

(2025) 10 TEL CK 1230

In the Telangana High Court

Case No : Civil Revision Petition No. 3580 Of 1999

Digamabara Rao and another

APPELLANT

Vs

Joint Collector

RESPONDENT

Date of Decision : 06-10-2025

Acts Referred:

Andhra Pradesh Tenancy and Agricultural Lands Act, 1950 — Section 34, 35, 37, 40

Citation : (2025) 10 TEL CK 1230

Hon'ble Judges : Abhinand Kumar Shavili, J; Vakiti Ramakrishna Reddy, J

Bench : Division Bench

Advocate : B. Mahender Reddy, Vishwanath Reddy

Final Decision : Allowed

Judgement

Vakiti Ramakrishna Reddy, J

1. This Civil Revision Petition is preferred by the petitioners aggrieved by the order dated 05.07.1999 (hereinafter referred to as the "Impugned Order") passed by the learned Joint Collector, Ranga Reddy District in Case No.F2/569/96 confirming the order dated 20.10.1994 passed by the Mandal Revenue Officer in File No.D/4366/94, wherein succession certificate was granted in favour of respondent Nos.3 and 4 herein in respect of lands in Sy.Nos.143 and 144 of Tandur Village.

I. BRIEF FACTS OF THE CASE:

2. The factual backdrop to the present revision is as follows:

a) The case of revision petitioners is that they are the owners and possessors of agricultural lands in Sy.Nos.143 and 144, admeasuring approximately Ac.1.33 guntas and Ac.1.36 guntas respectively, situated in Tandur Village and Mandal, Ranga Reddy District. These lands originally stood in the name of their father, late Rama Rao. Through an oral partition among the brothers, Sy.No.143 was allotted to Digambara Rao and Sy.No.144 was allotted to Prakash Rao. The said

oral partition was recognized and confirmed by the Mandal Revenue Officer of Tandur in the year 1991 and their names were subsequently mutated in the revenue records as owners and possessors of their respective lands. Since then, the petitioners have been in peaceful possession and enjoyment of these properties as absolute owners.

b) Respondents Nos.3 and 4, Baboomia and M.A. Raheem, claiming to be the sons and legal heirs of late Hussanmia, filed an application under Section 40 of the Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands Act, 1950 presently known as Telangana Tenancy and Agricultural Lands Act, 1950 (hereinafter referred to as "the Tenancy Act") seeking issuance of succession certificate over the same lands. They claimed that their father viz., late Hussanmia was a protected tenant in respect of the said lands and as such they were entitled to succession. However, the petitioners disputed their claim by contending that late Hussanmia was never a protected tenant, but only a mortgagee in possession under a 20 year usufructuary mortgage executed by their father, which had since been redeemed, thereby reverting the possession to the petitioners. The petitioners alleged that the Mandal Revenue Officer, Tandur, granted the succession certificate in favour of the respondent Nos.3 and 4 without proper notice to the petitioners or conducting any proper enquiry.

c) Aggrieved by the same, the petitioners preferred an Appeal vide Case No.F2/569/96 before the Joint Collector, Ranga Reddy District, who upheld the order passed by the Mandal Revenue Officer vide order dated 05.07.1999 by holding that the father of the respondent Nos.3 and 4 was a protected tenant. Aggrieved thereby, the petitioners filed the present Civil Revision Petition before this Court challenging the said order dated 05.07.1999 passed by the Joint Collector, Ranga Reddy District.

II. POINT FOR DETERMINATION:

3. The point that arises for consideration is:

Whether there are any sufficient grounds to set aside the impugned order?

