(2007) 01 AP CK 0024

In the Andhra Pradesh High Court

Case No : Writ Petition No. 20537 of 1997

Kuna Lingaiah APPELLANT

Vs

Revenue Divisional Officer and Others RESPONDENT

Date of Decision : 31-01-2007

Acts Referred:

Andhra Pradesh Rights in Land and Pattadar Pass Books Act, 1971 — Section 5, 5(3), 9

Citation : (2007) 3 ALD 741 : (2007) 4 ALT 227

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : A. Sudarshan Reddy, for the Appellant; Government Pleader for Respondent Nos. 1 and 2 and A. Vishnu Vardhana Reddy, for the Respondent

Final Decision : Dismissed

Judgement

L. Narasimha Reddy, J.—Petitioner purchased an extent of Ac. 11.00 of land in Survey No. 14 of Ummapur Village, Vangoor Mandal, Mahabubnagar District, under a registered sale deed, dated 11.12.1972 from one Mr. Tajuddin. Thereafter, he approached the then Tahsildar, Achampet, for mutation of his name, in the concerned revenue records. Mutation was effected in the records pertaining to the year 1985-86.

2. Respondents 3 and 4, the brothers of the vendor of the petitioner, filed an appeal before the Revenue Divisional Officer, Mahabubnagar, the first respondent herein, u/s 5 of the A.P. Rights in Land and Pattadar Pass Books Act, 1971 (for short ''the Act''). The appeal was dismissed on 21.3.1996. Aggrieved by the same, respondents 3 and 4 filed a revision u/s 9 of the Act before the second respondent.

3. The petitioner contends that he derived title under the sale deed of the year 1972 and mutation in the revenue records is only a matter of course. He contends that the second respondent has proceeded under several assumptions, be it as regards the partition of the property or the scope of enquiry before the

entries are mutated etc., and allowed the revision.

4. On behalf of respondents 1 and 2, a counter-affidavit is filed. It is stated that the land of Ac. 11.38 guntas in Survey No. 14 was held jointly by late Lal Mohammad and Subbaiah and after the death of Lal Mohammad, the succession in respect of Ac. 11.00 of land was sanctioned in favour of his three sons i.e., vendor of the petitioner and respondents 3 and 4. According to them, the record does not disclose that the Tahsildar, Achampet issued any notice to respondents 3 and 4, before the mutation was effected. It is ultimately urged that serious irregularity was noticed, while entering the name of the petitioner as pattadar and possessor; and no prejudice can be said to have been caused to the petitioner, inasmuch as he can seek mutation afresh, in accordance with law.

5. Sri A. Sudarshan Reddy, the learned Counsel for the petitioner submits that the scope of enquiry u/s 5 of the Act is very limited and in exercise of powers thereof, the revenue authorities cannot adjudicate upon the validity or otherwise of the transfer of an immovable property. He contends that on being satisfied about the genuinity of the sale deed, the Tahsildar mutated the name of the petitioner and the first respondent dismissed the appeal, whereas the second respondent had set aside the mutation, on the basis of surmises and certain grounds, which were not even pleaded by respondents 3 and 4.

6. The learned Government Pleader for Revenue, on the other hand, submits that the Act and the Rules made thereunder prescribe a detailed procedure, in the matter of making entries in the revenue records and amendment thereof. He contends that as late as in the year 1982-83, succession in favour of the three sons of late Lal Mohammad was sanctioned by the hierarchy of the revenue authorities and the same could not have been set at naught by the Tahsildar, that too without issuing any notice and without passing any reasoned order.

7. Apart from providing evidence as to the possession over the landed properties, the entries made in accordance with the Act, in a way, reflect the title also. It is on account of this, a detailed procedure is prescribed. For instance, whenever an application is made or intimation is received as regards the acquisition of right in respect of any land, the Mandal Revenue Officer, whose predecessor is the Tahsildar, is required to satisfy himself about the manner, in which the title is acquired, and to carry out the amendments in the revenue records. Even for refusal, to make such amendment, he is under obligation to furnish the reasons. Whenever, the existing entries are altered to the detriment of an individual, a notice is to be issued to that person and enquiry is to be conducted as provided for under Sub-section (3) of Section 5 of the Act.

8. A conflict of the rights flowing from a transfer as provided for under the Transfer of Property Act, on the one hand, and the entries to be made in the revenue records, on the other, is noticed more often. Instances are not lacking, where the revenue authorities express their inability to accede to the request to make alteration in the revenue records, on the basis of deeds of transfer. It must

be recognised that the purposes underlying a deed of transfer on the one hand and entry in the revenue record are not one and the same. While the former leads to the derivation of title, the latter tells upon the exercise of rights over the land. A sale deed can be executed by an individual transferring an item of property to another. The authorities registering the sale deed do not have any occasion or the power to verify the nature of title held by the transferor or the validity of transaction. Where, however, the entries in the revenue records are to be mutated, the concerned authority is required to ascertain the views of the parties, particularly those, whose rights are adversely effected. In case, the party, whose name is already entered in the records, is found to have transferred his rights in favour of another, there does not exist any difficulty in acceding to the request for making amendments or alterations. But, if the transfer is made by a person other than the one whose name is recorded in the concerned records, a further enquiry becomes necessary. In a given case, the revenue authority may himself require parties to seek adjudication in a civil Court. It is trite that the entries in the revenue records do not either confer or take away the title, but they only deal with the nature of the rights of the parties to enjoy the same.

9. In the instant case, the record discloses that as late as in the year 1982-83, the concerned revenue authority sanctioned succession to the three sons of the original land holder. Respondents 3 and 4 pleaded that the property was not divided at all. A tentative division was shown in the revenue records. The petitioner is not able to show that respondents 3 and 4 were put on notice by the Tahsildar, before the entries are altered in his favour, as regards the entire extent of Ac. 11.00 of land, in the year 1984-85. Had it been a case, where the name of the petitioner was substituted in the place of his vendor, no exception could have been taken with the dismissal of the appeal presented by respondents 3 and 4. However, it is clear that the name of the petitioner was substituted in the place of the names of not only his vendor but also of respondents 3 and 4. Therefore, this Court does not find any basis to interfere with the impugned order.

10. The writ petition is, accordingly, dismissed. It is, however, made clear that the Mandal Revenue Officer shall issue notices to respondents 3 and 4, before any mutation is ordered in favour of the petitioner. Further, this order shall not have any affect upon the possessory or other rights of the petitioner, over the land, till such rights are decided, through the proceedings to be initiated in an appropriate Court of law. There shall be no order as to costs.

