

APHC010158662023



**IN THE HIGH COURT OF ANDHRA
PRADESH
AT AMARAVATI
(Special Original Jurisdiction)**

[3488]

WEDNESDAY, THE TWENTY FIFTH DAY OF SEPTEMBER
TWO THOUSAND AND TWENTY FOUR

PRESENT

THE HONOURABLE SRI JUSTICE R RAGHUNANDAN RAO

THE HONOURABLE SRI JUSTICE HARINATH.N

WRIT APPEAL NO: 367/2023

Between:

Yenuganti Nagalakshmi

...APPELLANT

AND

Kankanala Venkateswarlu and Others

...RESPONDENT(S)

Counsel for the Appellant:

1. SUDHAKARA RAO AMBATI

Counsel for the Respondent(S):

1. GP FOR REVENUE

2. MADHAVA RAO NALLURI

Dt: 25.09.2024

(per Hon'ble Sri Justice R. Raghunandan Rao)

One Sri Kommineni Narayana, who is acknowledged and admitted by all the parties, in this writ appeal, as the owner of the land which is now in dispute. He had a son by name Kommineni

Venkateswarlu and a daughter by name Smt. Venkata Seshamma who was married to Sri M. Venkateswarlu. Smt Venkata Seshamma, passed away in the year 1972. Sri K.Narayana passed away on 04.03.2003. Smt. Venkayamma, wife of Sri K. Narayana also passed away in the year 1993.

2. The son of Sri K. Narayana, namely Sri K. Venkateswarlu, was married to Smt. K. Jayamma. Sri K. Venkateswarlu passed away on 15.04.2002. This couple had two children, a son late Sri K. Dinesh babu and a daughter Smt. Y. Naga Lakshmi.

3. After the demise of all these people, Smt Y. Naga Lakshmi, and Sri M. Venkateswarlu the daughter and husband of Smt. Venkata Seshamma filed a suit bearing O.S.No.284 of 2003 before the Additional Senior Civil Judge, Ongole, against Smt K. Jayamma, for partition and possession of their share of the suit schedule properties, which included the properties under dispute in the present litigation. The case of the plaintiffs in this suit, was that Sri K. Narayana had executed a Will, dated 06.05.2003, bequeathing $1/3^{\text{rd}}$ share, each, to Smt. Nagalakshmi and Smt. K. Jayamma, while retaining $1/3^{\text{rd}}$ share for himself and that Sri M. Venkateswarlu is entitled to $1/6^{\text{th}}$ share, Smt. Nagalakshmi would be entitled to $3/6^{\text{th}}$ share and Smt. Jayamma would be entitled to $2/6^{\text{th}}$ share. This suit was dismissed on 17.01.2007. In the said judgment, the trial

Court held that the Will, which was marked as Ex.A1, said to have been executed by Sri K. Narayana, was not believable.

4. Aggrieved by the said Judgment and decree, Smt Y.Naga Lakshmi filed A.S.No.51 of 2007 before the I Additional District Judge, Ongole. This appeal was dismissed on 21.01.2013, by the appellate Court which confirmed the Judgment and decree of the trial court.

5. It may also be noted that Smt K.Jayamma had passed away on 22.08.2008, during the pendency of the above appeal and the wife and son of Sri Dinesh Babu, who is the brother of Smt Y. Nagalakshmi was impleaded as Respondent Nos.2 and 3 and Sri K. Venkateswarlu, the brother-in-law of Smt K. Jayamma was impleaded as Respondent No.4 in the appeal.

