, Kamareddy Taluk, Nizamabad District, to the Petitioners-2 to 4, within a period of 15 days in pursuance to the earlier order dated 24-01-2012 in W.A.No. 269/2009.

Counsel for the Appellant: SRI S.ASHOK ANAND KUMAR

**Counsel for the Respondent Nos.1 to 4: Dr. JUTTUKONDA VIJAYA LAXMI,
GP FOR ASSIGNMENT**

Counsel for the Respondent Nos.5 to 9: SRI N.VIJAY

The Court delivered the following: JUDGMENT

THE HON'BLE THE CHIEF JUSTICE ALOK ARADHE

AND

THE HON'BLE SRI JUSTICE N.V.SHRAVAN KUMAR

WRIT APPEAL No.269 of 2009

JUDGMENT: *(Per the Hon'ble the Chief Justice Alok Aradhe)*

Mr. S.Ashok Anand Kumar, learned counsel for the appellants.

Dr. Juttukonda Vijaya Laxmi, learned Government for Assignment for respondent Nos.1 to 4.

Mr. N.Vijay, learned counsel for respondent Nos.5 to 9.

2. This intra court appeal has been filed against an order dated 29.08.2008 passed by learned Single Judge in W.P.No.9104 of 2005, by which writ petition preferred by the appellant has been dismissed.

3. Facts giving rise to filing of this appeal briefly stated are that land measuring Ac. 4.02 guntas in Survey No.601/2, situated at Adloor Yellareddy Village, Kamareddy Taluq, Nizamabad District was assigned in

favour of the appellant in the year 1968. Respondent No.5 claimed to have purchased the aforesaid land from the appellant through an agreement of sale. Thereupon the appellant filed a civil suit namely O.S.No.8 of 1975 against respondent No.5 seeking the relief of declaration and possession of land measuring Ac. 3.26 guntas in Survey No.601/2, situated at Adloor Yellareddy Village, Kamareddy Taluq, Nizamabad District. The aforesaid civil suit was decreed on 22.04.1978 and the appellant was granted the decree of recovery of possession and was directed to pay a sum of Rs.5,000/- to respondent No.5. The aforesaid order was upheld in appeal upto Supreme Court.

4. Thereafter the appellant filed an execution petition namely E.P.No.4 of 1983 in O.S.No.8 of 1975 seeking execution of judgment and decree dated 22.04.1978 in O.S.No.8 of 1975. Respondent Nos.6 to 9 in the aforesaid execution proceedings raised the contention that they cannot be dispossessed on the land in question on the ground that the patta issued in favour of the

appellant has already been cancelled and the land was assigned to them. The aforesaid contention was rejected by the executing court which was upheld in an appeal namely A.S.No.27 of 1997 and in second appeal namely S.A.No.179 of 2003 even by this Court *vide* judgment dated 10.03.2003. Respondent Nos.6 to 9 also filed a Special Leave Petition namely S.L.P.No.8135 of 2003 which was dismissed on 07.05.2003.

5. Respondent Nos.6 to 9 submitted an application seeking survey of the land. It is the case of the appellant that the survey was carried out and in the dart of survey, the appellant was dispossessed from the land in his occupation measuring Ac. 4.02 guntas. The appellant thereupon filed a writ petition namely W.P.No.9104 of 2005 in which the order dated 20.05.1985 passed by the Assistant Director of Survey and Settlement Land Records, Nizamabad District directing survey of the land was assailed. The appellant also assailed the action of Assistant Director of Survey and Settlement Land Records,

Nizamabad District in dispossessing the appellant from the land in question.

6. Learned Single Judge by an order dated 29.08.2008 *inter alia* held that the remedy for the appellant is to approach the appropriate Court seeking recovery of possession. The writ petition was therefore dismissed with the liberty to the appellant to take recourse to the remedy of recovery of possession. In the aforesaid factual background, this appeal has been filed.

7. Learned counsel for the appellant submitted that in pursuance of the interim order passed by this Court by a Division Bench of this Court on 24.01.2012, the possession of land measuring Ac. 1.38 guntas in Survey No.601/2 has already been handed over the appellant. It is further submitted that the Assistant Director of Survey and Settlement Land Records, Nizamabad District had no power to dispossess the appellant from the land in his occupation. It is further submitted that the possession of the land in question measuring Ac. 1.2 guntas be handed over to the appellant.

8. On the other hand, learned counsel for respondent Nos.5 to 9 has submitted that the land in question was assigned to the appellant in the year 1968 which was cancelled by an order dated 25.01.1980. It is further submitted that the aforesaid order of cancellation of assignment has not been assailed by the appellant in any forum and therefore, the same has attained finality and binds the appellant. It is therefore contended that since the appellant does not have right to hold the land, he cannot complain of dispossession. It is further submitted that the State Government was not a party to the civil suit which was instituted by the appellant.

9. Learned Government Pleader for Assignment has submitted that the State Government was not a party to the suit instituted by the appellant and since the patta issued in favour of the appellant has been cancelled. Therefore, the possession has been taken up.

10. We have considered the submission on both sides and have perused the record.

11. Admittedly, the land in question was assigned to the appellant in the year 1968. Thereafter, the aforesaid assignment of the land was cancelled by an order dated 25.01.1980. There is no material on record to show that the appellant has challenged the aforesaid order of cancellation of assignment in any forum. The order of cancellation of assignment dated 25.01.1980 has attained finality and binds the appellant. Suffice decree passed in favour of the appellant with regard to declaration and recovery of possession is concerned, suffice it to say that the aforesaid decree was passed on 22.04.1978 prior to the order of cancellation of patta in favour of the appellant. Therefore, the validity of the order dated 25.01.1980 has not been adjudicated in the aforesaid civil suit. So far as the contention of the appellant that the executing court has held that the patta issued in favour of the appellant was individual concern, suffice it to say that the State Government was not party to the aforesaid proceedings and the validity of the order of cancellation of patta dated 25.01.1980 has not been considered by the executing court.

12. For the afore-mentioned reasons, we do not find any ground to defer the clean conclusion arrived at by the learned Single Judge.

13. In the result, the appeal fails and is hereby dismissed. There shall be no order as to costs.

Miscellaneous applications, if any pending, shall stand closed.

SD/- T. KRISHNA KUMAR
DEPUTY REGISTRAR
GB
SECTION OFFICER

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To,

1. One CC to SRI S.ASHOK ANAND KUMAR, Advocate [OPUC]
2. One CC to SRI N.VIJAY, Advocate [OPUC]
3. Two CCs to GP FOR ASSIGNMENT, High Court for the State of Telangana at Hyderabad [OUT]
4. Two CD Copies

BSR
GJP



HIGH COURT

DATED: 12/10/2023

JUDGMENT

WA.No.269 of 2009



**DISMISSING THE WRIT APPEAL,
WITHOUT COSTS**

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RMA
31/10/2023