(2021) 10 TEL CK 0023

In the Telangana High Court

Case No : Writ Appeal Nos.716, 728 Of 2018

Nimmala Narahari APPELLANT

Vs

C.Narendranath RESPONDENT

Date of Decision : 21-10-2021

Acts Referred:

Telangana Rights In Land And Pattadar Pass Books Act, 1971 — Section 8(2)

Citation : (2021) 10 TEL CK 0023

Hon'ble Judges : A.Rajasheker Reddy, J;Dr. Shameem Akther, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. Since both these appeals arising out of Common Order dated 23.03.2018, they are being heard together and disposed of by way of this Common Judgment.

2. These appeals are filed against Common Order dated 23.03.2018 in W.P.Nos.20585 and 20586 of 2013 by one Nimmala Narahari, appellant herein (who is 5th respondent in writ petitions) against one C.Narendranath-1st respondent in these appeals.

3. For the sake of convenience, the parties hereinafter will be referred to as arrayed in the writ petitions. It is the case of the petitioner in both these writ petitions that one Sri Veera Mallaiah was the original owner of different extents of land in Sy.Nos.196, 197 and 206 of Madeenaguda Village, Serilingampaly Mandal, Ranga Reddy District. The lands in Sy.No.197 was sold by him in favour of Sri Suryanarayana Raju and five others, by way of registered sale deed dated 14.12.1966 vide document Nos.1170/66 and 1171/1966 and subsequently, he sold entire lands in the Sy.Nos.196, 197 & 206 after leaving the land towards roads at the time of execution of documents. The said Veera Mallaiah died in the year 1975 leaving behind Sri Nimmala Narahari-5th respondent as his legal heir. Subsequently, the 5th respondent along with his mother sold Acs.7.00 in Sy.Nos.197 & 207 pursuant to the agreement of sale entered by his father on

28.10.1974 as successors of the deceased. After 14 years of death of his father, the 5th respondent applied for succession certificate in the year 1989 in respect of Sy.No.197 for an extent of Acs.14.09 as if his father Veera Mallaiah did not sell the property and also without excluding the property sold by him along with his mother vide document No.246/1978, and the same was granted vide proceedings in File No.B/456/89 on 30.03.1989, which was sought to be implemented in the year 2008, that is after lapse of 33 years. Thereafter, the 4th respondent issued notices thrice to the petitioner- C.Narendranath. The petitioner submitted explanation/objections to the same and subsequently filed W.P.No.11635 of 2009, which was disposed of on 23.06.2009 directing the 4th respondent to pass appropriate orders after considering the objections filed by the petitioner. The 4th respondent-Tahsildar-cum-Deputy Collector, Serilingampally Mandal, without considering the objections of the petitioner, issued impugned proceedings dated 31.01.2010 ordering mutation of the name of the 5th respondent in revenue records for the year 2009-2010 in respect of the land to an extent of Acs.7.00 in Sy.No.196 and Acs.4.28 guntas in Sy.No.197 totally admeasuring Acs.11.28 guntas of Madeenaguda Village, ignoring the fact that mutation which was affected in favour of the petitioner and his family members in the year 1980. One Smt.C.Laxmibai and two others, mother and sisters of the petitioner, who purchased a part of the property from the vendee of Veera Mallaiah, applied for mutation, which was ordered by the 4th respondent in File No.B/2568/2003 dated 26.05.2004 for an extent of land admeasuring Acs.4.23 guntas out of the total purchased land of an extent of Acs.5.27 guntas in Sy.No.197 purchased under registered sale deed No.999/1979, dated 22.05.1979. The petitioner also obtained mutation proceedings in his favour in respect of land to an extent of Acs.0.10 guntas out of total purchased land of an extent of Acs.0.34 guntas, situated in Sy.No.197, under registered sale deed No.961/1979, dated 18.05.1979 from one Sri Suryanarayanana Raju and others, in proceedings No.B/2583/2003, dated 26.05.2004. After noticing the name of the 5th respondent in column No.13 of pahanies for the years 1982-83, 1999-2000 and 2000-2001, he made an application to the 4th respondent for deletion of the name in respect of land in Sy.No.197 on 27.09.2006, who issued proceedings on 17.11.2006 allowing the application and ordered for deletion of the name of the 5th respondent. In the said proceedings, it is observed that the entries in the pahanies of the name of the 5th respondent was with different ink by tampering the records and also observed that the said land was in possession of the petitioner by the name of 'Naren Garden'.