6. In parallel proceedings Smt. Y. Nagalakshmi had initiated O.S.No.27 of 2006 against Smt. K. Jayamma, Sri K. Venkateswarlu and two others before the Principal Junior Civil Judge, Ongole, for permanent injunction restraining the defendants from interfering with her possession over the property described in the schedule attached to the suit. Smt. K. Jayamma, as mentioned above, passed away on 22.08.2008, during the pendency of the suit. This suit was decreed on 21.01.2013. Two facts, set out in the judgment, are relevant for the present case. The trial Court held

that though the case of Smt. Y. Nagalakshmi against Smt. K. Jayamma was weak, the position changed after the demise of Smt. K. Jayamma, as Smt. Y. Nagalakshmi would be her legal heir in the absence of any other claim. The contention of Sri K. Venkateswarlu, that Smt. K. Jayamma had executed a Will, dated 21.12.2002, in his favour, was not accepted, on the ground that the said will had not been produced before the Court and that the said Will had not been proved in accordance with the requirements of the law.

7. Sri K. Venkateswarlu had then filed A.S.No.126 of 2014 before the Principal District Judge, Prakasham District, Ongole. The said appeal was dismissed on 28.11.2017 affirming the judgment of this trial Court.

8. While the proceedings before the Civil Courts were pending, Sri K. Venkateswarlu had moved the Mandal Revenue Officer, for mutation of the revenue entries from the name of Sri K. Narayana to his own name. The Mandal Revenue Officer, by his proceedings dated 28.07.2009, had mutated the revenue entries and had included the name of Sri K. Venkateswarlu as the owner of Ac.01.00 of land in Sy.No.520, Ac.00.92 cents in Sy.No.521, Ac.00.70 cents in Sy.No.546, Ac.01.07 cents in Sy.No.518/1 and Ac.02.60 cents in Sy.No.533/1 of Inamanamelluru in village of Maddipadu Mandal. Aggrieved by the said proceedings

Smt. Y. Nagalakshmi filed an appeal before the Revenue Divisional Officer, Ongole. This appeal came to be dismissed on the ground that various civil proceedings including proceedings and their judgments in O.S.No.284 of 2003 dated 17.01.2007, O.S.No.490 of 2004 dated 26.04.2010, A.S.No.128 of 2010 in O.S.No.490 of 2004 dated 14.09.2011 and A.S.No.51 of 2007 dated 21.01.2013 precluded the appellate authority from interfering in the matter. Against this order Smt. Y. Nagalakshmi again moved the Joint Collector by way of revision. This revision petition was also dismissed by the Joint Collector by order, dated 09.12.2016, on the ground that the claims made by both sides require proper adjudication before the Civil Court and that necessary mutations would be carried out as per the outcome of the Judgment.

9. Taking a cue from the said observations, of the Joint Collector, Smt. Nagalakshmi again moved the Tahsildar, for mutation of the Revenue entries, for the extents of land mentioned above, on the ground that she had now obtained a decree, in her favour, in O.S.No.27 of 2006 in the Court of the Principal Junior Civil Judge, Ongole. The Tahsildar, Maddipadu after issuing notice to Sri K. Venkateswarlu and after considering his explanation had allowed the application of Smt Y. Nagalakshmi. Consequently, a direction was issued for deleting the entries made in the pattadar passbook issued to Sri K.Venkateswarlu and

directing a fresh pattadar passbook to be issued to Smt. Y. Nagalakshmi, to the extent of this land.

10. Aggrieved by the said order of the Mandal Revenue Officer dated 28.05.2018, Sri K. Venkateswarlu approached the High Court of Judicature of Hyderabad for the State of Telangana and the State of Andhra Pradesh, by way of W.P.No.31115 of 2018.

11. A learned Single Judge of this Court, after hearing both sides had disposed of the writ petition, by a Judgment dated 02.01.2023, holding that the impugned order dated 28.05.2018 was without jurisdiction and set aside the same. Apart from this, Smt. Y. Naga lakshmi was given liberty to approach the competent Civil Court to get her rights over the said property as declared.

12. Aggrieved by the said Judgment, the 5th respondent, Smt. Y. Naga Lakshmi, in the Writ Petition, has filed the present appeal. The contention of the appellant is that the case of Sri K. Venkateswarlu, that he is a legal heir to Smt. K. Jayamma, on account of the Will said to have been executed by Smt. K. Jayamma, on 21.12.2002, had not been accepted by the Court and consequently Sri K. Venkateswarlu would have no right or title of any nature. The appellant contends that in such circumstances, the order of the Mandal Revenue Officer, dated 28.05.2018, does not suffer from any infirmities and requires to be upheld.

