IN THE HIGH COURT OF ANDHRA PRADESH: AMARAVATI

CIVIL REVISION PETITION No.3039 OF 2013

% Dated 07.01.2021

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Bhavanam Ademma
w/o Siva Satyanarayana Reddy
R/o Vejendla, Chebrolu Mandal
Guntur District and another ..... Petitioners

Vs.

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The State of Andhra Pradesh,
Rep. by its Authorized Officer
Land Reforms Tribunal,
Guntur and two others ..Respondents

JUDGMENT PRONOUNCED ON: 07.01.2021

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

1. Whether Reporters of Local newspapers may be allowed to see the Judgments?

2. Whether the copies of judgment may be marked to Law Reporters/Journals

3. Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment?

*** THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY**

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! Counsel for the petitioner : Sri Srinivas Emani

^ Counsel for the respondent :
Government Pleader for Arbitration

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> HEAD NOTE:

? Cases referred

1. 1989 (3) ALT 187
2. 1978 (2) ALT 234
3. (1976) 05 ITR 849
4. AIR 1980 AP 139
5. AIR 1968 AP 291
6. (1959) 2 MLJ 502
7. AIR 2008 SC 2033
8. AIR 1980 A.P 139
9. 2001 (5) ALD 402 (F.B)
10. 2007 (4) ALD 642
11. 1978 (2) ALT 9 (NRC)
12. 1992 (2) APLJ 66 (D.B)
13. 1981 (2) An.W.R 263

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION NO.3039 OF 2013

ORDER:

The appellants in Land Reforms Appeal No.17 of 2003 on the file of the Chairman, LRAT-cum-II Additional District Judge, West Godavari, Eluru, preferred this civil revision petition under Section 21 of the Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 (for short 'the Act') and the Rules, 1974 framed thereunder (for short 'the Rules').

The parties to the petition will hereinafter referred as arrayed before this Court for convenience.

The facts of the case in nutshell are that, the petitioners are the sisters and they are claiming to be the daughters of declarant in C.C.No.1774/GNT/74 – late Adapa Venkata Subbareddy. The declarant – late Adapa Venkata Subbareddy was blessed with three daughters and they have substantial interest in the proceedings in C.C.No.1774/GNT/74.

The petitioners and their younger sister Nagendramma are the daughters to their parents Adapa Venkta Subbareddy and Vardhanamma. The declarant – late Adapa Venkata Subbareddy, announced pasupu kumkuma gifts to all the three daughters at the time of their marriage, in view of the custom prevailing since very long time in their community. Father of the petitioners being the declarant was under obligation to maintain his daughters and in view of his obligation, he had to give property to his daughters at the time of their marriage. Accordingly, the declarant – late

Adapa Venkata Subbareddy performed the marriage of the first petitioner with Bhavanam Siva Satyanarayana Reddy alias Sivareddi of Vejendla Village on 12.04.1968 at 8-29 p.m and performed the marriage of second petitioner with Kandi Subbareddy of Karumurivaripalem Village, Tsunduru Mandalam on 12.04.1968 at 1-20 a.m. Thus, the declarant performed both the marriages of the petitioners on the same day at different times. Further, the declarant announced pasupu kumkuma gift to the first petitioner by giving Ac.5-75 cents in Sy.No.129-1 and Ac.0-25 cents in Sy.No.129-1 of Vejendla village to discharge his obligation and accordingly, handed over possession of land to the first petitioner after performing the marriage, in the presence of elders. Since then, the first petitioner is claiming to be in possession and enjoyment of the property by paying land revenue to the Revenue Department to the knowledge of one and all in the village. The Revenue Department also issued pattadar passbooks and title deeds to the first petitioner for the above property, recognizing her rights in the land mentioned above.

The marriage of the second petitioner – Kandi Sambrajyam with Kandi Subbareddy of Karumurivaripalem Village, Tsunduru Mandalam on 12.04.1968 at 1-20 a.m was performed. The declarant announced pasupu kumkuma gift to the second petitioner by giving Ac.3-79 cents in Sy.No.128-1 and Ac.0-37 cents in Sy.No.128-3 and Ac.1-39 cents in Sy.No.129-1 of Vejendla village to discharge his obligation and accordingly, handed over possession of land to the second petitioner after performing the marriage, in the presence of elders. Since then, the second

petitioner is claiming to be in possession and enjoyment of the property by paying land revenue to the Revenue Department to the knowledge of one and all in the village. The Revenue Department also issued pattadar passbooks and title deeds to the first petitioner for the above property, recognizing her rights in the land mentioned above.

As the petitioners father was not worldly-wise and marksman, the declaration was not prepared by the declarant and it was prepared by one Vejendla Subbarayudu who do not know the petitioners family affairs and the petitioners were not aware anything about ceiling case till recently. Further, declarant- late Adapa Venkata Subbareddy died on 15.11.1995. The petitioners submits that the declarant – late Adapa Venkata Subbareddy lived with their mother in their house till his death and the petitioners came to know that the land of various extents was proposed to take possession as excess land from their father's holding, which the petitioners claim that their father had gifted to them at the time of their marriage.