4. The 5th respondent filed suit in OS.No.3129 of 2006 along with I.A.No.4330 of 2006 seeking ad interim injunction against the petitioner in respect of the land in Sy.No.197 admeasuring Acs.6.11 guntas, was dismissed observing that there is manipulation of records at the instance of the 5th respondent and that he has not approached with clean hands. Aggrieved by the orders in I.A., the 5th respondent preferred CMA No.280 of 2008 before the I Additional District and Sessions Judge, Ranga Reddy District was also dismissed on 11.09.2009, and the

same has become final, as the 5th respondent did not challenge the said dismissal order in CMA. Since the proceedings by way of suit is pending before the competent civil court, the revenue authorities-respondents 2 to 4 are disentitled to proceed to determine the proceedings in respect of succession certificate or for its implementation. The petitioner and his family members filed O.S.No.1726 of 2009 on the file of III Additional Junior Civil Judge, Ranga Reddy District, seeking permanent injunction against 5th respondent and others, wherein injunction was granted in their favour in I.A.No.1566 of 2010 in respect of the land in Sy.No.197 admeasuring Acs.6.21 guntas situated at Madeenaguda village, which is still subsisting. Aggrieved by the orders of the 4th respondent granting mutation orders dated 30.08.1989 in favour of 5th respondent vide proceedings dated 06.01.2009 in file No.B/371/2008 in respect of land admeasuring Acs.11.28 guntas in Sy.Nos.196 and 197 of Madeenaguda village, the petitioner preferred appeal before the 3rd respondent, which was dismissed by him on 30.06.2012 confirming the order of the 4th respondent. The revision filed by the petitioner against the same before the 2nd respondent was also dismissed affirming the order of the 3rd respondent, vide order dated 04.05.2013 and relegated the parties to approach the competent civil court in order to examine the validity of the documents relied on by the parties and thereafter to approach the revenue authorities. Aggrieved by the same, W.P.No.20585 of 2013 is filed by the petitioner.

5. The 4th respondent mutated the name of the 5th respondent in respect of the land to an extent of Acs.1.14 guntas in Sy.No.206/1/A vide proceedings dated 15.05.2010. Aggrieved by the same, the petitioner preferred an appeal before the 3rd respondent, which was dismissed by him on 30.06.2012, against which, the petitioner preferred revision before the 2nd respondent. The 2nd respondent dismissed the said revision by order dated 18.05.2013. Aggrieved by the same, W.P.No.20586 of 2013 is filed.

6. In both the writ petitions, the 4th respondent filed counter affidavits stating that the file bearing No.B/456/89 containing the succession proceedings dated 30.03.1989 was not traceable, but stated that the same was noticed in the personal register of the concerned section that the same related to the sanction of succession under record of rights in respect of the land in Sy.Nos.196 and 197 of Madeenaguda village. It is further stated that the 4th respondent granted succession certificate to the 5th respondent merely because he is the son of Sri Veera Mallaiah and the entries in the records shown that of his father. Even though it is alleged that several sale transactions took place, but none of them have approached them for mutation of their names in revenue records.

7. The 5th respondent has not filed any counter in both the writ petitions.

The learned Single Judge, after considering the material on record and after hearing both the learned counsel, allowed the writ petitions setting aside the orders of the 2nd respondent dated 04.05.2013 and 18.05.2013 and remanded the matter to the 2nd respondent for considering the following points:

i) Whether the proceedings of succession/mutation issued in favour of the 5th respondent in File No.B/456/89 are genuine, valid and create any right for mutation in favour of 5th respondent?

ii) In view of the change of nature of the land consequent to the expansion of the city, whether the applications of the 5th respondent can be considered for mutation of his name in the revenue records in the light of detailed objections filed by the petitioner?

iii) Whether the application of the 5th respondent can be considered, in the light of the earlier orders passed by the 4th respondent in favour of the petitioner in File Nos.B/2568/2003 and B/2583/2003 dated 26.05.2004 and 28.05.2004 which have become final?

