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(2015) 02 AP CK 0003

In the Andhra Pradesh High Court

Case No : Writ Petition No. 7626 of 2006

Susheela and Others APPELLANT

Vs

A. Gopal Reddy and Others RESPONDENT

Date of Decision : 25-02-2015

Acts Referred:

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

Citation : (2015) 4 ALD 248

Hon'ble Judges : P. Naveen Rao, J

Bench : Single Bench

Advocate : M. Laxman, for the Appellant; M. Damodar Reddy, Learned Counsel, Advocates for the Respondent

Final Decision : Dismissed

Judgement

P. Naveen Rao, J.—Petitioners are the legal heirs of Late Sri A. Penta Reddy and respondents 1 to 3 are the brothers of Penta Reddy. There is an inter se claim with reference to the entitlement of the petitioners as legal heirs of Penta Reddy and respondents 1 to 3 as brothers of Penta Reddy in the properties in Survey Nos. 2 (Ac. 0.28 guntas), 52 (Ac. 2.00 guntas) and 94 (Ac. 2.28 guntas), in all Ac. 5.16 guntas, situated at Thimmapur Revenue Village of Kothur Mandal, Mahaboobnagar District. Respondents 1 to 3 filed an application in Form 3A on 13.11.1990 praying to grant succession in favour of them along with three sons of Penta Reddy since the above said lands are ancestral properties. The Mandal Revenue Officer, Kothur Mandal, Mahaboobnagar District (5th respondent) issued notice on 26.11.1990 calling for objections. Since Penta Reddy died in the year 1983, the petitioners herein as legal heirs of Penta Reddy contested the claim of respondents 1 to 3 herein by filing their objections.

2. According to the applicants before the Mandal Revenue Officer, the above said lands in addition to other lands were originally acquired by Late Sri Chenna Reddy, who is grand father of Penta Reddy and respondents 1 to 3 herein. The said properties were succeeded by Sri Kista Reddy and that being a joint family

property, respondents 1 to 3 herein are also entitled to equal share along with Penta Reddy and, therefore, they are entitled to mutate their names in the revenue records. In support of their contention that the said property is a joint family property and, therefore, they are entitled to a share, the applicants therein have also relied upon the declaration given by Penta Reddy in the year 1976 under the A.P. Land Reforms (Ceiling on Agricultural Holdings) Act, 1971, declaring the said land as belonging to joint family. A similar declaration was also given by the applicants. The applicants disputed the stand of the petitioners herein that the said property is the self-acquired property of Penta Reddy; that an oral partition took place among the family members and in the said oral partition, the subject lands were excluded from the partition as there was a clear understanding that the subject land belongs to Penta Reddy and not joint family property.

3. Having considered the rival contentions and on verification of revenue records, the Mandal Revenue Officer vide his orders, dated 15.03.1991, held that in view of the declaration given by the petitioners as well as the applicants claiming that the subject lands as belonging to joint family property and as the objectors failed to bring on record any evidence to show that it is a self-acquired property of Penta Reddy, the claim of the applicants was valid. The Mandal Revenue Officer also held that the objectors themselves have admitted the subject property as joint family lands and the above lands were partitioned among them i.e., between the successors of Penta Reddy and the applicants and having peaceful possession of the lands till date. The Mandal Revenue Officer also noticed, from the revenue records, that from the year 1982-83 onwards, the names of the applicants were also reflected in the revenue records and the name of Kista Reddy was recorded as cultivator on all extents of lands, which are even otherwise claimed as joint family properties till his death since he was the kartha of the family and not because the said land was acquired by him. The Mandal Revenue Officer also rejected the contention of the objectors that there is serious dispute with reference to succession and the revenue Court has no power and jurisdiction to adjudicate succession claim by relying on the provision contained in Rule 9(1)(c)(ii) of the A.P. Rights in Land and Pattadar Pass Books Rules, 1989 (for short, the Rules of 1989). Accordingly, the names of the applicants therein were reflected in the revenue records.

