

(1999) 11 AP CK 0062

In the Andhra Pradesh High Court

Case No : AAO No. 1108 of 1999 and CMP No's. 12713 and 20497 of 1999

Agnigundala Venkata Ranga Rao

APPELLANT

Vs

Indukuri Ramachandra Reddy and another

RESPONDENT

Date of Decision : 24-11-1999

Acts Referred:

Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands Act, 1950 — Section 47
Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 — Section 3(5)
Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, 64
Contract Act, 1872 — Section 23
Hyderabad Houses (Rent, Eviction and Lease) Control Act, 1954 — Section 3(3)
Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 — Section 10(2), 12(2), 16, 17(1), 21

Citation : (2000) 1 ALD 585

Hon'ble Judges : Krishna Saran Shrivastav, J

Bench : Single Bench

Advocate : Mrs. A. Anasuya, for the Appellant; Mr. C.R. Pratap Reddy, for the Respondent

Judgement

1. This appeal is directed against the order passed by the Additional Senior Civil Judge, Narasaraopet, in IA No.788 of 1998 in OS No.98 of 1998 on 22-3-1999, whereby the application for temporary injunction has been dismissed.

2. On 29-10-1998, the appellant filed a suit for permanent injunction against the respondents alleging that he is the owner in possession of Ac.22-76 cts. of land situated in village Agnigundala (for short "the suit fields") and had raised cotton crop in about Ac.6-00 cts., maize and red gram crop in about Ac.8-00 cts. and tobacco in Ac. 1-00 cts. and had ploughed the remaining suit fields for seedling, but the respondents had started threatening him to dispossess, therefore, the respondents should be permanently restrained from disturbing his possession over the suit fields. He also filed an application for temporary injunction and ex parte temporary injunction was granted. The respondents filed IA No.874 of 1998 for vacating the ex parte temporary injunction alleging that they have purchased

the suit fields through registered sale deed dated 16-7-1975, Ex.BI, and had been delivered the vacant possession of the suit fields on that day. They have further alleged that they have been in continuous cultivating possession of the suit fields and, therefore, ex parte temporary injunction should be vacated.

3. The lower Court found that though the sale deed, Ex.BI, had been executed in contravention of Section 17(1) A.P. Land Reforms (Ceiling of Agricultural Holdings) Act, 1973 (for short "the Land Reforms Act"), but the sale deed is not void but it is voidable, because the word "void" used in Section 17 of the Land Reforms Act should be read as voidable in order to be effective to the requirement of the Legislature as the intention of the Legislature is only to disregard the sales which have been made in contravention of Section 17(1) of the Land Reforms Act. The lower Court also found that there is recital in the sale deed, Ex.BI, regarding delivery of possession of the suit fields to the respondents and that the entries in the Adangal, Ex.BS, for Fasli 1408, equivalent to the year 1998-99, show that the respondents were in possession of the suit fields on the date of the institution of the suit. Holding so, the trial Court vacated the exports interim injunction order, and dismissed the application for temporary injunction.

4. Feeling aggrieved by the impugned order, the plaintiff has come up in this appeal.

5. On 26-4-1999, interim injunction was granted in CMP No.9318 of 1999 and the respondents were noticed who have filed CMP No.12713 of 1999 for vacating the interim injunction, and CMP No.20497 of 1999 for issuance of direction to the appellant-plaintiff for depositing Rs.1 lakh to the credit of the suit.

6. By consent of the learned Counsel of both sides, I have heard at length arguments on merits.

7. Relying on die cases of P. Nantsinihaiah v. V.K. Laxmidevamma and others 1985 (2) ALT 44 (Notes), P. Parameshwar Yadav and others v. The Government of A.P. 1989 (2) ALT 32 , Y. Latchi Raju Vs. State of A.P. and others, , Indupur Sudhir Reddy Vs. State of A.P. and Another, , Rajendra Singh and others v. State of U.P. and others (1998) 1 SCC 654 and State of Andhra Pradesh Vs. Vatsavyi Kumara Venkata Krishna Verma, , it has been argued by the learned Counsel of the appellant that Section 17(1) of the Land Reforms Act provides that no person whose holding is in excess of the ceiling area as on 24-1-1971 or at any time thereafter, shall, on or after the notified date, alienate his holdings by way of sale or through any other mode of transfer of right until he has furnished a declaration u/s 8 of the Act and the extent of land to be surrendered in respect of his holdings has been determined by the Tribunal and possession of the excess land has been taken by the State, and a notification was published u/s 16 of the Act and if any such alienation has been made in contravention of this section, the alienation shall be null and void. He has further argued that the sale deed has been effected after the notified date, that is 1-1-1975 and before the finalisation of the declaration of the declarant under (he Act, therefore, the sale deed, Ex.BI,

is null and void and title has not been conveyed to the respondents. Pattadar Pass Book, Ex.B2, has been issued to the appellant according to law and the appellant has been paying regularly the land revenue through receipts which are at Exs.A4 to Ex.A19. The name of the appellant has been recorded in Adangals for Fasli 1402 to 1407, copies of which are at Ex.A25 to A28, in which the appellant has been shown to be the enjoyer of the suit fields. Therefore, the trial Court should have confirmed the ex parts injunction granted by it earlier. The trial Court has committed an error of law in concluding that the transaction in question is voidable and it also erred in relying on Ex.BS Adangal, dated 29-1-1999.