It is contended that, as the declarant – late Adapa Venkata Subbareddy had no sons, their father treated them with equal rights by giving the above property to the petitioners. Hence, it is contended that the petitioners are the absolute owners of the property who are put in possession and requested to exclude the land from the holding of late Adapa Venkata Subba Reddy, which was allegedly given to the petitioners at the time of their marriage in different survey numbers.

Declaration of Declarant – late Adapa Venkata Subbareddy who filed declaration under Section 8(1) of the Act was considered and passed an order dated 04.10.1975 holding the declarant – late Adapa Venkata Subbareddy to be surplus land holder, he is liable to surrender the excess land of 0.4641 standard holding and proceedings including surrender of land was completed.

The Primary Tribunal observed that the petitioners filed the petition claiming to be the daughters of declarant – late Adapa Venkata Subbareddy who failed to prove their relationship with the declarant – late Adapa Venkata Subbareddy; consequently, the petition was dismissed by the Primary Tribunal.

The order passed by Primary Tribunal was was challenged before the Appellate Tribunal under Section 20 of the Act. The Appellate Tribunal also came to the same conclusion that the petitioners miserably failed to establish their relationship with the declarant – late Adapa Venkata Subbareddy. It is further observed that the petitioners were not in possession of the property as on the date of filing declaration and the names of these petitioners were not shown as daughters of declarant – late Adapa Venkata Subbareddy in the declaration filed under Section 8(1) of the Act. The Appellate Tribunal also observed that the petitioners failed to prove their possession over the land as claimed by them since 1968, but they are in possession since 1980 and dismissed Land Reforms Appeal No.17 of 2003 on 25.02.2013.

Aggrieved by the order passed by the Appellate Tribunal, the present civil revision petition is filed under Section 21 of the Act, raising several grounds.

The main grounds urged before this Court is; failure of both Primary Tribunal and Appellate Tribunal to look into the material available on record to infer that pasupu kumkuma gift was declared at the time of marriage, donating property to the petitioners by the declarant – late Adapa Venkata Subbareddy which they are claiming.

It is further contended that, when the petitioners are in possession of the property, a notice is required to be issued to the petitioners even at the time of surrender proceedings under Section 10 of the Act. But, no notice was served on these petitioners which is a grave illegality. It is contended that the petitioners are entitled to claim the property in different survey numbers as stated in the earlier paragraphs being the donees under oral pasupu kumkuma gifts, but for one reason or the other, Appellate Tribunal did not consider the claim of the petitioners in proper perspective and requested to set-aside the order passed by the Appellate Tribunal in Land Reforms Appeal No.17 of 2003.

During hearing, Sri Srinivas Emani, learned counsel for the petitioners reiterated the grounds urged in the petition, while contending that the petitioners filed earlier applications to implead them as legal heirs of the declarant – late Adapa Venkata Subbareddy, which is pending before the Tribunal and not yet

decided by the Primary Tribunal. But, on the ground of delay, dismissal of their claim before the Primary Tribunal is a grave illegality, since right to property is a constitutional right and delay cannot deprive the petitioners' constitutional right by deviating the procedure. It is further contended that, a notice is required to be issued when the petitioners are in possession and enjoyment of the property, atleast at the time of surrender proceedings, but, no such notice was issued. On this ground alone, revision is liable to be allowed.

Whereas, learned Government Pleader for Arbitration supported the order passed by the Appellate Tribunal in all respects and requested to dismiss the civil revision petition.

Considering rival contentions, perusing the material available on record, the points that arise for consideration are as follows:

1. ***Whether the petitioners were daughters of declarant – late Adapa Venkata Subbareddy? and whether the oral pasupu kumkuma gifts allegedly announced at the time of marriage of petitioners by the declarant – late Adapa Venkata Subbareddy is legally valid and confers any title to the schedule property?. If so, whether the property claimed by these petitioners be deleted from the excess holding of declarant – late Adapa Venkata Subbareddy by re-computing the holding?***

2. ***Whether a notice is mandatory to the persons in possession of the property at the time of surrender proceedings under Section 10 of the Act, in view of Section 7(7) read with Rule 6(1) of the Rules?***

P O I N T NO.1:

The petitioners are claiming to be the daughters of the declarant – late Adapa Venkata Subbareddy and they are claiming that the property was gifted to them at the time of their marriage, announcing "pasupu kumkuma oral gift" as per the custom prevailing in their community and that the petitioners are continuing in possession and enjoyment of the property, obtained pattadar passbooks and title deeds for the lands by paying land revenue to the revenue department. Whereas, the learned Government Pleader for Arbitration contended that there is no relationship between the petitioners and the declarant – late Adapa Venkata Subbareddy and in the absence of any relationship between them, the petitioners are not entitled to claim the relief in the petition.