Since there is scramble for possession and the civil suits are pending for injunction, it is desirable that the second respondent shall pass appropriate orders in accordance with law under the provisions of the Telangana Rights in Land and Pattadar Pass Books Act, within a period of three months from the date of receipt of a copy of this order after hearing the petitioner and the 5th respondent. The 2nd respondent shall pass orders after perusing the records, uninfluenced by any observations made in this order, but strictly in accordance with the provisions of Telangana Rights in Land and Pattadar Pass Books Act, 1971. In view of this order of remand, the order of status quo granted by this Court earlier on 23.07.2013 shall continue till orders are passed by the 2nd respondent.

8. Counter affidavit is filed by the 1st respondent reiterating the averments in the affidavit filed in support of the writ petitions and stated that the revenue officials have no power or authority to issue proceedings in respect of non-agricultural lands in violation of the provisions of the A.P.Rights in Lands and Pattadar Pass Books Act, 1971 and the appellant played fraud with the revenue officials in obtaining succession dated 30.03.1989 vide file No.B/456/1989 and managed the appellate authority and revisional authority in confirming the same. Even though the fact of non availability of succession certificate dated 30.03.1989 obtained under RTI was informed to the 3rd respondent, he proceeded further and assumed the jurisdiction and passed the orders, which were impugned in the writ petitions. Since the appellant already invoked the jurisdiction of civil court, the authorities ought not to have entertained the application submitted by the appellant for mutation of his name in the revenue records. The provisions of the Act of 1971 has no application to the non-agricultural land, as such, the revenue authorities has no such power to determine the issue of title and sought for dismissal of the writ appeals.

9. Counter affidavit is filed by the 5th respondent stating that the file bearing No.B/456/1989 could not be traced and that upon verification of inward register in the record section, it is noticed that the file furnished by the appellant is not genuine and correct as the subject matter entered at Sl.No.456 of the Inward/

Distribution Register is as "20.03.1989-Petitio of Sri P.S.Babu and Rama Raju dated 13.03.1989-in Miyapur village, Sy.No.118 correction of pahani of 1987-88-regarding. It is also stated that at the request of the Station House Officer, Miyapur vide letter dated 27.01.2018 seeking information in respect of Sy.No.197, Madeenaguda, the same was furnished vide Ref.No.C/587/2018 dated 11.01.2019. The information also furnished to C.Narendranath S/o.C.Balkishan vide Lr.No.B/391/2012-50, dated 10.10.2012 and also to T.Nageshwar Rao in file No.C/03/2018-04 dated 19.01.2018 and sought for dismissal of the writ appeal.

10. The appellant filed rejoinder to the counter affidavit filed by the 5th respondent denying the averments therein stating that the respondents 3 to 5 failed to produce the file No.B/456/1989 pertaining to succession granted in favour of the appellant, which is nothing but will disobedience and obstruction of course of justice, punishable in law. Even though said file is not traceable in the office of the 5th respondent, the same could have been reconstructed. It is stated that the deponent cannot on the basis of an entry at Sl.No.456 in the Inward Register of the year 1989, affirm on oath that the file B/456/1989 relating to succession certificate is not genuine or correct. The deponent on the basis of any entry at Sl.No.456 in the Inward Register of the Year 1989 affirm on oath that the file B/456/1989 relating to succession certificate is not genuine or correct, as the inward register maintains the tappal received by the Office. The succession certificate issued in favour of the appellant is after due enquiry, as such, it cannot be said that the same is not genuine and that the basis for the proceedings which came to be challenged by the 1st respondent is file No.B/456/1989. The 1st respondent preferred appeal before the 4th respondent questioning the order of the 3rd respondent dated 30.01.2010 by exaggerated his claim from Ac.6.21 guntas to Ac.11.28 guntas. The genuineness of the file No.B/456/1989 was never doubted by the 1st respondent, but only filed an interlocutory application about its existence in the year 2018 only in the writ petition filed by the 1st respondent. On enquiry it is revealed that the Tahsildar and Joint Collector who have passed the orders which are questioned by the 1st respondent have retired, but the RDO is still in service, who is the best person to file an affidavit as regards the existence of file B/456/1989 and seeks time to pursue the matter.

11. Heard Sri D.V.Sitarama Murthy, learned Senior Counsel for Sri G.Prashanth Rao, Sri S.Rahul Reddy, learned counsel for the 1st respondent, learned Assistant Government Pleader for Revenue appearing for respondents 2 to 5.

