(2014) 08 AP CK 0109

In the Andhra Pradesh High Court

Case No : Writ Appeal No. 1056 of 2014

Peruri Venkata Chinna Krishnnaiah APPELLANT

Vs

The Joint Collector RESPONDENT

Date of Decision : 07-08-2014

Acts Referred:

Andhra Pradesh Rights in Land and Pattadar Pass Books Act, 1971 — Section 5(5), 8(2), 9

Citation : (2014) 6 ALD 692 : (2014) 6 ALD(Cri) 692 : (2015) 1 ALT 231 : (2015) ALT(Rev) 92

Hon'ble Judges : Kalyan Jyoti Sengupta, C.J;Sanjay Kumar, J

Bench : Division Bench

Advocate : V.V.N. Narayana Rao, Advocate for the Appellant; Madhavi Priya Mantena, Advocate for the Respondent

Judgement

Kalyan Jyoti Sengupta, C.J.—This writ appeal has been filed questioning the judgment and order of the Hon''ble single Judge Dt. 27.6.2014 by which His Lordship has been pleaded to dismiss the writ petition declining to grant relief as prayed therein.

2. Short facts leading to preferring this appeal are as follows. The appellant - writ petitioner''s uncle, namely, Peruri Varaha Laxminarasimha Rao before his death is alleged to have executed last Will dated 11.06.2005. After death of his uncle, on the strength of this document, which is unregistered one, the appellant made an application for rectification of revenue record in relation to the property, allegedly bequeathed in his favour. The third respondent Tahsildar accordingly pursuant thereto had rectified the revenue record and issued pattadar pass book.

3. The fourth respondent, being aunt of the appellant and widow of said Varaha Laxminarasimha Rao, preferred appeal against the aforesaid order allowing correction of the revenue record and issuing pattadar pass book. The appellate authority, namely, the Revenue Divisional Officer reversed the order of the Tahsildar and cancelled the pattadar pass book. The appellant - writ petitioner

filed a revision application against this order before the Joint Collector, who too dismissed the revision application on 26th March, 2008 holding that order of the appellate authority was perfectly justified.

4. The basis of filing of the revision application by the appellant was that the appellate authority would not have entertained the appeal under the Statute as he filed a civil suit before the Civil Court where necessary relief was sought for touching the legality and validity of the Will relating to disposition of the property. The appellate authority overruling this objection decided the matter allowing the appeal on 8.3.2007. The revision application was filed reiterating the same contention unsuccessfully. The writ petition was filed thereafter on 9.4.2008 then the suit filed by the appellant was pending and it was dismissed on 21.12.2012 by detailed and reasoned judgment by the learned Senior Civil Judge. It appears that the Civil Court thoroughly disbelieved story of execution of the alleged Will. Consequently declaration of right was not granted in favour of the appellant.

5. It is true, when the appellate authority in the Revenue Department decided the matter, the suit was pending. Even at the time of filing writ petition also it was pending. But when the writ petition was heard finally on 22.6.2014 the suit was dismissed and appeal was preferred without any subsisting interim order staying operation of the judgment and order of learned trial Civil Court. Thus because of subsequent events, as it was found by the learned single Judge, that the appellant did not had and have any subsisting right.

6. Learned counsel for the appellant emphatically urges that the orders of the appellate authority and the revisional authority are nullity and without jurisdiction because Statute provides that if the matter concerning identical issue is pending before Civil Court, nothing is to be decided by those authorities. In this context, he has referred to Rule 9(1)(c)(ii) of the Andhra Pradesh Rights in land and Pattadar Pass Books Rules, 1989 (for short, ''the Rules''), which is reproduced hereunder:

"9(1)(c)(ii). In respect of cases falling under Rule 9(1)(a)(i), the Mandal Revenue Officer shall hold a summary enquiry as to who has the right to succeed to the property of the deceased registered holder, according to the principles of the Law of Succession which govern the case and give notice to all persons known or believed to be interested to the effect that the registry will be made in the name of the person found to be entitled, unless a declaration if filed, within three months from the date of the notice, by any person objecting to the registry, stating that he has instituted a suit in a Civil Court to establish his superior title and an authenticated copy of the plaint in the suit is produced. If no declaration is filed, the registry should be made as stated in the notice, at the expiration of three months. If a declaration is filed, the result of the suit should be awaited before taking further action."

7. In our view, the aforesaid provision does not ouster the power of the appellate

authority as provided in this Rule. Above Rule in our view will be applicable at the time of altering register by the Mandal Revenue Officer. We, therefore, examine what is jurisdiction of the appellate authority under the Andhra Pradesh Rights in Land and Pattadar Pass Books Act, 1971.

Section 5(5) of the Act provides as follows:

"5(5). Against every order of the Mandal Revenue Officer either making an amendment in the record of rights or refusing to make such an amendment, an appeal shall lie to the Revenue Divisional Officer or such authority as may be prescribed, within a period of sixty days from the date of communication of the said order and the decision of the appellate authority thereon shall subject to the provisions of Section 9, be final."

8. In this case, the revenue record was amended on the strength of the alleged Will. If it is an order within the meaning of Section 5(5) of the Act, we are unable to accept the contention that the appellate authority has no jurisdiction to decide when the suit was pending. However, the finality will reach subject to Section 8(2) of the Act, which reads as under:

"8(2). If any person is aggrieved as to any rights of which he is in possession by an entry made in any record of rights he 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, 1963 (Central Act 47 of 1963) and the entry in the record of rights shall be amended in accordance with any such declaration."

9. Accordingly, as this contention fails, we do not find any law that fetters the power of the statutory authorities, namely the appellate authority and the revisional authority to scrutinize act and action of Mandal Revenue Officer.

10. As the things stand today in this matter order of the Appellate Authority is perfectly justified since fist Civil Court has refused to accept the Will for its operation, however, it will be subject to result of the first appeal. The learned single Judge has taken care of these things. We only mention that the order of the appellate authority as accepted by the revisional authority will be subject to decision of the Civil Court where Will is again sought to be proved to be genuine. We do not find any merit in this appeal.

11. The appeal is accordingly dismissed. There will be no order as to costs.

Consequently, pending miscellaneous petitions, shall also stand dismissed.

