

(2023) 03 TEL CK 0025
In the Telangana High Court
Case No : Writ Petition No. 30674 Of 2021

Kurva Nagaraju, And Another

APPELLANT

Vs

State Of Telangana, And 5 Others

RESPONDENT

Date of Decision : 03-03-2023

Acts Referred:

Telangana Rights in Land and Pattadar Pass Books Act, 1971 — Section 9
Telangana Rights in Land and Pattadar Pass Books Act, 2020 — Section 16, 16(1)

Citation : (2023) 03 TEL CK 0025

Hon'ble Judges : K.Lakshman, J

Bench : Single Bench

Advocate : V Ramakrishna Reddy

Final Decision : Allowed

Judgement

1. Heard Mr. V. Ramakrishna Reddy, learned counsel for the petitioners, Mr. Parsa Ananth Nageswar Rao, learned Government Pleader attached to the office of learned Advocate General appearing for respondent Nos.1 to 4 and Mr. R. Chandra Shekar Reddy, learned Standing Counsel appearing for respondent No.6. Despite service of notice, none appears for respondent No.5.

2. This writ petition is filed to issue a writ of Certiorari by calling for the records pertaining to the impugned order dated 15.06.2021 passed by the Special Tribunal, Jogulamba - Gadwal District in Case No.ST/OA/72/2021/D1/745/2019, in allowing the revision case of respondent Nos.5 and 6 preferred under Section - 9 of the Telangana Rights in Land and Pattadar Pass Books Act, 1971 while setting aside the order dated 30.10.2010 in File No.A/3699/2010 passed by respondent No.4 in respect of lands admeasuring Acs.1-10 guntas in Survey No.98/B, situated at Maldakal Village and Mandal, Jogulamba - Gadwal District and to set aside the same as it being illegal.

3. FACTUAL BACKGROUND:

i) The petitioners are claiming that they are the absolute owners and possessors

of the land admeasuring Acs.1-10 guntas in Survey No.98/B, situated at Maldakal Village and Mandal, Jogulamba - Gadwal District, on the strength of a registered sale deed bearing document No.3889 of 2005, dated 23.08.2005 executed by Mr. Kurva Thimmanna alias Jalige Thimmaiah, son of Sandanna. Mutation proceedings and pattadar pass books and title deeds were also issued in their favour vide proceedings No.A/3699/2010, dated 30.10.2010. The details of the same are specifically mentioned in a tabular form in paragraph No.6 of the writ affidavit. The petitioners have filed copies of the aforesaid proceedings including Dharani status.

ii) When one Mr. Narasimhulu Goud and respondent No.6 interfered with the possession of the Vendor of the petitioners, he had filed a suit vide O.S. No.131 of 2005 seeking declaration of title and perpetual injunction in respect of the aforesaid property. The vendor of the petitioners died on 30.11.2007. His legal heirs did not pursue the said suit and, therefore, the same was dismissed as not pressed.

iii) After purchase of the land by the petitioners, respondent No.6 - Gram Panchayat had filed a suit vide O.S. No.135 of 2005 against the petitioners, their vendor and others for perpetual injunction in respect of the land admeasuring Acs.2-00 guntas in Survey No.98/3 of Maldakal Village. The said suit is pending. In the said suit, respondent No.6 had filed an interlocutory application vide I.A. No.252 of 2005 seeking interim injunction and the same was allowed by learned Junior Civil Judge, Gadwal, vide order dated 20.12.2005. Feeling aggrieved by the said order, the Vendor of the petitioners had preferred an appeal vide C.M.A. No.7 of 2006, and vide order dated 19.09.2007, learned Senior Civil Judge, Gadwal, allowed the said appeal.

iv) The petitioners herein have also filed a suit vide O.S. No.180 of 2008 seeking declaration of title and perpetual injunction respect of the aforesaid land admeasuring Acs.1-10 guntas in Survey No.98/B of Maldakal village. Both the said suits were clubbed together and tried together. The matters are posted for arguments.

v) According to the petitioners, the father of petitioner No.2 and respondent No.5 contested in Gram Panchayat Elections held in 2019 for the post of Sarpanch, wherein respondent No.5 succeeded while the father of petitioner No.2 lost. Due to the said rivalry, respondent Nos.5 and 6 have filed a Revision under Section - 9 of the Telangana Rights in Land and Pattadar Pass Books Act, 1971 (for short 'ROR Act, 1971') before respondent No.2. After promulgation of ROR Act, 2020 and in terms of Section - 16 (1) of the ROR Act, 2020, the said revision was transferred to the file of respondent No.2.

