

HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD

SATURDAY, THE TWENTY FIRST DAY OF SEPTEMBER
TWO THOUSAND AND TWENTY FOUR

PRESENT

THE HONOURABLE THE CHIEF JUSTICE ALOK ARADHE
AND

THE HONOURABLE SRI JUSTICE J. SREENIVAS RAO

WRIT APPEAL NO: 1294 OF 2012

Writ Appeal under clause 15 of the Letters Patent against the order dated 20-09-2012 in W.P.No.10280 of 2002. on the file of the High Court.

Between:

1. P. Krishna Murthy (died)
2. P.Dhananjaya, S/o. Late P. Krishna Murthy, Occ Advocate, R/o. H.No.16-2-139/1, Dayananda Nagar, Akbar Bagh, New Malakpet, Hyderabad.
3. Smt. T. Dhanan Lakshmi, W/o. Dr. T. Dhananjaya, Occ Household, D/o. Late P. Krishna Murthy, R/o. Venkateshwara Nagar, Mandal Chintapally (Mall), Nalgonda District.

.....WRIT APPELLANTS

AND

1. Smt. Panuganti Laxmamma, W/o.Late Venkaiah, Major, Occ ; Housewife, Azampur Village, P.A. Pally, Nalgonda District.
2. The Jt. Collector, Nalgonda District, Nalgonda.
3. P. Yadagiri, S/o. Late P. Krishna Murthy, R/o. Opp, Post and Mandal Office Devarkonda, District Nalgonda.
4. Smt. Chevva Vijaya Lakshmi, W/o. Lated Chevva Surender, D/o. Late P. Krishna Murthy, R/o. Opp. Govt Hospital, Nagar Kurnool, Mahaboobnagar District.
5. Smt M. Bhagyalakshmi, W/o. N. Chandrasekhar, D/o. Late. P. Krishna Murthy R/o. Sita Mansion, Flat No.8, BIG 36 Sector I, MVP Colony, Visakhapatnam.

.....RESPONDENTS

I.A.NO:1 OF 2012 (WAMP.NO:2779 OF 2012)

Petition Under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to direct the Respondents to please to stay the operation of the Orders Dt: 20-09-2012 passed in W.P. No. 10280 of 2002 passed by Hon'ble Acting Chief Justice Sri Pinaki Chandra Ghose, confirming the Order of the 2nd Respondent Dt. 24-04.2002 in File No. C3/27988 of 2000 pending disposal of the writ appeal.

Counsel for Appellants : SRI B.VENKAT RAMA RAO

Counsel for Respondent No.1 : SRI P.CHANDRA SEKHAR REDDY

Counsel for Respondent No.2 : SRI MURALIDHAR REDDY KATRAM, GP FOR REVENUE

Counsel for Respondent No.3 : SRI J.UGRANARASIMHA

Counsel for Respondent Nos.4 & 5 : --

The Court made the following ORDER

THE HON'BLE THE CHIEF JUSTICE ALOK ARADHE

AND

THE HON'BLE SRI JUSTICE J.SREENIVAS RAO

WRIT APPEAL No.1294 of 2012

JUDGMENT: *(Per the Hon'ble Sri Justice J. Sreenivas Rao)*

This intra-court appeal is filed by the appellants aggrieved by the order dated 20.09.2012 passed by a learned Single Judge, by which a writ petition i.e., W.P.No.10280 of 2002 has been dismissed.

2. Heard Sri B. Venkat Rama Rao, learned counsel for the appellants, Sri P.Chandra Shekar Reddy, learned counsel for respondent No.1, and Sri Muralidhar Reddy Katram, learned Government Pleader for Revenue appearing for respondent No.2. No representation on behalf of respondent Nos.3 to 5.

3. On 16.12.2023, learned counsel for the appellants seeks time to file necessary application for substitution of legal representatives of the deceased respondent No.1. However, during the course of hearing, he submitted that respondent No.1 is not having any other legal heirs and no petition seeking to bring the legal representatives on record is required to be filed.

