

HON'BLE SRI JUSTICE K. LAKSHMAN

WRIT PETITION No.20624 of 2021

ORDER:

Heard Sri Yogesh Kumar Heroor, learned counsel for the petitioner, Sri J.Amruth Rao, learned Asst. Govt.Pleader for Revenue appearing for respondent Nos.1 to 3 and Sri Srinivasa Rao Sirikonda, learned counsel appearing for 4th respondent. None appears for respondent Nos.5 and 6. Perused the record.

2. This writ petition is filed to set aside the order in Case No. D/359/2018 (old), Case No.F2/1118/21 (New) of Special Tribunal, dated 08.06.2021 passed by 2nd respondent.

CONTENTIONS OF THE PETITIONERS:-

3. Originally part of the land admeasuring Ac.3.00guntas in Sy.No.15 situated at Kolanupaka Village of Alair Mandal, Yadadri-Bhuvanagiri District, was purchased by 5th respondent from one Dupelli Ambakka W/o Raji Reddy under a *sada bainama*. The same was regularized vide proceedings No.1133/2002 and 13(B) certificate dated 04.09.2002 was also issued in favour of 5th respondent. Thereafter, 5th respondent had executed registered gift settlement deed bearing Doc.No.22325 of 2015, dated 08.12.2015 in favour of his wife i.e. 6th

respondent to an extent of Ac.2.00guntas out of said Ac.3.00guntas in Sy.No.15. The same was mutated in revenue records vide proceedings No.118/2015-16, dated 06.06.2016. Respondent Nos.5 and 6 being the absolute owners and possessors of the aforesaid land admeasuring Ac.3.00guntas in Sy.No.15 of Kolanupaka Village of Alair Mandal, sold the same to the petitioner under two registered sale deeds bearing Doc.Nos.10914 of 2017 and 10915 of 2017 both dated 26.09.2017. The same was mutated in favour of the petitioner vide proceedings No.220/2017-19. Therefore, the petitioner is in possession of the said property.

4. 4th respondent had filed an appeal under Section 5(5) of the Telangana Records of Rights in Land & Pattadar Pass Book Act, 1971 (for short, 'ROR Act, 1971') read with Telangana Records of Rights in Land & Pattadar Pass Book Rules, 1989 (for short, 'the Rules') questioning the Proc.No.1118/2015-16 dated 06.06.2016 and Proc.No.220 of 2017 alleging that said amendments are in respect of land admeasuring Ac.1.19guntas in Sy.No.10 and Ac.6.00guntas in Sy.No.15 total admeasuring Ac.7.19guntas are illegal and that respondent Nos.4 and 5 have jointly purchased the said land vide Doc.No.11130 of 2008 dated 01.11.2008. Respondent No.5 played fraud

upon 4th respondent and sold part of the property without his knowledge. All the documents executed by 5th respondent are not valid and not binding on him. After promulgation of ROR Act, 2020, 2nd respondent had passed an order dated 04.02.2021 setting aside the mutation proceedings issued in favour of the petitioner. Since the said order dated 04.02.2021 was without notice to the parties and in compliance of the order dated 18.03.2021 passed by this Court in W.P.(PIL).No.20 of 2021, 2nd respondent re-opened the said case and after hearing the petitioner, respondent Nos.5 and 6, had passed order dated 18.06.2021 allowing the appeal filed by 4th respondent setting aside the mutation proceedings issued by 3rd respondent/Tahsildar to an extent of land admeasuring Ac.7.19guntas in Sy.No.10 and 15 in favour of petitioner, respondent Nos.5 and 6 and subsequent changes if any are also set aside and 3rd respondent is directed to take action accordingly.

5. Challenging the said order, the petitioner herein filed the present writ petition contending that the Special Tribunal failed to consider the counter filed by him, without considering the facts except holding that the joint property cannot be sold and mutations cannot not be done. The impugned order is erroneous since there is no such

mutation in respect of land admeasuring Ac.7.19guntas. The mutation is to the extent of Ac.3.00guntas only.

CONTENTIONS OF 4TH RESONDENT:-

6. 4th respondent had filed counter contending that Smt. Dupelli Ambakka w/o Raji Reddy was the absolute owner and possessor of the land Ac.1.19guntas in Sy.No.10 and Ac.6.00guntas in Sy.No.15 situated Kolunupaka Village of Alair Mandal and she had succeeded the subject property from her husband. After his death and her name was recorded in the pahani copy for the year 1989-90 in respect of the said land. She has executed the sale deed on 26.12.2001 in favour of Chilukuri Laxma Reddy and three others who in turn made a family settlement and partitioned the said land equally among themselves vide Doc.No.4528 of 2007 dated 17.10.2007. Thereafter, the respondent Nos.4 and 5 have jointly purchased the said land under a registered sale deed bearing Doc.No.11130 of 2008 dated 01.11.2018 from said Chilukuri Laxma Reddy and three others. Both of them were in peaceful possession and enjoyment of the said land without any partition. 5th respondent promised 4th respondent that he will get mutation of the aforesaid land in their favour. The same was not effected. Therefore, 4th respondent got doubt and on enquiry he came to know that 5th respondent got his name