vi) Vide order dated 24.02.2021 in Case No.ST/OA/72/ 2021/D1/745/2019, respondent No.2 disposed of the said revision holding that a suit vide O.S. No.131 of 2005 is pending before the Junior Civil Judge, Gadwal and, therefore, the Tribunal is not vested with powers to proceed parallelly and the matter is sub

judice in nature. The said order was passed without notice to the parties. A Division Bench of this Court vide order dated 18.03.2021 in W.P. (PIL) No.20 of 2021 directed all the Special Tribunals constituted under Section - 16 of the ROR Act, 2020 to dispose of pending revisions and appeals transferred to Special Tribunals by putting the parties on notice and hearing them in accordance with law. In view of the said order, respondent No.2 has reopened the aforesaid revision. The petitioners and respondent Nos.5 and 6 have filed written arguments. Vide order dated 15.06.2021, the Special Tribunal allowed the said revision by setting aside the order dated 30.10.2010 in file No.A/3699/2010 of respondent No.4. It was also further held that respondent Nos.5 and 6 have purchased the subject land vide sale deed bearing document No.903 of 1965 from one Jalige Thimmaiah and revenue record shows that respondent No.6 has been in an uninterrupted peaceful possession. It is indisputable that respondent Nos.5 and 6 herein have been in continuous possession of the subject land. The petitioners herein are questioning the validity of sale deed, which Civil Court is competent and not the Tribunal. With the said findings, respondent No.2 allowed the aforesaid revision filed by respondent Nos.5 and 6 and set aside the mutation proceedings dated 30.10.2010 of respondent No.4 in favour of the petitioners herein. The Special Tribunal also granted liberty to the petitioners herein to approach Civil Court for declaration of title and appropriate relief.

4. Challenging the said order, dated 15.06.2021, the petitioners filed the present writ petition.

5. CONTENTIONS OF RESPONDENT No.6:

i) On the other hand, respondent No.6 has filed counter contending that it has purchased the land admeasuring Acs.2-00 guntas in Survey No.98/B of Maldakal village from Jalige Thimmaiah under a registered sale deed bearing document No.903 of 1965, dated 21.09.1965 by paying sale consideration and possession was also delivered to him. But, the name of respondent No.6 was not mutated in revenue record and the name of Mr. Jalige Thimmaiah was recorded in revenue record. Taking advantage of the same, he had filed a suit vide O.S. No.131 of 2005 and, thereafter, the same was withdrawn. Suppressing the sale deed bearing document No.903 of 1965, dated 21.09.1965, he had executed another sale deed bearing document No.3389 of 2005, dated 23.08.2005 in favour of the petitioners herein in respect of the land admeasuring Acs.1-10 guntas in Survey No.98/B. The petitioners have purchased the aforesaid property fraudulently. They do not have any right. Respondent No.6 is in physical possession of the property. Therefore, without considering the said fact, respondent No.4 had issued proceedings dated 30.10.2010 and the same was set aside by respondent No.2, Special Tribunal, vide order dated 15.06.2021. The said order is on consideration of entire facts on record. Therefore, there is no error in it. The petitioners are trying to grab the property belongs to respondent No.6 and in the said course of action, they have filed the present writ petition. With the said contentions, respondent No.6 sought to dismiss the present writ petition.

6. ANALYSIS AND FINDING OF THE COURT:

i) The aforesaid rival submissions would reveal that there is no dispute that Mr. Jalige Thimmaiah was the absolute owner and possessor of the land in Survey No.98/B of Maldakal village. He had executed the aforesaid sale deed bearing document No.903 of 1965, dated 21.09.1965 in favour of respondent No.6 in respect of the land admeasuring Acs.2-00 guntas in Survey No.98/B. The petitioners herein have purchased the aforesaid land to an extent of Acs.1-10 guntas in Survey No.98/B from the said Mr.Jalige Thimmaiah under the registered sale deed bearing No.3889 of 2005, dated 23.08.2005. He had filed the aforesaid suit O.S. No.131 of 2005 seeking declaration of title and perpetual injunction against respondent No.6 and others. He died on 30.11.2007 and, thereafter, the said suit was dismissed as not pressed.