The Primary Tribunal and Appellate Tribunal concluded that the petitioners failed to establish the blood relationship between the petitioners and declarant – late Adapa Venkata Subbareddy, as the declaration filed under Section 8(1) of the Act did not disclose the details of the children. Though the proceedings in the Primary Tribunal were commenced in the year 1975, till date, none of the petitioners approached either the Primary Tribunal or any other authority claiming any right in the property. But, after death of the original declarant – late Adapa Venkata Subbareddy, his wife was impleaded as legal heir of the deceased and even the wife also did not disclose the details of their children. If really, the original declarant was blessed with children, he ought to have mentioned

the details of children in the proforma of declaration itself, but did not disclose the details of the children of the declarant in the declaration filed under the Act. If the declaration relates to a family unit, details of family members of the family unit as on the specified date shall be disclosed. But, for one reason or the other, the petitioners did not disclose the details of family unit and the members of the family or the details of the children. In the absence of any details in the declaration, it is incumbent upon the petitioners to prove that the petitioners are the daughters of declarant – late Adapa Venkata Subbareddy. No iota of evidence is placed on record before the Primary Tribunal or before the Appellate Tribunal to substantiate their case that they are the children of declarant – late Adapa Venkata Subbareddy. In the absence of proof of relationship, the alleged pasupu kumuka oral gift is not believable. Before the Primary Tribunal or the Appellate Tribunal, no oral or documentary evidence is produced to substantiate their claim. Therefore, the Primary Tribunal and the Appellate Tribunal disbelieved the relationship of the petitioners and declarant – late Adapa Venkata Subbareddy and this Court cannot interfere with such finding, since the power of this Court under Section 21 of the Act is limited and identical to the jurisdiction of the Court under Section 115 of C.P.C.

According to Section 21 of the Act, an application for revision from any party aggrieved, including the Government, shall lie to the High Court, within the prescribed period, from any order

passed on appeal by the Appellate Tribunal on any of the following grounds, namely:-

(a) that it exercised a jurisdiction not vested in it by law, or

(b) that it failed to exercise a jurisdiction so vested, or

(c) that it acted in the exercise of its jurisdiction illegally or with material irregularity.

Therefore, only in three circumstances, this Court can exercise such jurisdiction in view of the limited scope.

The jurisdiction vested in all the authorities is to determine the holding with reference to the various provisions of the Act and declare surplus land for the purpose of giving it to the landless poor. Hence, every error of law which is committed by the authorities in the exercise of their jurisdiction would be very vital and it must be held that it is an error of law which touches the jurisdiction of the Tribunal. If an authority commits an illegality and determines the holding incorrectly and if the same cannot be corrected in revision, then the revisional jurisdiction of the High Court would be rendered nugatory and purposeless. Every error of law in reaching the decision is a vital error of law and must be considered as error of jurisdiction. (vide **State of A.P. v. Raji Reddy**[1]). The Tribunal under the Act have to scrutinise carefully the claims of alienations alleged to have been made under unregistered agreements of sale. (vide **P. Mahendar Reddy v. State**[2]).

In view of the law declared by the Court in the judgments referred supra, if the Court finds that there is any error of law

[1] 1989 (3) ALT 187
[2] 1978 (2) ALT 234

which is vital in determining the standard holding of a declarant, it must be considered as error of jurisdiction. But, in the present case, the relationship between the petitioners and the declarant – late Adapa Venkata Subbareddy is a question of fact that is to be decided by the authority, who are claiming to be the daughters of the declarant – late Adapa Venkata Subbareddy and Vardhanamma. Surprisingly, mother of the petitioners who is competent to speak about the blood relationship between the petitioners and declarant – late Adapa Venkata Subbareddy was not impleaded to this civil revision petition. This creates any amount of suspicion on the claim of these petitioners. More so, though the petitioners appears to be literates, they did not produce any piece of evidence like birth extract issued by competent authority, marks lists and transfer certificate issued by any school to prove relationship of petitioners with late Adapa Venkata Subbareddy. No piece of evidence is produced before the Primary Tribunal or the Appellate Tribunal or before this Court to substantiate their claim. Hence, in view of the limited jurisdiction conferred on this Court, this Court cannot interfere, since the relationship between the petitioners and declarant – late Adapa Venkata Subbareddy and Vardhanamma is a question of fact. Consequently, the contention of the petitioners is rejected.

Assuming for a moment that there was subsisting blood relationship between the petitioners and declarant – late Adapa Venkata Subbareddy and his wife Vardhanamma, the alleged oral

pasupu kumkuma gifts announced by the declarant at the time of the petitioners' marriage are not valid for various reasons.

According to the Law Lexicon by P. Ramanatha Iyer., Pasupu Kumkuma is a gift, settlement or assignment of land to a daughter. At the time of Manu, a daughter along with her brothers had a right to share in the father's property. With the passage of time, it became a duty of the father to maintain the daughter covering all the reasonable expenses.

Marriage is a sacred Hindu tradition where a father offers his daughter to become a part of the other family and therefore out of love and affection, he is allowed to offer the daughter some property, movable or immovable as gift. It is the very basic instinct of the society to claim what it thinks it has a right on and therefore moving with their instinct disputes started arising on the nature of the property that was given by a father to his daughter in marriage.