entered into the revenue record by creating false gift settlement deed bearing Doc.No.22335 of 2015, dated 08.12.2015 in favour of his wife, 6th respondent herein in respect of land admeasuring Ac.2.00gutnas in Sy.No.15. Respondent Nos.5 and 6 have also executed sale deeds bearing Doc.No.10914 and 10915/2017 both dated 26.09.2017 and illegally got the same implemented in revenue records. The said documents do not create any right in favour of the petitioner. The said fact was brought to the notice of 3rd respondent. 5th respondent is trying to alienate the said property. Therefore he had filed an appeal under Section 5(5) of the ROR Act,1971 challenging the Memo No.B/09/2018 dated 20.01.2018 and amendment No.118/2015-16, dated 06.06.2016 and amendment No.210/2017-18 in respect of land admeasuring Ac.1.19guntas in Sy.No.10 and Ac.6.00gutnas in Sy.No.15 total Ac.7-19guntas situated at Kolanupaka Village of Alair Mandal and a direction to 3rd respondent was sought to implement the aforesaid sale deed bearing Doc.No.11130 of 2008 dated 01.11.2008 and issue pattadar passbooks and title deeds in favour of respondent Nos.4 and 5 by dividing the said property into two equal shares. On constitution of Special Tribunals, the said appeal was transferred to 2nd respondent and

2nd respondent on consideration of the entire material on record passed an order dated 18.06.2021. There is no error in it.

7. It is further contended that since 5th respondent had executed gift deed in favour of 6th respondent and both of them have executed sale deed in favour of the petitioner in respect of land admeasuring Ac.3.00guntas in Sy.No.15 of Kolanupaka Village of Alair Mandal, and on issuance of legal notice dated 01.01.2021, he had filed a suit vide O.S.No.32 of 2021 seeking partition and separate possession of the subject property and the same is pending on the file of the learned Junior Civil Judge at Alair. There are serious disputed questions of title and Recording Authority under ROR Act, 2020 cannot consider the same. The petitioner and respondent Nos.5 to 6 have to pursue the said suit. Thus, 2nd respondent/Special Tribunal on consideration of the fact that both the respondent Nos.5 and 6 have purchased the subject property jointly under the aforesaid sale deed bearing document No.11130 of 2008 dated 01.11.2008 passed the impugned order. There is no error in it. With the said contentions, he sought to dismiss the present writ petition by vacating the interim order.

CONTENTIONS OF LEARNED ASST. GOVT. PLEADER APPEARING FOR RESPONDENT NOS.1 TO 3:-

8. Learned Asst.Govt.Pleader would submit that 2nd respondent/Special Tribunal, on consideration of the entire facts, passed the order dated 08.06.2021 and there is no error in it. Neither Revenue Authority under ROR Act, 2020 the Special Tribunal is having power to consider the disputed questions of facts and title.

9. Despite service of notice, there is no representation on behalf of respondent Nos.5 and 6.

FINDINGS OF THE COURT:-

10. The aforesaid stated facts would reveal that Smt. Dupelli Ambakka W/o Raji Reddy. being the absolute owner and possessor of subject land, executed sale deed dated 26.12.2001 in favour of Chilukuri Laxma Reddy, Chilukuri Venkat Reddy, Chilukuri Chandra Reddy and Chilukuri Devender Reddy, grandsons of her sister Chilukuri Venkatamma. They have entered into their family settlement vide deed bearing Doc.No.4528 of 2007 dated 17.10.2007. The said Chilukuri Laxma Reddy, Chilukuri Venkat Reddy, Smt.Chilukuri Swaroopa w/o late Chilukuri Chandra Reddy and Chilukuri Devender Reddy, have executed registered sale deed bearing Document No.11130 of 2008 dated 01.11.2008 in favour of respondent Nos.5 and 6 in respect of subject land. According to the petitioner, respondent Nos.4 and 5 are not

the absolute owners and possessors of the subject property and they have created the sale deed bearing document No.11130 of 2008 dated 01.11.2008. They never partitioned the subject land. Respondent No.5 in collusion with staff of 3rd respondent created pattadar passbook and title deed No.987489 and patta No.572 illegally.

11. 3rd respondent had issued memo dated 20.01.2018 on the application filed by 4th respondent under RTI Act. 5th respondent had created registered gift deed bearing Doc.No.22335 of 2015 dated 08.12.2015 in respect of land admeasuring Ac.2.00 in Sy.No.15/E of Kolanupaka Village.