4. Heard Sri B. Mahender Reddy, learned counsel for the revision petitioners and Sri Vishwanath Yadavi, learned counsel for the respondent Nos.3 and 4

III. SUBMISSIONS OF THE PARTIES:

a) Submissions on behalf of the petitioners:

5. The learned Counsel for the petitioners, contended that late Hussanmia was only a mortgagee in possession for a limited period of twenty (20) years and after the expiry of the mortgage period, the possession reverted to the revision petitioners, which is borne out by the revenue records and Pahanies from 1971 to 1999. It is further submitted that the appellate authority erred in treating the relationship between the parties as landlord and tenant under the Tenancy Act. It was contended that possession by a mortgagee does not create any tenancy

rights, protected or otherwise. The Mandal Revenue Officer and the appellate authority failed to consider that the mortgage had been redeemed and that the father of respondent Nos.3 and 4 never had tenancy rights in the lands thereafter.

6. The learned counsel for the petitioners further contended that there is a wrongful assumption by the authorities that possession equates to tenancy, ignoring the exceptions under Section 5 of the Tenancy Act which excludes mortgage possession from tenancy rights. The learned counsel contended that in a land, title dispute like the present case, assumptions and presumptions must yield to documentary evidence which proves that late Hussanmia's possession was as a mortgagee but not as a tenant.

7. Further, notices were not issued to the revision petitioners before granting succession certificates in favour of the respondent Nos.3 and 4 and they were not accorded the opportunity to present their evidence fully before the Joint Collector and thereby violating principles of natural justice. Hence, the learned counsel for the petitioners prayed that the Civil Revision Petition be allowed by setting aside the impugned orders passed by the Mandal Revenue Officer as confirmed by the Joint Collector.

b) Submissions on behalf of the respondent Nos.3 and 4:

8. On the other hand, the learned counsel for respondents Nos. 3 and 4 contended that the lands in the relevant survey numbers were continuously in possession and cultivation of late Hussanmia from 1949-

50 onwards, which predates the commencement of the Tenancy Act on 10.6.1950. It is further submitted that the Tenancy Act recognizes such continuous possession and cultivation prior to the commencement of the Tenancy Act, creating protected tenancy rights under Sections 34, 35, and 37 of the Tenancy Act. The tenancy record prepared in 1950-51 shows late Hussanmia as the protected tenant, and the record enjoys a legal presumption of correctness. It was further contended that the protected tenancy rights cannot be challenged or corrected retroactively after 10.06.1952, as per the statutory provisions and settled case law.

9. In reply to the petitioners' contention of mortgage possession, the learned counsel for the respondent Nos.3 and 4 submitted that no valid mortgage agreement exists on record. The alleged Khasra Pahani entry wherein late Hussainmiya's possession was recorded as mortgage possession was alleged to be forged, written in a different ink, unsigned, and without official attestation. There was no documentary proof registered or stamped as required by law, and no evidence of such mortgage was produced by the petitioners at any stage. Further, the respondent Nos.3 & 4 pointed out in earlier land acquisition proceedings, one of the petitioners' brothers, Dattatri Rao, conceded the protected tenancy rights of late Hussanmia and settled the compensation with them in the ratio of 50:50. This concession undermines the petitioners' case before the Court. It is further argued that Digambara Rao, one of the petitioners,

sold his claimed shares by registered sale deeds and Prakash Rao holds only Ac.1-0 guntas in Sy. No.144, which is fully covered by the Protected Tenancy Register. Therefore, the tenure of protected tenancy continues to subsist in favor of the respondent Nos.3 & 4. Relying on the statutory provisions including Rule 24 of the A.P. (T.A.) Agricultural Lands Rules, 1950, the respondent Nos.3 & 4 submitted that the final record of tenancies for the village is conclusive and cannot be altered unilaterally at this stage. Therefore, the respondent Nos.3 & 4 prayed to dismiss the Civil Revision Petition with costs, as the tenancy rights and succession have been validly recognized by the competent authorities.

IV. ANALYSIS:

10. The core issues involved in the present case are:

(i) Whether the MRO/Tahsildar is competent to issue Succession Certificate and whether Section 40 of the Tenancy Act, 1950 is applicable to the facts of the present case?

(ii) Whether the respondent Nos.3 & 4, can claim protected tenancy rights based on succession certificate?