12. Learned Senior Counsel for the appellant submits that when allegations of fraud and fabrication of file No.B/456/89 dated 30.03.1989 is alleged against the appellant, the 3rd respondent has no power or jurisdiction to decide its genuineness. The 5th respondent merely issues proceedings No.B/371/2008, dated 30.01.2010 as a consequential proceedings in respect of file No.B/456/89 dated 30.03.1989 and not issued any proceedings afresh in favour of the appellant. The allegation of fraud and fabrication of succession certificate was

raised only in the writ petitions by the 1st respondent, that too in the year 2018, but not stated the same before the revenue authorities 1st respondent and it is also not the case of the official respondents 2 to 5. Even though the 1st respondent initially claimed Acs.6.21 in Sy.No.197 before the 5th respondent, but subsequently enlarged his claim to Acs.14.28 gts before the 3rd respondent without furnishing any link documents and that the 1st respondent got mutated his name on 28.05.2004 without issuing notice to the appellant, which is against the principles of natural justice. The link document showing flow of title was not filed by the 1st respondent and that even though the 1st respondent got his name mutated on 28.05.2004 without notice to the appellant, which is procedural illegality and cannot be sustained. The three revenue authorities have passed their respective orders after perusing the record and material on record more particularly the proceedings in File No.B/456/89 dated 30.03.1989, as such, there cannot be any basis to hold that the same was not found or untraceable and fabricated. He also submits that the entries in revenue records would only be relevant for the purpose of payment of land revenue and the same would not convey title on the basis of such entries and that the title can only be decided by a competent civil court. As per Section 8(2) of the Act, which specifically contemplates that any person aggrieved as to any rights of which he is in possession by any entry in the record of rights, may institute a suit against any person denying or interested to deny his title to such right for declaration of his right under Chapter VI of the Specific Relief Act. IN support of his contentions, he relied on the judgments reported in (i) B.Pushpamma and others v. Joint Collector [2005 (1) ALD 260] (ii) Surajbhan v. Financial Commissioner [(2007) 6 SCC 186] and (iii) V.Goutham Rao v. Revenue Divisional Officer [2003 (1) ALD 681].

13. On the other hand, Sri S.Rahul Reddy, learned counsel for the 1st respondent while reiterating the counter affidavit filed by the 1st respondent submits that since the succession certificate in File No.B/456/89, dated 30.03.1989 alleged to have been issued in favour of the appellant in respect of the subject property is not traceable, the learned Single Judge, has rightly considered the said issue after filing of the counter by the 5th respondent in the writ appeal, and passed the impugned order remanding the matter to the 3rd respondent-Joint Collector for fresh consideration. He also submits when the 1st respondent challenged the order passed by the 5th respondent-Tahsildar dated 30.01.2010, seeking implementation of the succession certificate dated 30.03.1989, before the 4th respondent-Revenue Divisional Officer, but the RDO, without there being any prayer thereto, set aside the mutation proceedings No.B/2568/03 dated 26.05.2004 and B/2583/2003 dated 26.05.2004 in favour of the 1st respondent (writ petitioner in the writ petition), without examining the validity of the order passed by the Tahsildar-5th respondent herein, which is illegal and arbitrary and on this ground alone, these writ appeals are liable to be dismissed.

14. Learned Government Pleader for Revenue appearing for respondents 2 to 5 reiterated the averments in the counter affidavit.

15. In view of above rival contentions of both the parties, the point that arose for consideration is:

Whether the impugned common order passed by the learned Single Judge dated 22.03.2018 in W.P.Nos.20585 & 20586 of 2013 is tenable or not?

16. In this case, it is to be seen that the crux of the whole issue revolves around the existence and genuineness of succession certificate in File No.B/456/1989 dated 30.03.1989 issued in favour of the appellant by the 5th respondent.