Brief facts of the case:

4. The claim of appellant No.1 is that he is owner and possessor of the agricultural lands admeasuring Ac.12.24 gts. in Sy.No.65 and Ac.14.01 gts. in Sy.No.274/1 and 2, situated at Azampur Village of P.A.Pally Mandal, Nalgonda District, (for short, 'the subject property' having succeeded the estate of his father, *viz.*, Panuganti Ayyanna and his name was mutated in the revenue records in the year 1964-65. It is further averred that he being owner and exclusive possessor of the subject property, settled Ac.14.01 gts. in Sy.No.274/1 and 2 in favour of his three daughters through registered gift settlement deed *vide* document bearing No.530 of 1995 dated 02.03.1995 and they sold out the said property through registered sale deeds *vide* document bearing Nos.5718 of 1997 and 5817 of 1997 dated 21.11.1997 and 24.11.1997 respectively and the remaining landed property to an extent of Ac.12.24 gts. in Sy.No.65 is in his possession. It is further averred that his brother, *viz.*, Panuganti Venkaiah, who is the husband of respondent No.1, died prior to 1950, as such, respondent No.1 has not succeeded the estate, in view of the law prevailing to the widows prior to 1956 and for the first time right to the property to women is made applicable after commencement of Hindu Succession Act, 1956. It is averred that his father P.Ayyanna died in the year 1960-61 leaving behind

appellant No.1, respondent No.1 and Panuganti Lachamma, who is the wife of P.Ayyanna, as his survival legal heirs and thereafter on the death of P.Lachamma, who is the mother of appellant No.1, he succeeded the entire estate of his deceased father P. Ayyanna.

4.1. While things stood thus, respondent No.1 with an ulterior motive to claim the share in the property approached respondent No.2 and respondent No.2 has taken *suo motu* revision exercising the powers conferred under Section 9 of the Andhra Pradesh/Telangana Rights in Land and Pattadar Pass Books Act, 1971 (for short, 'the RoR Act') passed order on 24.04.2002 in Case No.C3/27988/2000 allotting land in favour of appellant No.1, respondent No.1 and Panuganti Lachamma, who is the wife of P.Ayyanna, though he is not having right and jurisdiction to pass the said order. Aggrieved by the same, appellant No.1 filed W.P.No.10280 of 2002. Learned Single Judge, while dismissing the said writ petition, held that if the appellants are so aggrieved by such rectification, their remedy is to approach the Civil Court of competent jurisdiction seeking declaration of such right. Aggrieved by the same, the appellants have preferred this writ appeal.

Submissions of learned counsel for the appellants:

5. Learned counsel for the appellants vehemently contended that respondent No.2 is not having authority or jurisdiction to initiate *suo motu* revision under Section 9 of the RoR Act and pass order for mutation of the name of respondent No.1 in the revenue records by allotting share in her favour. Admittedly, respondent No.1 has to approach the competent Civil Court to establish her rights in respect of the subject property. He further contended that originally P.Ayyanna was owner of the subject land and he is having wife, by name P.Lachamma and two sons *viz.*, P.Venkaiah and appellant No.1-P.Krishna Murthy and said Venkaiah is predeceased to his father P.Ayyanna, leaving behind his wife Lachamma, who died in the year 1970. Appellant No.1 is having two sons i.e., appellant No.2 and respondent No.3 and three daughters i.e., appellant No.3, respondent Nos.4 and 5. The entries pertaining to the subject land stands are in the name of appellant No.1. Respondent No.2 is not having jurisdiction to determine the ownership rights of the parties and he has to direct respondent No.1 to approach the competent Civil Court.