4. The petitioners herein filed revision before the Joint Collector, Mahaboobnagar District, Mahaboobnagar (4th respondent) in the year 2003. The revision was considered and orders were passed on 05.11.2005. The Joint Collector affirmed the orders of the Mandal Revenue Officer (5th respondent) and rejected the revision petition. Aggrieved thereby, this writ petition is instituted.

5. Learned counsel for the petitioners contends that there is a serious dispute regarding succession between the petitioners as legal heirs of Penta Reddy and respondents 1 to 3 herein, who are the applicants before the Mandal Revenue Officer. When a serious disputed question of fact is involved, the Mandal Revenue

Officer as a revenue Court is denuded of power to adjudicate and, therefore, ought not to have granted succession certificate holding the subject lands as belonging to joint family. Such decision of the Mandal Revenue Officer is ex facie illegal in excess of jurisdiction and competency. Learned counsel for the petitioners further contended that the property in issue is not ancestral property, but it is a self-acquired property of Penta Reddy and, therefore, respondents 1 to 3 have no manner of right to claim share in the subject properties.

6. In support of his contentions, the learned counsel for the petitioners placed reliance on a decision of this Court in K.G. Krishna Murthy v. Balappa and others AIR 1985 NOC 6 (ANDH PRA). Learned counsel for the petitioners also relied upon the decision of this Court in K. Pratap Reddy and Others Vs. The Joint Collector and Others, (2009) 2 ALD 212 : (2009) 2 ALT 742 . Both the decisions relate to the power of the revenue Court in deciding the disputed questions of fact.

7. Sri M. Damodar Reddy, learned counsel appearing for respondents 1 to 3 contend that the subject property is ancestral property originally acquired by Chenna Reddy, succeeded by Kista Reddy and thereon devolved upon respondents 1 to 3 and Penta Reddy. The fact that in the year 1976, declaration was filed by Penta Reddy as well as respondents 1 to 3 under the A.P. Land Reforms (Ceiling on Agricultural Holdings) Act, 1971, showing the subject land as belonging to Joint family clearly support their version that it is a joint family property. Learned counsel for respondents 1 to 3 further contended that only on the ground that in the revenue records the name of Penta Reddy was shown, the successors of Penta Reddy were trying to take advantage to claim that it is a self-acquired property of Penta Reddy. Learned counsel for respondents 1 to 3 further contends that no material is brought on record to show that it is a self-acquired property and is not part of the joint family property and, therefore, they are alone entitled to succeed the entire extent of the subject property.

8. Having regard to the above contentions, the point that arises for consideration in this writ petition is whether the Mandal Revenue Officer exceeded his jurisdiction in acceding to the request of applicants before him (respondents 1 to 3) for grant of succession certificate by declaring the subject lands as belonging to joint family ?

9. The application before the Mandal Revenue Officer was filed under Section 3 of the Andhra Pradesh Rights in Land and Pattadar Pass Books Act, 1971 (for short, the Act of 1971). Thereupon in accordance with the provision contained in the A.P. Rights in Land and Pattadar Pass Books Rules, 1989, the Mandal Revenue Officer conducted enquiry and after giving due opportunity to the objectors and on detailed consideration of the revenue records, passed orders on 15.03.1991. The objection as to maintainability of such application and the competency of the Mandal Revenue Officer to decide the disputed questions of fact with reference to the succession was considered and specifically rejected by the Mandal Revenue Officer. In support of his decision, the Mandal Revenue Officer placed reliance on

the provision contained in Rule 9(1)(a)(i) read with Rule 9(1)(c)(i) of the A.P. Rights in Land and Pattadar Pass Books Rules, 1989. The said provisions read as under:

"9(1)(a)(i). all cases requiring change of Registry necessitated by the death of registered holder i.e., succession by heirship, if succession is not disputed. With regard to the entry of the names of the heirs, the names of all the heirs entitled to shares in the property should be registered.