ii) Respondent No.6 herein had filed a suit vide O.S No.135 of 2005 against the petitioners herein and their Vendor, Mr. Jalige Thimaiah seeking for perpetual injunction. They have also filed I.A. No.252 of 2005 seeking temporary injunction, and the learned Junior Civil Judge at Gadwal has allowed the said I.A. vide order dated 20.12.2005 granting temporary injunction. As against the said order, the Vendor of the petitioners had preferred an appeal vide C.M.A. No.7 of 2006 and the same was allowed on 19.09.2007 by the learned Senior Civil Judge at Gadwal setting aside the order passed in the said I.A. No.252 of 2005. Respondent No.6 did not challenge the said order and it attained finality.

iii) It is relevant to note that in the said order dated 19.09.2007, there is a categorical finding that the plaintiff in O.S.No.135 of 2005, respondent No.6 herein came to the Court with unclean hands without any basis to claim that it came into possession of the suit schedule property. There is no prima facie case that the plaintiff has been in possession of the suit schedule property. When there is no prima facie case, the question of considering the other two facets for grant of temporary injunction, namely balance of convenience and irreparable injury does not arise. Thereafter, the petitioners have filed a suit vide O.S. No.180 of 2008 seeking declaration and perpetual injunction pending on the file of Junior Civil Judge at Gadwal. The said suits were clubbed and tried together. Both the suits are pending and they are posted for arguments.

iv) Surprisingly, during pendency of the aforesaid suits and after passing the order dated 19.09.2007 in C.M.A. No.7 of 2006 by the learned Senior Civil Judge, Gadwal and after lapse of nine (09) years of the mutation orders passed by respondent No.4 dated 30.10.2010, respondent No.4 - the Gram Panchayat, Maldakal represented by its Sarpanch, Mr. Yakub, respondent No.5 herein, and the Gram Panchayat Office, represented by its Panchayat Secretary have filed a revision under Section - 9 of the ROR Act, 1971 on 30.10.2019 before the Joint Collector, Jogulamba - Gadwal District. After promulgation of New ROR Act, 2020 and on constitution of Special Tribunals in terms of Section - 16 of the ROR Act, 2020 vide G.O.Ms.No.4 of Revenue (Assignment-I) Department, dated 12.01.2021, the aforesaid Revision was transferred to the file of respondent No.2

from respondent No.3. Vide order dated 24.02.2021, respondent No.2 Tribunal held that the aforesaid suits are pending for adjudication, parallel proceedings cannot go and matter is sub judice. There is no finding with regard to the possession of respondent No.5 over the subject property in the said order. Admittedly, the said order was passed without hearing the parties. In the said order itself, there is specific mention that no counter was filed by the petitioners.

v) Pursuant to the order dated 18.03.2021 in W.P. (PIL) No.20 of 2021, the aforesaid matter/revision was re-opened and thereafter both the petitioners and respondent Nos.5 and 6 have filed their written arguments. Vide order dated, 15.06.2021, respondent No.2 allowed the said revision holding that respondent No.6 has purchased the land admeasuring Acs.2-00 guntas from Jalige Thimmaiah under a registered sale deed bearing document No.903 of 1965, it is in continuous possession of the property and respondent Nos.5 and 6, who are questioning validity of sale deed, have to approach competent Civil Court. Thus, the aforesaid finding in the order dated 15.06.2021 is contrary to the finding of respondent No.2 given in its earlier order dated 24.02.2021.

vi) In the impugned order, though there is specific mention about pendency of two (02) suits i.e., O.S. No.135 of 2005 and 180 of 2008 filed by respondent No.6 and the petitioners, respectively, and one of the said suit is a title suit. In the said order, there is no consideration of order dated 19.09.2007 in C.M.A. No.7 of 2006 of learned Senior Civil Judge, Gadwal, wherein it was categorically held that respondent No.6 herein - plaintiff in O.S. No.135 of 2005 is not in possession of the subject property and the plaintiff therein failed to make out a prima facie in its favour. The said order attained finality. Therefore, finding of respondent No.2 in the impugned order dated 15.06.2021 that respondent No.6 is in possession of the subject property is contrary to the finding given by competent Civil Court i.e., Senior Civil Judge, Gadwal in the order dated 19.09.2007 in C.M.A. No.7 of 2006.