5.1. He further contended that as per the provisions of Hindu Women's Right to Property Act, 1937, though it was brought into

force in the whole India, it is not applicable to the State of Hyderabad and for the first time, the said Act was made applicable to the Hyderabad State in the year 1952 and it is extended for agricultural properties. Therefore, as on the date of death of husband of respondent No.1, she has neither limited right nor she is the successor to the estate of late P.Ayyanna and when the Hindu Succession Act, 1956, came into force, the widows were recognized as Class-I heirs, which is prospective in nature. In such circumstances, respondent No.2 ought to have directed respondent No.1 to approach competent Civil Court to establish her claim and rights over the subject property, and on the other hand, he passed order dated 24.04.2002 basing on the admission made by appellant No.1 in Land Ceiling declaration filed by him in Ceiling Case No.5013/1975/DVK. Basing on such admission, respondent No.2 is not entitled to allot share in favour of respondent No.1. He further contended that learned Single Judge instead of directing respondent No.1 to approach the competent Civil Court directed the appellants to approach the Civil Court as per the provisions of Section 8(2) of the RoR Act and the same is contrary to law.

5.2. In support of his contention, he relied upon the following judgments:

i) **Bandi Subash Reddy and Ors. V. K.Satyanarayana Reddy and Ors.**¹, wherein the erstwhile High Court of Judicature of Andhra Pradesh at Hyderabad held at para 15 that:

“As regards the contention that the sale deed is supported by consideration atleast to the extent of Rs. 33,000/- and therefore, the learned Subordinate Judge ought to have dismissed the suit of the respondents 1 and 2 to that extent also cannot be accepted in view of the fact that the sale deed recites that Rs. 8,000/- was paid as consideration and except the oral evidence, there is no other evidence in respect of that finding. Since the recital in the sale deed cannot be controverted by oral evidence, I reject the contention of the learned counsel. However, since the sale deed categorically says that Rs. 8,000/- was paid as consideration and since it is found that the sale deed is void as it was executed in violation of Section 4 of the Dowry Prohibition Act, respondents 1 and 2 are liable to return Rs. 8,000/- paid as consideration to appellant Nos. 1, 2 and 3. They are also liable to pay interest at 12% per annum till the payment of the same from the date of the suit.”

ii) **Vaijanath and others v. Guramma and another**², wherein the Hon'ble Supreme Court held at para 9 that:

“The appellants, however, rely upon a subsequent Act passed by the State of Hyderabad, namely, Hyderabad Hindu Women's Rights to Property (Extension to Agricultural Lands)

¹ 1996 (3) ALD 709

² (1999) 1 SCC 292

Act, 1954. Section 2 of the said Act provides that the "term 'property' in the Hindu Women's Rights to Property Act as in force in the State of Hyderabad shall include agricultural land". This Act received the assent of the President on 15-10-1954 and was published in the State Gazette dated 22-10-1954. It was submitted that prior to the enactment of the Hyderabad Hindu Women's Rights to Property (Extension to Agricultural Lands) Act, 1954, the Hindu Women's Rights to Property Act as enacted in 1952 would not apply to agricultural land. The High Court has rightly negated this contention. A subsequent Act cannot be used to interpret the provisions of an earlier enactment in this fashion. The language of the earlier Act is wide enough to cover agricultural land also. In the entire Hindu Women's Rights to Property Act, 1937, there is nothing which would indicate that the Act does not apply to agricultural land. The word "property" is a general term which covers all kinds of property, including agricultural land. A restricted interpretation was given to the original Hindu Women's Rights to Property Act, 1937 enacted by the then Central Legislature, entirely because of the legislative entries in the Government of India Act, 1935, which excluded the legislative competence of the Central Legislature over agricultural lands. Such is not the case in respect of the Hindu Women's Rights to Property Act, 1937, as enacted by the State Legislature of the State of Hyderabad. The ratio of the Federal Court judgment, therefore, would not apply. There is, therefore, no substance in the contention that the subsequent Act of 1954 restricted the application of the Hindu Women's Rights to Property Act, 1937 brought into force by the earlier Hyderabad Act of 1952. As is pointed out by the High Court,

the Act of 1954 was enacted by way of abundant caution, to make sure that the agricultural lands were not considered as excluded from the scope of the Hindu Women's Rights to Property Act as enacted in 1952. The second Act is, therefore, clarificatory."