Questions were raised whether the property thereby offered falls within the ambit of term 'gift' as laid under Section 122 of the Transfer of Property Act, then requires lawful registration of the immovable property, or can it be transferred by a mere oral declaration because the property offered is a part of the duty imposed by Section 3 of the Hindu's Adoption and Maintenance Act.

The society changes and with it the laws are modified to maintain the normative culture. The final remnant is that it is the obligation of a father to maintain his daughter within in the limited scope as laid down by Section 3 of the Hindu Adoption and

Maintenance Act including marriage expenses. With this an opinion grew in the mind of the society that since Section 3 covers the ambit of expenses incurred in marriage, any property offered to the daughter for marriage cannot be termed as a 'gift' within the meaning of Section 122 of Transfer of Property Act. The mode of giving a property by the way of 'Pasupu Kumkuma' is involuntary transfer without consideration and does not hold the essential ingredients of a gift**.** Once the property is out of the ambit of Section 122 of Transfer of Property Act, it does not require a written document or a registration by law; such property can be transferred by mere oral declaration, as per traditional approach.

The oral gift is a non-testamentary instrument governed by the provisions of Transfer of Property Act, it is a transfer *inter-vivos.* Section 122 of Transfer of Property Act, defined the gift as follows:

> *"Gift" is the transfer of certain existing moveable or immoveable property made voluntarily and without consideration, by one person called the donor, to another, called the donee, and accepted by or on behalf of the donee."*

Here, the donor was the father of the petitioners. According to Section 123 of Transfer of Property Act, when the immoveable property is gifted, the transfer must be affected by a registered instrument signed by or on behalf of the donor, and attested by at least two witnesses. From a bare reading of Section 123 of Transfer of Property Act, when the immoveable property is transferred by way of gift, it must be by way of registered document. According to Section 17(a) of Registration Act, an

instrument of gift of immoveable property is to be compulsorily registered. Under Section 49 of Registration Act, no document required by Section 17 or by any provision of the Transfer of Property Act, 1882, to be registered shall, affect any immovable property comprised therein, or confer any power to adopt, or be received as evidence. Thus, a document which is compulsorily registerable under Section 17(a) of Registration Act, when not registered, the same cannot be admitted in evidence and such document would not confer any right or title over the immovable property extinguishing the right of the other. Apart from that, the property covered by gift, according to the petitioners as defined under Section 122 of Transfer of Property Act and governed by the provisions of Indian Stamp Act. Such gift of immoveable property is liable to be stamped according to Sl.No.29 of Schedule 1-A of Indian Stamp Act (A.P. Amendment Act, 1922) and the stamp duty is payable as conveyance for the value mentioned in the gift deed, equivalent to the market value of the property which is the subject matter.

In **C.G.T v. Chandrasekhara Reddy**[3], it was held by the Court that, "a Hindu father, mother or other guardian has to give his or her daughter in marriage to a suitable husband as one of their legal as well as a moral obligation. The daughter for the purpose of her marriage is moreover entitled to set apart a portion of the family property. In enacting Section 3(b)(ii) of the Hindu Adoptions and Maintenance Act, 1956, the legislature codified the

[3] (1976) 105 ITR 849

well settled principles of the Hindu Law and payment of reasonable expenses incurred at the time of the marriage is obligatory. Hence, both under general Hindu law and the Hindu Adoptions and Maintenance Act, 1956, father has a duty to give some property on the occasion of her marriage. If the conveyance is made to discharge the obligation of the father to provide maintenance to the daughter and the share of reasonable expenses incidental to the marriage, it can be said to be a transfer for consideration and as such it will not be a 'gift' liable to gift tax under the Gift-tax Act, 1958."

The debates and discussions were put to rest by the judgement delivered by the High Court in **Bhubaneswar Naik Santoshrai and etc. vs. The Special Tahsildar Land Reforms Tekkali and Ors**[4] The court unhesitatingly held that it was evident from the case at hand that the so-called gift of the property purported to have been made by the petitioner is legal, valid and binding. Since it does not fall in any of the categories of transactions enumerated in Section 122 of the T.P Act and is not a gift with this the meaning of the aforementioned provision, such transfer does not require any registration.

The High Court in **A. Gangadhara Rao v. G. Ganga Rao**[5] refused to accept the contention that a gift made during marriage is not required to be registered by law. Justice Ekbotate stated his refusal and dissent in these words:

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[4] AIR 1980 AP 139
[5] AIR 1968 AP 291

> "*It is difficult to accept the contention that a gift made at the time of marriage is not required to be in writing by any law. Any such contention would be flying in the face of Section 123, Transfer of Property. Act. It may be that under the Traditional Hindu Law no writing for the validity of transfer of property made at the time of marriage was necessary. There was no transaction under Hindu Law which absolutely required a writing.*
>
> *But after the T. P. Act came into force, to say that the oral gift can be made at the time of marriage by way of Pasupu Kumkuma would be inconsistent with Section 123 of Transfer of Property Act. That is a provision applicable to all gifts which transfer Immovable property. It is therefore necessary in order to constitute a valid gift that not only it should be in writing but it must also be registered".*

In **Serandaya Pillai And Anr. vs Sankaralingam Pillai And Anr**[6], learned single Judge of Madras High Court observed that, where a transaction is a gift of the immovable property, it should be registered and effected by writing.

