

HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

WRIT PETITION No.2580 OF 2020

ORDER:

The petitioner seeks a writ of *mandamus* declaring the action of respondent Nos.2 to 4 in not registering the FIR against the respondent Nos.5 and 6 pursuant to the complaint dated 19.01.2020 of the petitioner as illegal, arbitrary and contrary to the guidelines framed by the Hon'ble Supreme Court in the case of ***Lalitha Kumari vs. Government of Uttar Pradesh*** and for consequential direction to respondent Nos.2 to 4 to register the FIR against respondent Nos.5 and 6.

2. The petitioner's case succinctly is thus:

(a) At the time of her marriage, her parents have given Ac.3.00 cents of agricultural land situated in S.Nos.830/6, 829/2, 829/1, 820/3, 828/4 & 825 of Chelluru Village, Ramachandrapuram Mandal, East Godavari District towards Pasupukumkuma. Apart from it, her father executed a Registered Gift Settlement Deed vide Doc.No.2572/1993 dated 13.08.1993 in her favour in respect of Ac.0.40 cents at Chelluru Village in S.No.830/2 of Chelluru Village. Since then, the petitioner has been in peaceful possession and enjoyment of the same and the said fact is known to one and all including the respondent No.5 who is none of other than her brother and the respondent No.6 the daughter of respondent No.5.

(b) While so, in the last week of December, 2019, the petitioner came to know through her younger brother B. Krishna Bhagawan that her agricultural land of Ac.0.40 cents in S.No.830/2 at Chelluru Village was illegally gifted by her second brother i.e., the respondent No.5 in favour of her daughter i.e., the respondent No.6 under a Gift Settlement Deed vide document No.327/2010 dated 18.09.2010. The petitioner further came to know that the respondent No.6 alienated the said property in favour of one Ranisetty Surya Krishna, S/o. Buraiah of Mandapeta under registered sale deed vide document No.3306/2019, dated 26.09.2019. The petitioner obtained the certified copies of aforesaid documents and came to know that her brother without having any right or title, fabricated the documents with a dishonest intention and executed a Gift Settlement Deed in favour of respondent No.6 and the respondent No.6 sold the said property in favour of third party. Hence, the petitioner gave a complaint to respondent Nos.2 to 4 on 09.01.2020. However, they did not register the complaint in spite of repeated requests of the petitioner. On 26.01.2020, the respondent No.4 informed the petitioner that the FIR cannot be registered as the contents in the complaint are civil in nature.

Hence the writ petition.

3. Heard learned counsel for petitioner Sri V.V.N. Narayana Rao and learned Government Pleader for Home for respondents 1 to 4.

4. Learned Government Pleader would submit that on enquiry, the respondent No.4 came to know that the dispute relating to the subject property is between the petitioner and her brother and it is purely civil in nature and therefore the respondent No.4 advised the complainant to seek redress in a competent court of civil law.

5. I gave my anxious consideration to the contents of the complaint submitted by the petitioner to respondent No.4 briefly stating, her grievance is that the respondent No.5 who is her second brother executed a Gift Deed in favour of his daughter i.e., the respondent No.6 in respect of the petitioner's property without having any right or title in him and without the knowledge of the petitioner.

6. The legal question is when a person who proclaims himself to be the owner of the property, but factually not, transfers the property in favour of a third party can be said to have committed any criminal offence within the realm of Indian Penal Code (for short, "IPC"). I gave my anxious consideration to this legal issue but found the answer in negative. He cannot be said to have committed the offence of cheating, forgery, mischief or creation of false evidence etc., defined under the IPC. The reason perhaps is that such false document will not divest the right of the original owner and create any right in favour of the transferee. The original owner in such an instance can ignore such a document or else approach the Civil Court for declaration of his title and other ancillary reliefs. In the instant case, the respondent No.5 is none other than the brother of the petitioner and as per the

enquiry of the respondent No.4, there appears to be some property disputes between the petitioner and the respondent Nos.5 and 6. Thus, the entire gamut of the facts discloses a civil dispute more than any criminal offence. Therefore, the respondents 1 to 4 cannot be found fault for non-registration of the FIR. In my considered view, the decision of Hon'ble Apex Court in *Lalitha Kumari's* case has no application in the instant case.

6. Accordingly, the writ petition is dismissed. However, this order will not preclude the petitioner from seeking appropriate relief/remedy before a Civil Court. No costs.

As a sequel, interlocutory applications, if any pending, shall stand closed.

U. DURGA PRASAD RAO, J

23.04.2020.

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