11. It is the contention of the petitioners that firstly, Section 40 of the Tenancy Act, 1950 has no application to the subject lands as the same are not covered or governed by the provisions of the Tenancy Act, 1950 and secondly, the MRO/Tahsildar is not competent to issue Succession Certificate. In this connection, the learned counsel for the petitioners relied upon a decision in *Dandu Narahari v. The State of Telangana and four others*¹ wherein the Coordinate Bench of this Court observed as under:

"25. In *Kosigi Yadaiah Vs. Deputy Collector*, it was held that the proceedings under Section 40 of the Act are comparable to the suits or original petitions filed for grant of a succession right which are declaratory in nature. It is only after the status of the applicants in such proceedings is decided, that they can be said to be entitled for any rights vis-a-vis any property held by the person whose successors they claim to be."

12. In *Syed Abdul Majeed and others v. Joint Collector – II, Ranga Reddy District and others*² the High Court for the erstwhile State of Andhra Pradesh held that Section 40 of the Act only declares that protected tenancy is heritable and that legitimate lineal descendants by blood or adoption of protected tenant shall be entitled to hold tenancy on the same terms and conditions on which such protected tenant was holding the land at the time of his death. The same does not confer any power on any Revenue Authority much less MRO to decide the disputed questions of succession. It was further observed that the Tahsildar/MRO is not competent to decide questions of succession. Similarly, in *Pasula Baliah through General Power of Attorney, G. Ramakrishna Reddy v. Venkata Rao and two others*³ the High Court for the erstwhile State of Andhra Pradesh observed that the Revenue Divisional Officer has no jurisdiction to entertain petition filed

under Rules 3 and 4 of the Hyderabad Tenancy Records (Correction) Rules, 1956.

13. In yet another decision in *K. Narsimmulu Talla Narasimulu v. The State Of Telangana*⁴, the Coordinate Bench of this Court held that the Tahsildar has no power to decide questions of succession. The relevant observations read as under:

“15. Reading Section 40 of the Act and the Tenancy Rules together, it must be held that though under Section 40 of the Act, Tahsildar has no power to decide questions of succession to the protected tenancy, in the event of acquisition of rights, Tahsildar can conduct verification under Rule 14 of the Rules and order amendments in the register of mutations. Such a procedure is also contemplated under Section 4 of the A.P. Rights in Land and Pattadar Pass Book Act, 1971 and Rule 18 of the A.P. Rights in Land and Pattadar Pass Book Rules, 1989. The enquiry contemplated for amending mutation in the event of acquisition of rights either by survivorship or succession is altogether different from adjudicating the question of succession. Even while dealing with the application for recording for amendment of entries in the mutation register, if there is a dispute by the applicant, the MRO should relegate such party to the Civil Court.”

14. On the other hand, the learned counsel for the respondent Nos.3 and 4, relied upon the decision of the High Court for the erstwhile State of Andhra Pradesh in *G. Venkat Ram Reddy and others v.*

*Najeebunnisa and others*⁵, wherein it was held that when there is no person available to be a deemed protected tenant under Section 34 of the Act at the commencement of the Act, on the expiration of one year, any other person, who, at the commencement of the Act, held the land as tenant, subject to other conditions, would be deemed to be a protected tenant under Section 37 of the Tenancy Act.

15. It is pertinent to note that the revision petitioners are the children of Rama Rao, who is none other than the original owner of the subject lands. The petitioners are claiming to be in possession of the subject lands after completion of mortgage period. Section 37 of the Tenancy Act would apply only in cases where the land is left in the possession of cultivating tenant and where the original owner or his heirs are not in possession of the subject lands. The legislative intention behind Section

37 is to protect genuine cultivating tenants, but not to displace the lawful possession of the original owner or his successors – in – interest. Hence, where the rightful owners themselves are in possession, the deeming fiction of “protected tenancy” is excluded. In the instant case, as the petitioners are admittedly in possession of the subject lands as heirs of original owner, the invocation of Section 37 of the Act by the respondents is clearly misconceived and unsustainable.