12. Even in the counters filed by the petitioner, before 2nd respondent/ Special Tribunal in Case No.F2/1118/2021, there is specific contention that 5th respondent originally purchased the land to an extent of Ac.3.00guntas in Sy.No.15 from its original owner i.e. Smt. Dupally Ambika W/o Raji Reddy long back through an ordinary sale deed. The said ordinary sale deed was placed before revenue officials and they have mutated her name in the revenue records and 13-B proceedings were also issued. Thus, according to respondent No.4, he and 5th respondent have jointly purchased the subject property under registered sale deed bearing Doc.No.11130 of 2008 dated 01.11.2008. They never

partitioned the said property. Therefore, the question of execution of registered gift settlement deed in favour of 6th respondent by 5th respondent with regard to Ac.2.00guntas of land does not arise. 5th respondent cannot execute a registered gift settlement deed in favour of his wife/6th respondent without knowledge of 4th respondent. 5th respondent cannot ignore the share of 4th respondent and execute a registered gift settlement deed in favour of 6th respondent in respect of joint property. Therefore, subsequent sales in favour of the petitioner, have no consequence and mutation proceedings obtained in favour of the petitioner are also illegal. On consideration of the said facts, vide impugned order dated 18.06.2021, the Special Tribunal has allowed the appeal filed by 4th respondent setting aside the mutation proceedings issued by 3rd respondent in respect of aforesaid property in favour of the petitioner, respondent Nos.5 and 6 and subsequent changes if any were also set aside. 2nd respondent directed 3rd respondent to take action accordingly. Therefore, according to this Court, there is no error in the said order. The said Tribunal has considered the said aspects properly and passed the impugned order.

13. As rightly contended by the learned counsel appearing for 4th respondent that respondent Nos.4 and 5 have jointly purchased the

subject land under a registered sale deed bearing Doc.No.11180 of 2008 dated 01.11.2018 from Chilukuri Laxma Reddy and three others. Therefore, the question of execution of registered gift settlement deed with regard to part of the property by 5th respondent alone in favour of his wife/6th respondent is illegal. Considering the said disputed facts with regard of title and complicated questions of facts, 4th respondent had issued a legal notice dated 01.11.2021 to the petitioner, respondent Nos.5 and 6, demanding partition and separate possession and also for cancellation of registered documents. Despite receiving and acknowledging the said legal notice, they have not partitioned the said property. Therefore, 4th respondent had filed a comprehensive suit vide O.S.No.32/2021 seeking partition and separate possession of the suit schedule property and also to declare registered gift settlement deed bearing Doc.No.22335 of 2015 dated 08.12.2015 and registered Doc.Nos.10914 and 10915 of 2017 both dated 26.09.2017 executed in favour of writ petitioner herein as null and void. The said suit is pending. Thus, there are disputed and complicated questions of facts. The petitioner, respondent Nos.5 and 6 have to pursue the said suit by raising all the contentions and grounds which they have raised in the present writ petition.

14. As discussed supra, the Special Tribunal has considered the said aspects and passed impugned order dated 18.06.2021. There is no error in it. The petitioner herein failed to make out any case to interfere with the said order.

15. It is relevant to note that the Special Tribunal order is dated 18.06.2021. The petitioner herein had filed the present writ petition on 28.08.2021. This Court vide order dated 03.09.2021 granted interim suspension of the impugned order dated 18.06.2021.

15. The petitioner herein had obtained conversion proceedings in respect of land admeasuring Ac.3.00guntas in Sy.No.15 of Kolunupaka Village from agriculture to non-agriculture vide proceedings dated C/1100/2020, dated 29.06.2020 from the Revenue Divisional Officer Bhongir. She has also obtained lay out from DTCP, vide proceedings Lr.No.61/2021/ DTCPO/YDRB, dated 09.03.2021, the District Town & Country Planning Officer, Yadadri Bhuvanagiri District approving the Draft Technical Lay out Pattern and the same was informed to Panchayat Secretary, Kolanupaka Gram Panchayat. She has also obtained latest passbooks and title deeds on 25.04.2018 in respect of the subject and admeasuring Ac.3.00guntas in Sy.No.15E/1 and 15E/2 situated at Kolanupaka village. Even the learned counsel for the

petitioner had filed copies of the said documents along with the memo vide USR No.1412 of 2022 dated 05.01.2022. She had executed several gift settlement deeds viz; doc.No.17581, 17582, 17583, 17584, 6757 and 6758 of 2021, 14088, 14559 of 2020 in favour of her husband Sri Jukanti Uppalaiah. in respect of open plots. She has conveniently suppressed the said facts in the present writ affidavit. Learned counsel for 4th respondent had filed copies of aforesaid gift settlement deeds along with the memo dated 21.10.2022 vide USR No.93822/2022, dated 21.10.2022. Thus, the petitioner has not approached this Court with clean hands.

16. As discussed supra, the 5th respondent had executed gift deed in favour of his wife/6th respondent in respect of joint property purchased by 4th respondent and 5th respondent jointly. 6th respondent had executed the aforesaid two sale deeds in favour of the petitioner. Thus, the petitioner herein has filed the aforesaid writ affidavit by suppressing true and material facts and she has not approached this Court with clean hands. Therefore, this writ petition is liable to be dismissed, with costs.

17. In the result, this writ petition is dismissed with costs of Rs.25000/- to be paid to the Telangana High Court Legal Services Authority, Hyderabad, within one month from today i.e. 24.04.2023.

As a sequel, the miscellaneous petitions, if any, pending in the Writ Petition shall stand closed.

K. LAKSHMAN, J

Date:23.03.2023.

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