8. On the other hand, learned Counsel of the respondents has urged that the appellant had executed an agreement to sell the suit fields in the year 1958 for a consideration of Rs.25,000/- and he had received a part consideration of Rs.8,380/-, and in pursuance of that agreement to sell, he had executed and registered the sale deed, Ex.BI, on 16-7-1975, after receiving the balance amount of consideration. He had also delivered possession of the suit fields to them on 16-7-1975 itself. He had deposed before the Land Reforms Tribunal during inquiry u/s 8(1) of the Land Reforms Act that, he had executed an agreement to sell the suit fields in favour of the respondents. The respondents had obtained loan of Rs.27,000/- from the State Bank of India on 16-4-1976 mortgaging the suit fields and the appellant stood as their guarantor. The Bank had also obtained a decree against the respondents and the appellant in OS No.14 of 1980 on 17-11-1980. The respondents have been in possession of the suit fields. He has further argued that the Land Reforms Tribunal has passed orders in CC2311/VKD/75, dated 21-8-1976 and has determined excess land to be Ac.0.0758 cts. The appellant has surrendered the excess land which he owned and possessed excluding the suit fields. Under these circumstances, the prohibition contained u/s 17(1) of the Land Reforms Act is not an impediment in treating the sale deed, Ex.BI, as valid, because the intention of the Legislature is to disregard such transfers which have been effected within the relevant period in order to determine excess land which a declarant holds. The transaction is null and void only so far as the Government is concerned, but it is a valid document inter se the parties to the transaction. Reliance has been placed on the cases of Shankerlal Gupta Vs. V. Jagadishwar Rao, and Syed Rafiuddin v. S. Asaduddin and another 1984 (2) APLJ 75. It has been lastly urged that, Adangal, Ex.B8, is very much relevant because the concerned authority shall record the name of the occupier only after it finds that the respondents have cultivated the land during the currency of the agricultural year in question. The respondents have cultivated the suit fields in the month of October, 1998 and the inquiry was made in the month of January, 1999 and thereafter the Adangal was prepared.

9. In the case of P. Narasimhaiah (supra), a preliminary decree for partition was passed after the notified date, that is 1-1-1975, and before the finalisation of the declaration of the declarant under the Act. Prayer for exclusion of the land from being commuted for determination of excess land was rejected.

10. In the case of P. Parameshwar Yadav (supra), declarants had surrendered the excess land which land had been covered by an invalid sale and agreement. It was found that the declarants were entitled to surrender the land of their choice though covered by the invalid sale and agreement because the agreement has been effected in contravention of Sections 17 and 28 of the Land Reforms Act.

11. In the case of Y. Latch! Raju (supra), the petitioner had purchased the lands from the declarant in the year 1978. The Land Reforms Tribunal determined the excess land. The declarant in spite of notice did not submit any surrender proposal. Therefore, the Land Reforms Tribunal selected the land sold by the declarant to the petitioner who submitted his objection, but (he objection was rejected. It has been held in this case that the petitioner had no right to claim ownership of a part of the land which was declared surplus and, therefore, no prejudice could be treated as having been caused to the petitioner.

12. In the case of Indupur Sitdhilr Reddy (supra), the Land Reforms Tribunal has passed the impugned order whereby the excess land has been declared. The minor member of the family became major by the time notice u/s 10(2) of the Land Reforms Act was issued directing surrender of the excess land. It has been held in this case that the minor son, becoming major by the time the notice u/s 12(2) of the Act was issued directing surrender of the excess land, is not entitled to claim ceiling for himself taking benefit of delay in taking such action by the Tribunal or the concerned authority.