In view of law declared, it is now a well settled principle of law that any gift of immovable property to a daughter by the way of 'Pasupu Kumkuma' during marriage is required to be stamped and registered since it is a gift within the meaning of Section 122 of the Transfer of the Property Act and shall be registered within the meaning of Section 123 which says that the transfer must be effected by a registered instrument signed by or on behalf of the donor and attested by atleast two witnesses. It is not permissible to give away oral gifts by the way of 'Pasupu Kumkuma'.

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[6] (1959) 2 MLJ 502

It is believed that the rule of Hindu Law, where the delivery of possession is considered essential to the validity of a gift has been abrogated by application of Transfer of Property Act, 1882 in regards to Hindu gifts. By virtue of this Act, mere delivery is not sufficient to constitute a gift; movable property being an exception to the rule. Moreover, delivery of the possession is not required to complete a gift either. Section 123 of the Act provides manner in which a gift must be effected.

While discussing the provisions of Section123 the author in the Mulla's Hindu Law states that:

> "*This section applies to Hindus. It applied to Hindus even before the amending Act 20 of 1929 for it was made applicable to Hindus by the old section 129 which expressly abrogated the Hindu rule. The section was held to abrogate the rule of Hindu Law that delivery of possession is essential to the validity of a gift"*

In **Anathula Sudhakar v. P. Buchi Reddy (Dead) by LRs & Ors**[7] Apex Court decided the question of validity of 'Pasupu Kumkuma" gift, the Court silenced all the debates, discussions and verdicts but overturned judgements. The case was dragged through the courts for over 30 years until the apex court upheld the decision of first appellate court to make the registration of the gifts given by way of 'Pasupu Kumkuma' is mandatory. Therefore, oral 'Pasupu Kumkuma' gift is not valid.

The petitioners claimed that they are in long continuous possession and enjoyment of the property having occupied the

[7] AIR 2008 SC 2033

same in the year 1968 and obtained pattadar passbooks in their favour. The next contention is that, at the time of the petitioners' marriage, their father original declarant – late Adapa Venkata Subbareddy agreed to gift the above mentioned property as pasupu kumkuma and announced the same at the time of their marriage; since then, the petitioners are in possession and enjoyment of the property. These contentions are not consistent with one another for the reason that, if really, pattadar passbooks were granted in their favour, when the petitioners were in possession and enjoyment of their property, the question of gifting the property at the time of their marriage as pasupu kumkuma by their father i.e. original declarant – late Adapa Venkata Subbareddy does not arise. The plea of gift by way of pasupu-kumkuma falsifies their earliest version of assignment of the property in recognition of their unauthorized occupation. Even otherwise, in view of these inconsistent pleas, it is the duty of the Court to examine the case in two different angles; the first one is with regard to assignment and the second one is oral pasupu kumkuma gift by the father of the petitioners i.e. original declarant – late Adapa Venkata Subbareddy at the time of her marriage. Further, the burden is upon the petitioners to prove that the property was orally gifted to them by their father at the time of their marriage.

From the beginning, the case of the petitioners is that their father orally gifted the property at the time of their marriage. However, the original declarant, the father of the petitioners allegedly announced 'Pasupu kunkuma' gift at the time of their marriage and their specific contention is that the 'Pasupu

kumkuma' gift requires no registration. In fact, Sl. No. 29 Schedule 1-A of A.P. Amendment 1922 to Indian Stamp Act or Section 17(a) read with Section 49 did not say that 'Pasupu kunkuma' gift need not be stamped and registered as per the provisions of Indian Stamp Act and Registration Act. Even as per Section 123 of Transfer of Property Act, the alleged document of gift of immoveable property is required to be registered and attested by two witnesses. Thus, it is a compulsorily registrable document.

Though the statue did not exempt such gift styled as 'Pasupu kunkuma' gift from the application of provisions of Indian Stamp Act, Registration Act and Transfer of Property Act, obviously the law laid down by High Court is contrary to the provisions of those statutes. In a decision reported in **Bhubaneswar Naik Santoshrai and others v. The Special Tahsildar Land Reforms Tekkali and others**[8], this Court is of the view that, Expressions of intention to give away the property for provisions of marriage of daughter or sister is not a gift within Section 122 of the Act, therefore the non-registration of such deed would not hit its validity.