iii) **Edla Venkat Raj Reddy v. Edla Linga Reddy (died) per L.Rs. and others**³, wherein the erstwhile High Court of Judicature of Andhra Pradesh at Hyderabad held at para 12 that:

"It is pertinent to mention here that Ex. A4, which is the declaration said to have been filed by the first defendant in the suit under Section 8 of Act 18 of A.P. Land Reforms Act, in Col. No. 1 at page No. 1 contains the names of defendant No. 1 and other members of the family. The particulars of land in respect of which declaration has been filed are found at page No. 3 of the declaration. In respect of the suit lands in question, which are relevant for the purpose of this appeal, Col. No. 7 mentions that the total land to an extent of Ac. 43.01 gt. is in equal enjoyment of the four brothers. In respect of two other Sy. Nos., Sy. No. 356 is described as ancestral and against Sy. No. 365 there is a mention of "assignment". In the statement recorded in those proceedings, a certified copy of which is marked as Ex. A5, the first defendant has stated that the lands in Sy. Nos. 377 to 382 are held by him as a protected tenant and that patta certificate under Section 38-A has also been issued accordingly. He however, states that on the spot his cousin,

³ 2000 (5) ALT 299

himself and his brothers *Yadagiri Reddy* and *Venkat Raj Reddy* are in possession with equal shares.”

Submissions of learned Government Pleader:

6. Learned Government Pleader appearing for respondent No.2 submitted that appellant No.1 himself filed declaration in Land Ceiling Case, wherein he admitted that respondent No.1 is having half share in the lands of late P.Ayyanna. Respondent No.2 after due verification of the records passed order dated 24.04.2002, wherein it is specifically stated that after the death of P.Ayyanna, the names of his son, namely P.Krishna Murthy, daughter-in-law Laxamma and wife Lachamma were recorded in the revenue records for the year 1963-64. However, in the subsequent record, the name of Laxamma i.e., respondent No.1, was not recorded. Respondent No.2 after due verification of records rightly passed order for correction of revenue entries in respect of the share of respondent No.1.

6.1. He further contended that respondent No.2 had not decided the title or rights of either of the parties either under the provisions of Hindu Women's Right to Property Act, 1937 or Hindu Succession Act, 1956 and he only passed order as per the provisions of the RoR Act. Learned Single Judge rightly dismissed the writ petition and

directed the appellants to approach the competent Civil Court under Section 8(2) of the RoR Act and there is no illegality or irregularity in the impugned order passed by the learned Single Judge.

7. Learned counsel appearing for respondent No.1 has reiterated the submissions of learned Government Pleader.

8. Having considered the rival submissions made by the respective parties and after perusal of the material available on record, it reveals that one P.Ayyanna was the original owner of the subject lands covered by Sy.Nos.65 and 274/1 and 2 admeasuring Ac.12.24 gts. and Ac.14.01 gts respectively, situated at Azampur Village of P.A.Pally Mandal, Nalgonda District. After his death, the said lands were mutated in favour of his legal heirs *viz.*, appellant No.1, respondent No.1 and Lachamma, who is wife of P.Ayyanna, in the revenue records i.e., Faisal Patti for the year 1963-64. Subsequently, the name of appellant No.1 alone was recorded in revenue records, instead of recording the names of respondent No.1 and Lachamma. Aggrieved by the said revenue entries, respondent No.1 filed grievance petition before the District Collector, Nalgonda, who in turn forwarded the same to the Mandal Revenue Officer, P.A.Pally, for enquiry and report. The then Mandal Revenue Officer, P.A.Pally, in his letter dated 10.04.1997 in Ref.No.F/132/96

reported that original pattadar of Sy.No.65 and 274/1, 2 was Sri P.Ayyanna and after his death, the lands were got mutated in favour of his legal heirs, i.e., wife and (2) sons in the year 1963-64 through faisal patti. The then Village Revenue Officer entered the name of appellant No.1. In the meantime, P.Lachamma, wife of P.Ayyanna, died. Hence, both appellant No.1 and respondent No.1 are the equal shareholders for the lands of P.Ayyanna and requested to accord permission to rectify the entries. Respondent No.2 initiated the proceedings exercising the powers conferred under Section 9 of the RoR Act and after following the due procedure and also after due verification of the records as well as after hearing the parties passed order dated 24.04.2002 directing the Mandal Revenue Officer, P.A.Pally, to record the names of appellant No.1, respondent No.1 and the name of P.Lachamma in Sy.Nos.65, 274/1, 2 in the revenue records.