13. In the case of Rajendra Singh (supra), the prescribed authority declared 13 bighas of land as surplus land vide order dated 2-3-1974. In appeal, disposed of on 25-3-1977, the surplus area was reduced. In the meantime, on 26-8-1974, the tenure holder had executed two sale deeds transferring the same land to Rajendra Singh and some land to another person who, in turn, sold the same on 4-12-1975 to the appellants Nos.2 and 3. The appellants prayed that the surplus land may not be carved out from the surplus land transferred to them. The application was rejected. The Apex Court held that every transfer made in contravention of Section 5 of the U.P. Imposition of Ceiling on Land Holdings Act, 1960 is void. The Apex Court held that, the prohibition on transfer of land during the pendency of the proceedings was introduced with the object of facilitating an early disposal of the proceedings for determination of surplus land as also for preventing the tenure holder from disturbing the status quo of his holding as existing on the date of the notification u/s 9 of the Act. u/s 12-A, discretion can be exercised by the prescribed authority and he may not take over those plots as part of the surplus area. It is thus "discretion" and not "compulsion" which constitutes the core of this statutory provision. The prescribed authority shall first take into consideration the choice indicated by the tenure holder and if it is not possible to act wholly upon the choice, for which there may be a variety of reasons, the prescribed authority will proceed in his own way to leave the area determined by him as the ceiling area with the tenure holder and take over the other area as surplus area. Holding so, the appeal of the subsequent purchasers

was dismissed.

14. In the case of *State of A.P. v. yatsavyi Kitmara* (supra), it has been held by the Apex Court that, u/s 7(1) of the Land Reforms Act, transfer of land on or after 24-1-1971 but before the notified date, that is 1-1-1975, should be assumed to be effected in order to defeat or avoid provisions of the Land Reforms Act and to be disregarded for the purpose of computing the ceiling area, unless it is shown that the transfer was not only genuine but also had to be effected for some compelling reasons and was backed up by some necessity. In this case, the Tribunal had not taken into consideration the lands sold by the declarant for purposes of computation of his ceiling area, holding that the transactions were genuine and were not made with a view to circumvent the provisions of the Land Reforms Act, but the Land Reforms Appellate Tribunal reversed the finding in part holding that two transactions were genuine and the remaining two transactions were nominal ones, but directed that all of them ought not to be considered as they were effected by the declarant and his wife in anticipation of and with a view to avoiding the provisions of the Act. In revision, the High Court, disagreeing with the Appellate Tribunal, held that the remaining two transactions were also genuine and, therefore, all the four transactions had to be excluded u/s 7(1) of the Land Reforms Act, they being genuine transactions. The Apex Court found that the transfers were effected with the intention of defeating the provisions of the Land Reforms Act and the High Court had erred in holding that the transactions were genuine. The High Court should not interfere with the pure findings of fact while exercising jurisdiction u/s 21 of the Land Reforms Act.

15. From what has been stated above, it is evident that in all the aforementioned cases, the land transferred during the prohibition period was included in the holding of the transferor for purposes of determining the surplus land to be surrendered by the declarant-vendor. In none of the aforementioned cases, the right inter se between the vendor and the vendee had fallen for determination on the strength of the transfer deeds executed by the vendor in favour of the vendee.

16. In the case of *Shankerlal Gipta* (supra), relying on the case of *Murlidhar Aggarwal and Another Vs. State of Uttar Pradesh and Others*, , it has been held that, tenancy created in contravention of the provisions of Section 3(5) of the A.P. Buildings (Lease, Rent and Eviction) Control Act, 1960, and Section 3(3) of the Hyderabad Houses (Rent, Eviction and Lease) Control Act, 1954, is not illegal and void inter se between the parties though it is void against the Controller. It is also held that the transaction is not hit by the provisions "of Section 23 of the Contract Act.

17. In the case of *Syed Rafiuddin* (supra), when the sale deed was executed, there was prohibition for transferring the agricultural land u/s 47 of the A.P. (Telangana Area) Tenancy and Agricultural Lands Act. This section was repealed subsequently, that is on 18-3-1969. The vendee filed a suit for declaration of title

and possession on 20-3-1969, two days after Section 47 was repealed. Relying on C.V. Narayan Reddy Vs. Katanguru Raghava Reddy and Another, , it has been held in this case that, as by the time the suit was instituted Section 47 of the Act stood deleted, therefore, the sale deed cannot be declared as void and possession was ordered to be delivered holding the impugned sale deed as valid and lawful.

18. All private transfers or delivery of property under attachment are void as against all claims enforceable under attachment u/s 64 of the Code of Civil Procedure. In the case of Official Receiver, Muzaffarnagar Vs. Chandra Shekhar and Others, , and in the case of Rushi Mahakur Vs. Dibya Shankar Padhan and Another, , it has been held that an alienation of immovable property under attachment, whether under a decree or otherwise, is void. Its private sale has no effect against the attaching creditor. However, if the attachment is revoked or the attaching creditor's claim has otherwise been satisfied, the private sale would be valid and convey good title to the purchaser.