The same principle is reiterated by the learned single Judge of this Court in **P. Buchi Reddy v. Anathula Sudhakar** (referred supra). Thus, from the principle laid down by the Division Bench of this Court in **Bhubaneswar Naik Santoshrai and others v. The Special Tahsildar Land Reforms Tekkali and others** (referred supra) and reiterated by the learned single Judge of this Court

[8] AIR 1980 A.P. 139

P. Buchi Reddy v. Anathula Sudhakar (referred supra), a 'Pasupu kunkuma' gift requires no registration as per the provisions of Registration Act i.e., Section 17(a). Fortunately, in a Full Bench judgment of this Court in **Gandevalla Jayaram Reddy Vs. Mokkala Padmavathamma and others**[9], it was held that transfer of immovable property by way of 'Pasupu kunkuma' gift to a daughter at the time of marriage given under a document requires stamp duty and registration in terms of provisions of Section 17 of Registration Act, and such document is inadmissible in evidence, overruled the judgment of Division Bench of this Court rendered in **Bhubaneswar Naik Santoshrai and others v. The Special Tahsildar Land Reforms Tekkali and others** (referred supra) and judgment of learned single Judge of this Court rendered in **P. Buchi Reddy v. Anathula Sudhakar** (referred supra) while holding in para Nos. 7 and 8 as follows:

> **"***The learned Judges committed a manifest error in holding that the daughters have a share in the property. The daughters have and except under a customary or statutory right cannot have any share in a joint family property. Even assuming that she has such right, she can only claim partition, but it is beyond any cavil of doubt that if a transaction is effected in writing, the same would require registration. The division Bench, in our opinion, further committed a manifest error in holding that the 'pasupu kumkuma' being both involuntary as we will as for consideration, the same would not be a gift within the meaning of Section 122 of the Transfer of Property Act. Evidently such a transaction would create right in immoveable property in one and the right of the owner thereof shall be extinguished and thus the same would attract the provisions of Section 17(1)(b) of the Registration Act. No authority has been cited by the learned Division Bench in support of their opinion that pasupu kumkuma could very well be done orally.*
>
> *Furthermore, the learned Judges proceeded on a wrong*

[9] 2001 (5) ALD 402 (FB)

> *premise in holding that the pasupu kumkuma is not a gift. 'Pasupu Kukuma' as defined in P. Ramanatha Iyer's Law Lexicon means a gift, a settlement or assignment or land to a daughter. Inevitably therefore, such a gift of immoveable property, the consideration whereof would be love and affection could come within the meaning of Section 123 thereof.*"

Thus, the law is clear that 'Pasupu Kumkuma' gift orally cannot be done, it may be done by way of document in compliance of Stamp and Registration Laws. Consequently, oral 'Pasupu Kumkuma' gift is not valid in the eye of law as held by the Supreme Court in **Anathula Sudhakar v. P. Buchi Reddy (Dead) By LRs & Ors** (referred supra). Therefore, unwritten and unregistered gift deed is not admissible in evidence in view of the settled legal position. In another Judgment of reported in ***Nangineni Radhakrishna Murthy v. Kanneganti Nagendramma (died) by L.Rs*[10]**, this Court reiterated the same principle.

In order to make a valid transfer of property to a daughter at the time of marriage by the way of 'Pasupu Kumkuma' it must be by way of registered gift within the meaning of Section123 of Transfer of Property Act and in compliance of Section 17 of the Registration Act.

In view of the law declared by the Apex Court and Full Bench of High Court of Judicature at Hyderabad and persuaded by the principles laid down by the other High Courts in the judgments referred supra, I find that oral pasupu kumkuma gift announced at the time of marriage of the petitioners allegedly is not valid in

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[10] 2007 (4) ALD 642

the eye of law and such agricultural land cannot be deleted from the holding of the original declarant – late Adapa Venkata Subbareddy on the basis of such 'Pasupu Kumkuma' gift.

Accordingly, the point is answered.

P O I N T NO.2:

The petitioners are claiming to be the owners of the land being the donee under oral pasupu kumkuma gift and they are in possession and enjoyment of the property, paying land revenue to the Revenue Department, obtained pattadar passbooks and title deeds for the property from the Revenue Department. To substantiate their claim, the petitioners produced certain documents before the Appellate Tribunal and copies of those documents are also filed along with this petition, evidencing payment of land revenue to the government i.e. revenue receipts, adangal copies/pahanis vide Village Account No.3 to establish that they are in possession and enjoyment of the property in their right. All these documents clinchingly establish that the petitioners are in possession and enjoyment of the property since 1980, but failed to prove that they are in possession and enjoyment of the property from 1968 to 1979. Undisputedly, as per the finding of the Appellate Tribunal in the last lines of Paragraph No.16, the petitioners are in possession of the claimed property since 1980 and this finding is supported by documentary evidence. When the petitioners are in possession and enjoyment of the property since 1980, now the question to be determined by this Court is whether

the petitioners are the persons interested and if, so, whether a notice is required to be issued at the time of surrender proceedings taken up under Section 10 of the Act.