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."

10. The reading of the above provisions would make it clear that the Mandal Revenue Officer is competent to grant the certificate as sought; entitled to enquire into the issue by considering the rival claims; and such enquiry is summary enquiry. However, it is permissible for the objector to bring it to the notice of the Mandal Revenue Officer that on the same subject the objectors have instituted civil litigation and the same is pending consideration. The provision in Rule 9(1)(c)(ii) enables objectors three (3) months time to institute suit in civil Court and file proof of institution of such suit before the Mandal Revenue Officer. In such a case, the Mandal Revenue Officer has to postpone taking decision till the matter is adjudicated by the civil Court. Thereupon he would have to follow the declaration given by the said Court. In the present case, admittedly, the petitioners have not opted to the said course. Thus, there was no restraint imposed on the Mandal Revenue Officer to decide the issue raised before him. The scope of power of the revenue Courts under Rule 9 of the Rules of 1989 was considered by this Court in the two decisions relied upon by the petitioners.

11. In K.G. Krishna Murthys Case (Supra), the learned Single Judge of this Court held that the orders of the Courts of limited jurisdiction like Revenue Courts, are only conclusive as far as the proceedings are concerned. The Revenue Courts have no power or jurisdiction to decide the title conclusively. Subject to the conditions mentioned under the statute, they have got limited jurisdiction conferred thereunder. This Court observed that mutation proceedings are only for the fiscal purposes and they are made only to enable the collection of land revenue to the Government and mutation proceedings also are not conclusive

regarding title.

12. In K. Pratap Reddys Case (Supra), the scope of power available under the Act of 1971 and the Rules of 1989 was considered in detail. This Court held as under:

"The Rules of 1989 framed under the Act of 1971 detail the procedure to be followed by the revenue authorities in the course of preparation of the record of rights as envisaged by the Act. The scheme of the said Rules clearly indicates that the revenue authorities are required to hold a summary enquiry into issues of title also in certain circumstances while deciding disputes as to the entries to be incorporated in the record of rights. The decision of a learned Division Bench of this Court in SINGAMANENI PULLAMMAs case (supra) is also to this effect. However, this authorization to the revenue authorities is subject to judicial determination of disputes over issues of title and as demonstrated by Rule 9(1)(c)(ii), once a declaration is filed by a party that he has instituted a suit in a civil Court to establish his title, the revenue authority is required to await the result of such suit before taking further action. This Rule makes it clear that even in cases involving disputes as to succession to the property of the deceased registered holder, the Mandal Revenue Officer in exercise of his powers under this Rule is required to hold a summary enquiry and decide as to who has the right to succeed to such property by applying the law of succession governing the case."

This Court further held as under:

"It is however to be noted that revenue authorities are not substitutes for the Courts of competent civil jurisdiction and it is for the party concerned to invoke such jurisdiction so as to bar the summary enquiry by the revenue authorities into issues of title in particular given circumstances. Needless to state revenue authorities, in such a summary enquiry, would not be capable of deciding complicated questions of title. The scope and circumstances of such enquiry by revenue authorities into issues of title is circumscribed by Section 5 of the Act of 1971 read with Rule 9(1)(a)(i), (ii) and (iii) of the Rules of 1989. Under Rule 9(1)(a)(i), the Mandal Revenue Officer is empowered to deal with change of Registry owing to the death of the registered holder. Under Rule 9(1)(a)(ii), the Mandal Revenue Officer is authorized to entertain a dispute where there is a break in the chain of registered documents, if the change of registry is based on a sale, gift etc. through registered documents. Under Rule 9(1)(a)(iii), disputes pertaining to grant of joint pattas of a joint Hindu family shall be referred to the Mandal Revenue Officer. Under Rule 9(1)(c)(iii), the Mandal Revenue Officer is entitled to resolve disputes involving a break in the chain of registered documents by relying on certain other evidence such as statements of other ryots and cist receipts. Under Rule 9(1)(c)(ii), the Mandal Revenue Officer is empowered to hold a summary enquiry as to who has the right to succeed to the property of a registered holder. These, then, are the only disputes that can be resolved by the Mandal Revenue Officer under the scheme of the Act of 1971 and the Rules of 1989."