Admittedly, the father of the appellant i.e., Veeramallaiah was the original owner of different extents land in Sy.Nos.196, 197 and 206 of Madeenaguda Village, Serilingampally Mandal, Ranga Reddy District. During the life time of said Veeramallaiah and after his demise, several sale transactions took place in respect of lands situated in Sy.Nos.196, 197 and206 of Madeenaguda village, by himself and his legal heirs, who are appellant along with his mother through registered sale deeds in favour of third parties. He died in the year 1975. Thereafter, after a lapse of 14 years, the appellant filed an application for grant of succession certificate in the year 1989, which was stated to be issued in his favour on 30.03.1989 by the then 5th respondent. It is not stated anywhere in the pleadings either before the revenue authorities or before the learned Single Judge as to whether any notice was issued to the 1st respondent or any other person, before issuing such alleged succession certificate in favour of the appellant and the reason for filing such an application belatedly. However, the appellant sought to implement the said succession certificate in his favour in the year 2008. Notices were issued to the 1st respondent, wherein he filed elaborate objections. When several notices were issued to the 1st respondent, he filed writ petition in W.P.No.11635 of 2009, which was disposed of on 23.06.2009 directing the 4th respondent-Tahsildar therein to pass appropriate orders after considering the objections filed by the 1st respondent herein (writ petitioner in the writ petition). Accordingly, the 5th respondent passed orders in File No.B/371/2008, dated 30.01.2010 ordering mutation in the name of the appellant in revenue records for the year 2009-2010 in respect of the land to an extent of Acs.7.00 in Sy.No.196 and Acs.4.28 guntas in Sy.No.197 totally admeasuring Acs.11.28 guntas of Madeenaguda village.

17. It is pertinent to note here that before passing the aforesaid order dated 30.01.2010, one Smt.C.Laxmibai and others, who are the relatives of the 1st respondent purchased a part of the property from the vendee of Veera Mallaiah and hat on the strength of registered sale deeds, applied for mutation of their names in the revenue records, which was ordered by the Tahsildar in File No.B/2568/2003, dated 26.05.2004 for an extent of land admeasuring Acs.4.23 guntas out of total purchased land of an extent of Acs.5.27 guntas in Sy.No.197 purchased under registered sale deed No.999 of 1979 dated 22.05.1979. The 1st respondent also obtained mutation proceedings in respect of land to an extent of Ac.0.10 guntas out of total purchased land of an extent of Ac.0.34 guntas situated in Sy.No.197 purchased under registered sale deed No.961 of 1979

dated 18.05.1979 from one Sri Suryanarayana Raju and others, in proceedings No.B/2583/2003 dated 26.05.2004. When the 1st respondent noticed the name of the appellant in column No.13 of pahani for the years 1982-83, 1999-2000 and 2000-2001, he applied to the Tahsildar for deletion of the appellant on 27.09.2006, who issued proceedings dated 17.11.2006 ordering deletion of the name of the appellant. In the said proceedings, the Tahsildar categorically observed as follows:

"In pursuance of the report of the Mandal Revenue Inspector cited, it is evident that only the petitioner Sri C.Narendranath is the Possessor and Pattadar and no other person is Pattedar or Possessor by name N.Narahari. the entry in Pahanies is with different ink, which is a tampering of record case.

Therefore, it is warranted in the circumstances to delete the name of N.Narahari from the Sy.No.197/A from the years 1982-83, 1999-2000 & 2000-01. The Record Assistant is warned not to allow any person in the Record room and keep close watch on the records."

Admittedly, the said proceedings were never challenged by the appellant before the revenue authorities, but filed OS No.3129 of 2006 for perpetual injunction, on the file of the Junior Civil Judge, Ranga Reddy District along with I.A.No.4330 of 2006 seeking ad interim injunction against the 1st respondent in respect of the land in Sy.No.197 admeasuring Acs.6.11 guntas situated at Madeenaguda, which was dismissed. Aggrieved by the same, the appellant preferred CMA No.280 of 2008 before the I Additional District and Sessions Judge, Ranga Reddy District, which was also dismissed on 11.09.2009, which became final. As rightly observed by the learned Single Judge, the crucial document i.e., Succession Certificate dated 30.03.1989, which is the basis for claiming right over the subject property, has not been filed by the appellant in the suit filed by him.