19. The question that falls for determination is whether the sale deed inter se between the vendor and the vendee is void or not though had been executed in contravention of Section 17 of the Land Reforms Act, particularly in view of the fact that, after the determination of the surplus land, the vendor had surrendered certain other land in pursuance of the order passed by the Tribunal ?

20. As noted above, the case of the respondents is that the agreement to sell had been executed in 1958 and the sale deed, Ex.BI, had been executed by the appellant in pursuance of that agreement to sell on 16-7-1975. The Tribunal has determined the surplus land and the appellant has delivered certain other lands in pursuance of that order of the Tribunal. Therefore, the sale deed is valid and binding on the appellant who has obtained full consideration from the respondents.

21. The aforesaid question is of considerable importance and it depends on complicated questions of fact and law. When a serious question of law and fact is to be decided during trial, it can be safely inferred that the plaintiff-appellant has got a prima facie case.

22. The next question that falls for determination is whether the appellant was in possession of the suit fields on the date of the institution of the suit ?

23. In the sale deed, Ex.BI, dated 16-7-1975, the appellant has stated to have delivered the possession of the suit fields to the respondents. Relying on Markhu Mahto and Others Vs. Saharai Mahto and Others, , it has been contended by the learned Counsel of the appellant that, by virtue of the entries made in the Adangals for Fasli 1404 to 1407, which are at Ex.A25 to Ex.A28, regarding the possession of the appellant over the suit fields, the admission made in the sale deed regarding the delivery of possession to the respondents stands rebutted.

24. In the case of Markhu Mahto (supra), the wife of the deceased Bhim namely

Mt. Jamwia had executed a gift deed on 29-10-1892 transferring inter alia the suit lands to her daughter, Dulali, whereas in the record of rights finally published in the year 1922, the names of the defendant Nos.21, 17 and 18 were recorded as owners. The Division Bench of the Patna High Court observed that, it could be inferred from the assertion made in the year 1892 that, at that time the land was probably the land of Mt. Jamuna wife of late Bhim, but that statement in the deed of gift cannot be used to rebut the entry in the record of rights because it may well be that both the statement and the entry correctly represented the state of things which prevailed at the time they were respectively made. This case is distinguishable on facts. The reason is that, in the case on hand, the admission of delivery of possession has been made by the appellant himself. This statement is binding on him until it is satisfactorily explained; whereas in the case of Markhu Mahto (supra), the statement of Mt. Jamima was not required to be utilised against herself, but it was sought to be pressed into service in her favour that her husband was the owner of the lands in question. It is pertinent to note that the appellant has not stated as to when after 16-7-1975 he re-entered into the possession of the suit fields. Actually it is not his case that subsequent to the execution of the sale deed, at any point of time he has dispossessed the respondents. On the other hand, his case is that he never parted possession with the suit fields. Therefore, it was necessary for him to explain the admission by adducing cogent and reliable evidence. He has not filed certified copies of the Adangals of the years 1975-76 to 1993-94. True that possession of the appellant has been recorded in the Adangal for the Fasli 1404 to Fasli 1407, that is to say for the years 1994-95 to 1997-98, which are at Exs.A25 to A25, but in the absence of explanation for the admission made by him in the sale deed, Ex.BI, the entries in the aforementioned Adangals cannot be given any importance, particularly when in the Adangal for Fasli 1408, equivalent to the year 1998-99, a copy of which is at Ex.BS, the respondents have been shown to be the occupiers of the suit fields. Thus, it appears that from the month of October, 1998 to September, 1999, the respondents have been shown to be the enjoyers of the suit fields. The suit has been filed on or after 29-10-1998. True that copy of the Adangal, Ex.A8, had been obtained on 29-10-1999, that is to say during the pendency of the suit, but the concerned Revenue Officer shall record the entries only when the crops are grown and he makes spot inspection for purposes of verifying as to who has cultivated the land. Therefore, merely on the ground that, copy of the Adangal, Ex.A8, had been obtained in the month of January or February, 1999 this document cannot be excluded from being considered. From the entries made in the Adangal, Ex.A8 also; it appears that the respondents were in possession of the suit fields on the date of institution of the suit. For this reason, the finding of the Revenue Divisional Officer, in its order dated 2-6-1998, based on the report of the VAO, that the appellant was in possession as on 2-6-1998, is of no help to the appellant.

25. For the foregoing reasons, I am not inclined to interfere with the finding of the order of the lower Court whereby the application for temporary injunction has

been rejected.

26. In the result, the appeal fails and is hereby dismissed. The interim injunction granted on 26-4-1999 in CMP No.9318 of 1999 stands vacated. CMP No.12713 of 1999 and 20497 of 1999 are dismissed as infructuous. Costs as incurred.