9. Respondent No.2 while passing order specifically recorded the reasons that appellant No.1 himself filed declaration in Land Ceiling Case No.5013/75/DVK in Form No.1, wherein he admitted that respondent No.1 is having half share and further observed that subsequent to death of P.Ayyanna, the names of his legal heirs i.e., appellant No.1, respondent No.1 and P.Lachamma, were mutated in

the revenue records and continued in Faisal Patti for the year 1963-64 and in the absence of any procedure, the name of respondent No.1 was deleted in the revenue records.

10. It is pertinent to mention here that the appellants have not pleaded or raised ground about the entitlement of share pursuant to the provisions of Hindu Women's Right to Property Act, 1937 before respondent No.2 or before learned Single Judge and for the first time they raised the said ground in the writ appeal. Admittedly, respondent No.2 passed the order while exercising the powers conferred under the RoR Act basing upon the revenue records only and he has not decided the title over the subject property nor rights of the parties as per the provisions of the Hindu Women's Right to Property Act, 1937 or under Hindu Succession Act, 1956. The contention of learned counsel for the appellants that respondent No.2 is not having authority to allot share in favour of respondent No.1 is not tenable under law on the sole ground that neither respondent No.2 nor learned Single Judge have determined the rights of the parties whether respondent No.1 is entitled share as per the provisions of the Hindu Women's Right to Property Act, 1937 or under Hindu Succession Act, 1956.

11. It is already stated supra that respondent No.2 while exercising revisional powers conferred under Section 9 of the RoR Act and after due verification of the revenue records and report submitted by the Mandal Revenue Officer, P.A.Pally passed order dated 24.04.2002 that subsequent to the death of P.Ayyanna, the names of his legal heirs i.e, appellant No.1, respondent No.1 and P.Lachamma, wife of P.Ayyanna, were mutated in the revenue records in the year 1963-64. However, in subsequent years, the name of appellant No.1 was only recorded instead of recording the names of respondent No.1 and P.Lachamma. Whether respondent No.1 is not entitled to claim any rights over the property by virtue of Hindu Women's Right to Property Act or Hindu Succession Act and the appellants are only having rights over the property have to be adjudicated and decided by the competent Civil Court. It is settled proposition of law when the disputed questions of facts and title involved, the writ Court cannot adjudicate the same and the parties have to approach the competent Civil Court. Learned Single Judge, while relying upon the principle laid down in **Musku Mallaiah v. State of Andhra Pradesh**⁴, rightly held that if the appellants are so aggrieved by such rectification, their remedy is to approach the Civil Court of competent jurisdiction seeking declaration of such right.

⁴ 2005 (1) ALD (DB)

12. For the foregoing reasons, we do not find any grounds to interfere with the impugned order dated 20.09.2019 passed by the learned Single Judge while exercising the powers conferred under clause 15 of Letter Patent.

13. Accordingly, the writ appeal is dismissed, without costs.

Miscellaneous applications pending, if any, shall stand closed.

Sd/ I.NAGALAKSHMI
DEPUTY REGISTRAR

//TRUE COPY//

SECTION OFFICER

One fair copy to the HON'BLE THE CHIEF JUSTICE ALOK ARADHE
(For His Lordship's Kind Perusal)

AND

One fair copy to the HON'BLE SRI JUSTICE J. SREENIVAS RAO
(For His Lordship's Kind Perusal)

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SA

V.A.

HIGH COURT

DATED:21/09/2024

JUDGMENT

WA.No.1294 of 2012



DISMISSING THE W.A
WITHOUT COSTS.

(22) $\frac{VLS}{24/9/24}$