13. The contention of the 1st respondent, Sri K. Venkateswarlu, is that the finding of the Court, in O.S.No.284 of 2003, that the Will said to have been executed in favour of the appellant herein was rejected as not believable and her claim for a share in the property has also been rejected. In such circumstances, no reliance can be placed on the subsequent Judgment in O.S.No.27 of 2006 or the order in A.S.No.126 of 2014.

Consideration of the Court:

14. The admitted fact is that Sri K. Narayana is the ancestor from whom both sides are claiming title. In the first round of litigation, the appellant herein along with her father had filed O.S.No.284 of 2003 for partition and possession of their share in the suit schedule property. This claim was initially based on a Will, which is said to have been executed by Sri K. Narayana on 06.05.2002. This Will was rejected by the trial Court, holding that the Will is not believable. This finding was affirmed by the appellate Court in A.S.No.51 of 2007.

15. Smt. Y. Naga Lakshmi also took the plea that, *de hors* the Will, she would be entitled to a share in the property of Sri K. Narayana in as much as she was the daughter of a pre deceased daughter and as such, would be entitled to half of the property of Sri K. Narayana. This contention was also rejected on the ground that her brother Sri K. Dinesh

Babu would also have a share in the property as the son of Smt. Venkata Seshamma, the daughter of Sri K. Narayana. Apart from this, both the trial Court and the appellate Court refused to grant any relief to Smt. Y. Naga Lakshmi on the ground that necessary parties being late Sri K. Dinesh Babu and his legal heirs was not joined in the litigation and it was only at the appellate stage that the wife and son of Sri K. Dinesh Babu, who had expired by then, were added in the appeal. It may also be noted that even Sri K. Venkateswarlu, the 1st respondent herein, was a party to the appeal as Smt. K. Jayamma had passed away by the time the appeal came to be decided.

16. In a parallel proceeding, in O.S.No.27 of 2006, Smt. Y. Naga lakshmi had filed a suit for permanent injunction against Sri K. Venkateswarlu, Smt. K. Jayamma and two others. This suit came to be decreed on 21.01.2013, after the demise of Smt. K. Jayamma on 22.08.2008. The finding of the trial Court, in this case was, that the claim of ownership of Smt. Y. Naga Lakshmi over the land would not have been acceptable, except for the demise of Smt. K. Jayamma. Thereafter, the claim of Sri K. Venkateswarlu, that he was the legal heir of Smt. K. Jayamma, by virtue of a Will dated 21.12.2002, was negatived on the ground that the said Will had not been produced before the Court.

17. Both the above Judgments lead to an unsatisfactory situation where title and ownership of the land had not been clarified.

18. Any decision by the Revenue Authorities on the basis of the Judgments in these two proceedings would be unsafe.

19. In these circumstances, as rightly held by the learned Single Judge, the best course open to the parties would be to get the question of title and possession to be determined by a proper Civil Court of appropriate jurisdiction. Till then any entry made in the revenue records, would only give rise to further litigation.

20. In view of the above, this Writ Appeal is disposed of leaving it open to the parties to get their rights and claims over the land adjudicated by an appropriate civil Court. The mutation of the land, in favour of either side, can then be decided after receipt of the orders of the Civil Court. There shall be no order as to costs.

As a sequel, pending miscellaneous petitions, if any, shall stand closed.

R. RAGHUNANDAN RAO, J

HARINATH.N, J
RJS

**HON'BLE SRI JUSTICE R. RAGHUNANDAN RAO
&
HON'BLE SRI JUSTICE N. HARINATH**

W.A.No.367 of 2023
(per Hon'ble Sri Justice R. Raghunandan Rao)

Dt: 25.09.2024

RJS