The surplus holding of the original declarant – late Adapa Venkata Subbareddy was determined by order dated 04.10.1975. Aggrieved by the order, an appeal was preferred in L.R.A.No.7 of 1975 and on dismissal, filed revision before the High Court in C.R.P.No.793 of 1996. The High Court, rejected the claim of the declarant that the land given to his illatum son-in-law has to be excluded from his holdings and remanded the matter for fresh consideration on other points. The Primary Tribunal has considered the claim of the declarant with regard to the nature of the lands and passed order on 10.11.1992 dismissing the claim. However, the declarant filed an application seeking correction in the order, but it was also dismissed. Against the said order, the declarant preferred appeal in L.R.A No.124 of 1994, however, the appeal was also dismissed on 24.04.1995. Thereafter, a notice in Form-VI was issued to the declarant calling upon to surrend the determined surplus land i.e. Ac.0.4641 S.H before 15.01.1996. By that time, the petitioners allegedly made a representation on 17.01.1996 for grant of adjournments, as original declarant died. The Primary Tribunal, basing on the report of Mandal Revenue Officer, Chebrole, impleaded the wife of the declarant – late Adapa Venkata Subbareddy as next legal heir and issued revised Form-VI notice on 26.09.1998. Thereafter, as the wife of the declarant failed to file surrender statement, the suitability report was called

for and Mandal Revenue Officer, Chebrole who in-turn submitted a report on 04.08.2020 identifying Ac.6-96 cents in Sy.No.129 of Vejandla village. Thereafter, a notice in Form-VIII was issued on 08.10.2002 which was published on 23.10.2002. At this stage, the petitioners approached the Primary Tribunal by filing miscellaneous petition. However, the Primary Tribunal and the Appellate Tribunal recorded a specific finding about petitioners' continuous possession of the properties since 1980. But, Vardhanamma who is the alleged wife of the original declarant – late Adapa Venkata Subbareddy was not impleaded. When once the petitioners are allegedly found in possession of the property and notice(s) is required to be issued to them, being the persons affected.

The major contention of the learned counsel for the petitioners Sri Srinivas Emani is that, the petitioners are in possession and enjoyment of the property, as held by the Appellate Tribunal, a notice is required to be issued before exercising power under Section 10(5) of the Act and drawn attention of this Court to Section 7(7) of the Act and Rule 6(1) of the Rules framed therein.

According to Section 7 of the Act, where on or after the 24th January, 1971 but before the notified date, any person has transferred whether by way of sale, gift, usufructuary mortgage, exchange, settlement, surrender or in any other manner whatsoever, any land held by him or created a trust of any land held by him, then the burden of proving that such transfer or creation of trust has not been effected in anticipation of, and with

a view to avoiding or defeating the objects of any law relating to a reduction in the ceiling on agricultural holdings, shall be on such person. A notice is required to be issued to the person in whose name such interest was created or transfer is affected. Therefore, the procedure to be followed under Section 7(7) of the Act is limited to determine the illegality of the interest created or transfer affected between 24.01.1971 and the notified date. But, in the present case, the contention of the learned counsel for the petitioners is that, transfer was affected in the year 1968, prior to 24.01.1971. When the marriage of these petitioners was allegedly performed by original declarant – late Adapa Venkata Subbareddy, the oral pasupu kumkuma gifts themselves are not legal and not in accordance with law as held in Point No.1. Therefore, issue of notice to determine the standard holding of the declarant – late Adapa Venkata Subbareddy is an exercise in futility. Therefore, failure to issue notice(s) as contemplated under Section 7(7) of the Act is not a ground to set-aside the order passed by the Appellate Tribunal.

Coming to Rule 6(1) of the Rules, issue of notice pertains to an enquiry and determination of ceiling area. A notice in Form-V is required to be issued to the declarant intimating the date, time and place of enquiry in respect of the declaration or information published and in respect of the objections, if any, received thereto. Therefore, it is only an intimation about the date, time and place of enquiry to the declarant and not to the person who allegedly is claiming right. If, the petitioners are in possession of the property

as on the notified date, then a notice is necessary. In the present case, the petitioners if proved that they are in possession of the property as on the notified date or atleast as on the date of verification report submitted by the Land Reforms Tahsildar to the Revenue Divisional Officer, the person in possession is entitled to a notice which is mandatory and any enquiry without issuing notice to such person is illegal, as held by the High Court in **K. Buchi Reddy v. State of A.P**[11]).

Similarly, the expression employed in Rule 6 and Rule 16(7) "to the other persons interested" are also entitled to a notice. But, in the present case, the interest the petitioners by oral 'Pasupu Kumkuma' gift is not legal, as held by the Court while deciding Point No.1 and they were not in possession and enjoyment of the property as on the date of notified date or verification report. Therefore, the notice under Rule 6 is a notice about intimating the date, place and time of enquiry on the declaration, objections received thereon from the declarant or any third party, but the present case is at the stage of surrender proceedings initiated under Section 7 of the Act.

Turning to Rule 16(7) of the Rules, any person other than a party who satisfied the Revenue Divisional Officer, District Collector, Tribunal or the Appellate Tribunal having substantial interest in the matter, may at any time during the pendency of the proceedings, be permitted to appear and be heard and to adduce evidence and cross-examine witnesses. Therefore, Rule 16(7)

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[11] 1978 (2) ALT 9 (NRC)

permits any person other than a party, having substantial interest in the matter, may at any time, during pendency of the proceedings can participate in the proceedings.

