

IN THE HIGH COURT OF ANDHRA PRADESH: AMARAVATI

HON'BLE MR. JUSTICE PRASHANT KUMAR MISHRA, CHIEF JUSTICE

&

HON'BLE MR. JUSTICE NINALA JAYASURYA

WRIT APPEAL No.378 of 2023

(Through physical mode)

Tupili Nageswara Rao S/o. Venkatasubbaiah,
died his LR Tupili Rama Rao S/o. Venkatasubbaiah,
aged 60 years, R/o. D.No.5/157, East Street,
Gudur, SPSR Nellore District.

.. Appellant

Versus

The Joint Collector, Nellore,
SPSR Nellore District, and others.

.. Respondents

ORAL JUDGMENT

Dt: 10.04.2023

(per Prashant Kumar Mishra, CJ)

The writ petitioner in W.P.No.7508 of 2012 has preferred this intra-court appeal under Clause 15 of the Letters Patent, challenging the order dated 13.02.2023 passed by the learned single Judge dismissing the aforesaid writ petition filed for quashing the order dated 05.11.2011 in Case No.D.Dis.(E10)4106/2011 passed by the 1st respondent- Joint Collector, SPSR Nellore District.

2. By the order dated 05.11.2011 impugned in the writ petition, the order passed by the Revenue Divisional Officer, Gudur, cancelling the pattadar passbooks issued in favour of respondent Nos.4 and 5 in respect of land to an

extent of Ac.4.80 cents in Sy.No.309 of Tikkavaram Village, Chillakur Mandal, was set aside and the pattadar passbooks and title deeds granted in their favour on 14.12.1997 were restored. Further, Mr. Tupili Nageswara Rao (since died), who was respondent No.1 before the Joint Collector, was advised to approach the civil court under the provisions of Section 8(2) of the A.P. Rights in Land and Pattadar Pass Books Act, 1971 (for short, 'the Act of 1971') for establishing his right, title and interest in respect of the subject property.

3. Since Tupili Nageswara Rao has subsequently died, the present writ petition has been pursued by his brother Tupili Rama Rao, who claimed to have acquired title to the subject property through a Will said to have been executed by Tupili Nageswara Rao in his favour.

4. On behalf of the writ petitioner, it was argued before the writ Court that respondent Nos.4 and 5 have procured pattadar passbooks in respect of the subject property by manipulating the records. It was also contended that the writ petitioner's brother – Tupili Nageswara Rao has not conveyed title to respondent Nos.4 and 5 and has never executed a valid sale deed in their favour, but the said respondents are claiming title to the subject property through an alleged agreement of sale, which does not confer any title, and that they are also claiming title on the basis of an unregistered Will.

5. On behalf of respondent Nos.4 and 5, it was argued that the writ petitioner's brother - Tupili Nageswara Rao sold the subject property to C. Venkata Ramanamma through an agreement of sale dated 15.04.1983 and

delivered possession of the property. C. Venkata Ramanamma obtained pattadar passbook in January, 1989, and thereafter executed a Will in favour of respondent No.4, by virtue of which respondent No.4 became the absolute owner of the property. It was further contended that the order under Section 5-A of the Act of 1971 was passed on 14.12.1997, and though appeal has to be filed within thirty days from the date of communication of the said order, the appeal was filed on 21.08.2010, yet the 2nd respondent- Revenue Divisional Officer entertained the same and passed an order, which was challenged before the Joint Collector, who has rightly passed the order dated 05.11.2011 setting aside the order of the Revenue Divisional Officer and restoring the pattadar passbooks granted on 14.12.1997. Relying upon the law laid down in **Smt. P. Ghousia Begum and others v. Basireddy Rukminamma and others** reported in **2018 (5) ALT 148 (DB)** and **Ratnamma v. Revenue Divisional Officer, Dharmavaram, Ananthapur District** reported in **2015 (5) ALT 228** and the order passed by a Division Bench of this Court in W.A.No.666 of 2022, it was argued that the appropriate remedy for the writ petitioner is to file a civil suit for declaration.

6. Learned Government Pleader appearing for the revenue authorities also contended that pattadar passbook was issued to C. Venkata Ramanamma in December, 1989 itself, who bequeathed the subject property to respondent No.4, and after following due procedure, pattadar passbooks were issued to respondent Nos.4 and 5.

7. Having considered the rival contentions of the parties and the judgments relied upon by them, the learned single Judge held that the issues brought before the writ Court are all matters for determination of which, oral and documentary evidence has to be produced and that such issues cannot be decided in a writ petition and, accordingly, dismissed the writ petition.

8. Having heard the learned counsel for the parties and upon due consideration of the matter, it is evident that the dispute between the parties is one essentially concerning the title to the property. Both the parties are claiming title to the subject property through Will or agreement of sale, the validity of which can be decided only by the competent civil court. Cancellation of a pattadar passbook depends upon the decision of a competent civil court as to the title of the property in favour of the concerned person. In **Smt. P. Ghousia Begum** (supra), a Division Bench of the erstwhile High Court of A.P. held that when pattadar passbook has been issued, the same cannot be cancelled automatically unless the civil court finds that there is no justification for issuance of the same. It was specifically observed that unless a competent civil court decides the actual title of the property in favour of any person, consequential measures for issuance or cancellation of pattadar passbook would not arise. Further, in W.A.No.666 of 2022 also, vide judgment dated 26.09.2022, a Division Bench of this Court, taking note of the fact that the issue brought before the writ Court involves dispute of title, held that for determination of such issue, examination of both

oral and documentary evidence is required, which exercise cannot be done by the writ Court and, accordingly, upheld the order of the learned single Judge relegating the writ petitioner therein to avail the remedy before the jurisdictional civil court.

9. Considering the matter in its entirety and since the issue raised revolves around title dispute between the parties, we are of the considered opinion that the learned single Judge has rightly refused to entertain the writ petition and no interference is warranted therewith in this appeal.

10. Accordingly, this writ appeal is dismissed, leaving it open to the appellant to approach the civil court for any such relief as is permissible in law. No costs. Pending miscellaneous applications, if any, shall stand closed.

PRASHANT KUMAR MISHRA, CJ

NINALA JAYASURYA, J

IBL