The aforesaid provisions demonstrate that the revenue authorities, under the Act of 1971 and the Rules of 1989, are empowered to undertake a summary appraisal and enquiry of particular disputes in respect of title. Such enquiry is obviously not a substitute for an adjudication by a Civil Court of competent jurisdiction. In the course of such enquiry, it would not be open to the revenue authority to set aside transactions or adjudicate complicated issues falling out side the scope of Rule 9(1)(a)(i), (ii) and (iii) of the Rules of 1989.

13. It is, thus, clear that power is vested in the revenue Court to enquire into the dispute as per the objections raised by persons opposing grant of certificate claimed by the applicants, but such enquiry is not a detailed enquiry into disputed questions of fact, but one in the nature of summary enquiry to determine whether the claim is validly made.

14. In the instant case, the facts as admitted are, as early as in the year 1976, Penta Reddy and respondents 1 to 3 herein have filed declarations under the A.P. Land Reforms (Ceiling on Agricultural Holdings) Act, 1971, showing this extent of land as belonging to joint family. If the contention of the petitioners is accepted, then it would amount to late Penta Reddy giving a false declaration under the A.P. Land Reforms (Ceiling on Agricultural Holdings) Act, 1971, describing the subject property as belonging to joint family property and escaping from the rigors of the said Act. Thus, either the petitioners have to contend that a false declaration was made or the petitioners have to stand by the declaration given by Penta Reddy. Without pleading that a false declaration was made, the petitioners herein cannot take a different stand and to claim the property as acquired by Penta Reddy. Thus, the declaration given in the year 1976 conclusively proves the factum of property as belonging to joint family and not a self-acquired property of Penta Reddy. As noticed by the Mandal Revenue Officer, no other material is brought on record to show that property was acquired by Penta Reddy and the property was always treated as self-acquired property of Penta Reddy. The Mandal Revenue Officer has also held that the name of Penta Reddy was reflected in the revenue records since he was the kartha of the family being the eldest son of Kista Reddy. This finding of the Mandal Revenue Officer is not disputed. The revisional authority concurred with the said finding of the Mandal Revenue Officer.

15. Under Section 5 of the Act of 1971, on the decision of the Mandal Revenue Officer, an appeal shall lie to the Revenue Divisional Officer and such appeal shall be filed within 60 days from the date of communication of the decision of the Mandal Revenue Officer. Admittedly, no such appeal was filed and directly invoking the provision under Section 9 of the Act of 1971, without exhausting the remedy of appeal, a revision was filed before the Joint Collector after more than 12 years. The said revision was entertained, but dismissed on merits. No explanation is forthcoming as to why the petitioners kept quiet for 12 years and allowed the decision of the Mandal Revenue Officer to stand for such a long time. This unexplained delay also mitigate against the claim of the petitioners at this

stage. The petitioners having not exhausted the right of appeal within the statutory limitation prescribed, cannot take advantage of provision contained in Section 9 of the Act of 1971 to file a revision directly. Section 9 of the Act of 1971 though does not prescribe time limit for preferring a revision, such revision has to be filed within reasonable time. Twelve years cannot be treated as reasonable time, more so, when it is concerning the status of the land in issue. The petitioners are seeking to upset an issue which was concluded by the Mandal Revenue Officer on 15.03.1991, by filing a revision after 12 years and thereafter preferring this writ petition. Thus, the petitioners are not entitled to equitable relief, even assuming that there was serious dispute regarding the status of the joint family properties. Thus, I see no merit in the writ petition.

16. The Writ Petition is, accordingly, dismissed. There shall be no order as to costs. Miscellaneous petitions, if any, pending in this writ petition shall stand closed.