In the present case, the petitioners are claiming to be the owner under the oral pasupu kumkuma gifts claiming right in the property and requested to determine the standard holding of the declarant – late Adapa Venkata Subbareddy. Thus, as on date, the proceedings to determine the standard holding were concluded, except surrender proceedings. Thus, the word "during pendency of the proceedings" is inclusive of surrender proceedings under Section 10 of the Act. in such case, on the ground of delay, the Court cannot reject the claim of these petitioners and they be permitted to hear and adduce evidence and cross-examine the witnesses. If, the surrender proceedings are concluded, the proceedings are deemed to have been terminated and in such case, either Primary Tribunal or the Appellate Tribunal or this Court cannot permit the third parties/persons having substantial interest in the matter to adduce evidence as contemplated under Sub-Rule (7) of Rule 16 of the Rules. At the same time, when there is a mistake in computation of holding, such an application cannot be entertained under Rule 16(5) for rectification if mistake in computation of Holding is not sustainable unless it is for rectification of clerical or arithmetical mistake. (vide **Lakshma Reddy v. State of A.P**[12])

[12] 1992 (2) APLJ 66 (D.B)

At the same time, the Court time and again clarified that, a person who has no substantial interest in the lands, such a person cannot be impleaded as a party in the proceedings. (vide **Krishna Kumar v. Authorised Officer** (C.R.P.No.6646 of 1978 dated 11.07.1979 unreported)). A third party stranger who has no interest in the property declared by the declarant has no *locus standi* to prefer an appeal before the Tribunal (vide **N. China Basavaiah v. State of A.P and another**[13])

The petitioners are claiming to be the owners of the property, in view of the oral pasupu kumkuma gifts announced at the time of their marriage in the year 1968 and such oral gifts are invalid under law, as held by various Courts in the catena of judgments referred above, as discussed in Point No.1. When the basis of substantial interest claimed by these petitioners is not legal, the question of permitting them to appear and adduce evidence, affording an opportunity to hear the argument is an exercise in futility. However, undisputedly, the surrender proceedings are pending before the authorities concerned and Notice in Form-IX was issued by the Revenue Divisional Officer, Tenali calling upon the wife of the original declarant – late Adapa Venkata Subbareddy – Smt. Adapa Vardhanamma to surrender the land in excess of the ceiling area to deliver possession to Mandal Revenue Officer. But, she did not file her objections to the authorities under the Act. At this stage, these petitioners appeared before the Tribunal. However, proviso to Subsection (5) of Section 10 obligates the

[13] 1981 (2) An.WR 263

Tribunal, in every case, to serve a notice on the person concerned requiring him to surrender any other land in lieu thereof when a surrender statement is filed and not accepted by the authorities. The language employed in various subsections of Section 10 of the Act, "the person is liable to surrender" the land in excess of ceiling area assumes importance to determine whether a notice at the time of surrender is necessary. But, here, the petitioners are claiming to be the daughters of the declarant – late Adapa Venkata Subbareddy who failed to prove the blood relationship between them and declarant – late Adapa Venkata Subbareddy before the Tribunal by adducing any evidence or producing any document, but claimed that they are in possession of the property and the same was accepted by the Appellate Tribunal holding that they were in possession of property since 1980, however, they are not the persons liable to surrender the land in excess of the ceiling area, as a result notice under Section 10 of the Act, is not necessary. Hence, the contention of the learned counsel for the petitioners that no notice was served is rejected, while holding that the petitioners are not the persons liable to surrender the land in excess of the ceiling area, in view of the language employed in various subsections of Section 10 of the Act.

Even Rule 16(7) of the Rules also does not permit these petitioners to appear and adduce evidence, since their claim or substantial interest based on oral pasupu kumkuma gift is invalid. Hence, I find no substance in the contentions urged by the learned counsel for the petitioners Sri Srinivas Emani and consequently, I am of the considered view that no notice need be served on the

petitioners, without any hesitation. Accordingly, the point is answered in favour of the respondents and against the petitioners.

In view of my foregoing discussion on Point No.1, the alleged oral pasupu kumkuma gift announced at the time of marriage is invalid and such gifts will not create or confer any right or title on the donee, thereby, the petitioners claimed that they have substantial interest in the matter is rejected.

Similarly, in view of my finding on Point No.2, the petitioners are not entitled to any notice when the proceedings are at the stage of surrender under Section 10 of the Act, so also, under Rule 16(7) of the Rules framed under the Act, as the basis for claiming substantial interest is the oral pasupu kumkuma gifts allegedly announced at the time of their marriages are invalid, as discussed in Point No.1. Consequently, the civil revision petition is liable to be dismissed.

In the result, civil revision petition is dismissed.

Consequently, miscellaneous applications pending if any, shall also stand dismissed. No costs.

JUSTICE M. SATYANARAYANA MURTHY

Date:07.01.2021

Note: LR copy to be marked
b/o
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