16. It is equally significant to note that the respondent Nos.3 and 4 seek to

assert their rights over the subject lands solely on the basis of the succession certificate issued by the Mandal Revenue Officer. It is trite law that the Mandal Revenue Officer has no jurisdiction to issue a succession certificate, such power being vested exclusively in the competent civil court, more particularly, when a disputed question of succession is involved. Any such certificate issued without authority of law is a nullity and cannot confer or extinguish rights in immovable property. Consequently, respondent Nos.3 and 4 cannot derive any lawful claim over the subject lands on the basis of such void proceedings. A perusal of entire material placed before this Court, reveals that respondent Nos.3 and 4 had not even disclosed the date of death of their father, Hassanmiya. The petitioners herein on the other hand, contend that the father of the respondent Nos.3 and 4 was in possession of subject lands only by virtue of a mortgage, as reflected in the Khasra Pahani. Though the respondent Nos.3 and 4 sought to dispute the said Khasra Pahani entry by alleging that it was forged, written in a different ink, unsigned, and without official attestation, significantly no steps whatsoever, were initiated by the respondent Nos.3 and 4 before any competent forum to challenge or nullify the said alleged forged entry in the khasra pahani. Mere allegations of forgery, without recourse to proper adjudication, cannot dislodge the evidentiary value of the entry or the lawful possession of the petitioners. As held by the Honourable Supreme Court in *Smt. Sawarni vs. Inder Kaur and others*⁶ and reiterated in *Rajender Singh v. State of Jammu Kashmir and others*⁷, entries in revenue records do not by themselves confer title, but at the same time, unless duly set aside in appropriate proceedings, they cannot be brushed aside on the basis of unsubstantiated allegations. Hence, the plea raised by the respondent Nos.3 and 4 is devoid of merit.

V. FINDINGS AND CONCLUSION:

17. In view of the foregoing discussion, we are of the considered opinion that the respondent No.2/Mandal Revenue Officer had no jurisdiction to issue succession certificate in favour of respondent Nos.3 and 4. When the respondent Nos.3 and 4 approached the MRO with such application, the said authority ought to have relegated the parties to the competent Civil Court, as succession disputes fall beyond his jurisdiction. Similarly, the respondent No.1/Joint Collector also erred in confirming the succession proceedings issued by the respondent No.2/Mandal Revenue Officer in favour of respondent Nos.3 and 4. It is well settled that succession disputes cannot be adjudicated by revenue authorities, and any such proceedings undertaken by them are without authority of law. Consequently, the orders passed by MRO and confirmed by the Joint Collector are unsustainable. Since the respondent No.2/Mandal Revenue Officer had no competency to entertain and issue succession proceedings in favour of respondent Nos.3 and 4, particularly in the facts and circumstances of the present case, we are of the considered opinion that it is a fit case to relegate the parties to approach the competent jurisdictional civil court to seek redressal of their grievances.

18. Having regard to the fact that the dispute between the parties dates back to

1994, this Court is of the view that it would be appropriate to relegate the parties to the competent Civil Court for proper adjudication. All rights and contentions of the parties in relation to succession and possession are left open to be decided by the Civil Court in accordance with law.

19. Accordingly, this Civil Revision Petition deserves to be allowed.

VI. RESULT:

20. In the result, this Civil Revision Petition is allowed, and the orders passed by the respondent No.2/Mandal Revenue Officer and confirmed by the respondent No.1/Joint Collector are hereby set aside. The parties are granted liberty to approach the competent Civil Court by instituting an appropriate suit for redressal of their grievances. Upon filing such suit, the Civil Court shall decide all issues strictly in accordance with law, uninfluenced by any of the observations made in this order. In the circumstances of the case, there shall be no order as to costs. As a sequel, pending miscellaneous applications, if any, in the Civil Revision Petition, shall stand closed.