vii) There is no dispute that there is no limitation prescribed for filing a revision under Section - 9 of the ROR Act, 1971, and even then, respondent No.6 has to file such revision within a reasonable period. Whereas, respondent No.6 has filed the aforesaid revision under Section - 9 of the ROR Act, 1971 on 30.10.2019 challenging the mutation proceedings dated 30.10.2010 issued by respondent No.4 in favour of the petitioners i.e., after elapse of nine (09) years. The said fact was not considered by respondent No.2 in the impugned order dated 15.06.2021.

viii) It is also relevant to note that respondent No.6 did not mention about the aforesaid order dated 19.09.2007 passed by the learned Senior Civil Judge, Gadwal in C.M.A. No.7 of 2006. Therefore, the impugned order dated 15.06.2021 passed by respondent No.2 is contrary to its own finding given in the earlier order dated 24.02.2021. Further, respondent No.6 represented by its Sarpanch (respondent No.5 herein) and respondent No.6 herein have filed the revision under Section - 9 of the ROR Act, 1971 on 30.10.2019 before respondent No.3. But, Sarpanch cannot represent a Gram Panchayat in any legal proceedings.

Even then, they have filed the said revision. The said action of respondent Nos.5 and 6 is unwarranted.

ix) As discussed above, the aforesaid suit, vide O.S. No.180 of 2008 filed by the petitioners herein seeking declaration and perpetual injunction is pending and it is a comprehensive suit. The suit, vide O.S. No.135 of 2005 filed by respondent No.6 seeking perpetual injunction is also pending. Both the suits were clubbed and tried together. The matters are posted for arguments. During pendency of the aforesaid suits, without waiting for outcome of the same, respondent No.6 cannot approach respondent No.2 to set aside the mutation proceedings dated 30.10.2010 issued by respondent No.4 in favour of the petitioners mutating their names. It is settled law that Recording Authority under the provisions of the ROR Act, 1971 or ROR Act, 2020 has no power to decide the disputed question of title and possession and give a finding on the said aspects, and it is the Civil Court, which has to decide the said aspects. Admittedly, in the present case, the aforesaid suit O.S. No.180 of 2008 to declare the petitioners as owners and perpetual injunction is pending. The matter is sub judice. Civil Court is ceased of the said matter.

7. CONCLUSION:

i) Viewed from any angle, the impugned order is illegal and contrary to the record and also contrary to the order dated 19.09.2007 in C.M.A. No.7 of 2006 passed by learned Senior Civil Judge, Gadwal. In view of the same, the impugned order is liable to be set aside.

ii) The present writ petition is accordingly allowed setting aside the impugned order dated 15.06.2021 passed by respondent No.2 in file No.ST/OA/72/2021/D1/745/2019.

iii) Learned Junior Civil Judge, Gadwal, is directed to decide the aforesaid two (02) suits i.e., O.S. No.135 of 2005 and 180 of 2008 in accordance with law as expeditiously as possible, preferably within a period of one (01) month from the date of receipt of copy of this order. Both the petitioners and respondent No.6 shall co-operate with trial Court in disposal of the aforesaid suits in accordance with law. However, it is relevant to note that the petitioners herein are claiming the land admeasuring Acs.1-10 guntas in Survey No.98/B under a registered sale deed bearing document No.3889 of 2005, dated 23.08.2005, whereas, respondent No.6 is claiming that it is the absolute owner and possessor of the land admeasuring Acs.2-00 guntas in the very same survey number on the strength of a registered sale deed bearing document No.903 of 1965, dated 21.09.1965. Therefore, liberty is also granted to both of them to take all the grounds which they have raised in the present writ petition in the aforesaid suits, and it is for the trial Court to consider the same basing on the evidence, both oral and documentary.

iv) After disposal of said suits, liberty is also granted to both the petitioners and respondent No.6 to take steps in accordance with law and the judgments and

decrees that would be passed by learned trial Court in the said suits.

v) In the circumstances of the case, there shall be no order as to costs.

As a sequel thereto, miscellaneous petitions, if any, pending in the writ petition shall also stand closed.