18. It is also pertinent to note that the Tahsildar-5th respondent filed counter before this Court as well as before the learned Single Judge stating that the file bearing No.B/456/89 containing the succession proceedings dated 30.03.1989 was not traceable. A perusal of the documents Memo dated 10.10.2012 in Lr.No.B/391/2012-50 filed by the 5th respondent goes to show that the file No.B/456/1989 was not traceable but on verification of personal register of B-Section for the year 1989, the number B/456/1989 was assigned correction of pahani in respect of sy.No.118 of Miyapur village. In response to the RTI application filed by one T.Nageshwara Rao, the 5th respondent issued Memo dated 19.01.2018 in file No.C/03/2018-04 stating that file No.456 relating to subject rectification of pahani for Sy.No.118 of Miyapur village, Serilingampally Mandal, which was applied by P.S.Babu and Rama Raju on 13.03.1989.

19. It is the specific contention of the learned Senior Counsel for the appellant that authorities concerned i.e., Mandal Revenue Officer-5th respondent and Revenue Divisional Officer-4th respondent have considered the document dated 30.03.1989 and passed the orders affirming the succession certificate in favour

of the appellant, as such, it is the responsibility of the staff concerned to safeguard the said document and that the 5th respondent cannot deny it's existence, having once considered by him earlier.

20. In view of the specific averments in the counter affidavits filed before this Court as well as before the learned Single Judge, it is crystal clear that the succession certificate, alleged to have been obtained by the appellant from the 5th respondent is not traceable in the concerned section. As already supra, the serial No.456 refers to some other property with different name. The fact of non availability of the succession certificate dated 30.03.1989 was also found by the trial Court while dismissing the I.A.No.4330 of 2006 in O.S.No.3129 of 2006 on the file of learned Additional Junior Civil Judge, Ranga Reddy District, filed by the appellant for ad-interim injunction, which was not filed by the appellant. If really, the said document is available and is in existence, ought to have been filed by the appellant either before this Court or before any other forum and that the same has not seen the light of the day and that nothing prevented the appellant from filing atleast a copy of the same before this Court. More over, the delay in filing application for issuance of succession certificate after lapse of 14 years from the date of the death of the father of the appellant in the year 1975 is not explained anywhere and so also the revenue authorities concerned have also not considered the said aspect before passing impugned proceedings. Even the 3rd respondent also did not consider the said aspect while relegating the parties to the civil court. While so, the 1st respondent along with his family members filed O.S.No.1726 of 2009 on the file of III Additional Junior Civil Judge, Ranga Reddy District seeking permanent injunction against the appellant in I.A.No.1566 of 2010 in respect of the land in Sy.No.197 admeasuring Acs.6.21 guntas situated at Madeenaguda village, wherein ad interim injunction was granted, which was not in challenge by the appellant sofar before any forum.

21. That apart, quite surprisingly, when the 1st respondent preferred an appeal against the order of the Tahsildar dated 30.01.2010 before the Revenue Divisional Officer- 4th respondent set aside the proceedings of the mutation obtained by the 1st respondent in file Nos.B/2568/03 dated 26.05.2004 and B/2583/2003 dated 26.05.2004 without there being any prayer to that effect by either of the parties and dismissed the said appeal, which is erroneous. When once the 5th respondent being subordinate to the 3rd respondent-Joint Collector filed a counter stating that the aforesaid succession certificate is not traceable in the record, without verifying the genuineness of the existence of the same, he passed the impugned order mechanically, without application of mind, by relegating the parties to the civil Court for deciding the title over the subject property. The 3rd respondent not only affirmed the orders of the 4th respondent in respect of setting aside the mutation orders in favour of the 1st respondent, but also committed an error by relegating the parties to the civil court in regard to entries in revenue records. There is no dispute with regard to principle laid down in the judgments relied on by the learned Senior Counsel for the appellant, but the same are not applicable to the facts and circumstances of the case on

hand.

22. Since learned Single Judge has considered all the issues elaborately along with the material filed in support of the contentions of the respective parties and came to the just conclusion that the impugned orders dated 04.05.2013 and 18.05.2013 passed by the 3rd respondent are not tenable and accordingly set aside the same by remanding the matter, as such, we do not see any reason to interfere with the same, by exercising the jurisdiction under Clause 15 of Letter Patent. The order of status quo granted by the learned Single Judge on 23.07.2013 shall continue till the order passed by the 2nd respondent.

Accordingly, both these writ appeals are dismissed confirming the Common Order passed by the learned Single Judge dated 23.03.2018 in W.P.Nos.20585 and 20586 of 2013. No order as to costs. As a sequel thereto, miscellaneous petitions, if any, pending in these Writ Appeals, shall stand closed.