
(2004) 10 AP CK 0053

In the Andhra Pradesh High Court

Case No : C.R.P. No's. 816 and 4886 of 1997

Ambati Durgamma and Others

APPELLANT

Vs

Pericherla Jagapathiraju and Others

RESPONDENT

Date of Decision : 05-10-2004

Acts Referred:

Andhra Pradesh (Andhra Area) Tenancy Act, 1956 — Section 18
Civil Procedure Code, 1908 (CPC) — Order 21 Rule 99, 144, 151
Evidence Act, 1872 — Section 145, 21
Registration Act, 1908 — Section 49

Citation : (2005) 1 ALD 607 : (2005) 1 ALT 357

Hon'ble Judges : B. Seshasayana Reddy, J

Bench : Single Bench

Advocate : A. Ramalingeswar Rao and Dhanamjaya, in CRP No. 4886/97, for the Appellant; Dhanamjaya, in CRP 816/97, for the Respondent

Final Decision : Allowed

Judgement

B. Seshasayana Reddy, J.—C.R.P. No. 816 of 1997 is directed against the order dated 30-12-1996 passed in E.A. No. 6/91 in E.P. No. 2/91 in O.S. No. 881/1973 on the file of Principal District Munsif, Tadepalligudem, whereby the learned Special Officer-cum-Principal District Munsif allowed the Execution Application filed under Sections 144 and 151 CPC and Order 21 Rule 99 CPC declaring the petitioner therein viz., Pericherla Jagapathi Raju as the cultivating tenant of the E.P. schedule land and directing R-4 to R-10 therein to re-deliver the schedule property to him within three months from the date of the order.

2. C.R.P. No. 4886 of 1997 is directed against the order dated 30-8-97 passed in A.T.A. No. 7/97 on the file of District Judge, W.G. at Eluru, whereby the learned appellate authority-cum-District Judge set aside the order dated 30-11-1996 passed in A.T.C. No. 137/91 on the file of Special Officer-cum-Principal District Munsif, Tadepalligudem and consequently dismissed the application filed by R-1 Pericherla Jagapathi Raju therein for declaration of his tenancy rights over the land bearing Survey No. 116 admeasuring Ac. 7-50 cents situated in Narsampalli

village, Hamlet of Bayyannagudem (hereinafter referred to as the land).

3. The petitioners in C.R.P. No. 816 of 1997 are the legal representatives of Ambati Narsaiah, who is the owner of the land. R-1 Pericherla Jagapathi Raju is the tenant and R-2 Pericherla Ramachandraraju is the auction purchaser. R-3 Maddala Subba Rao is the decree holder in O.S. 881/73. The petitioner in C.R.P. No. 4886/97 is the tenant and R-1 to R-7 are LRs of Ambati Narsaiah (R-8) the landlord. R-9 is the auction purchaser. R-10 is the primary authority under A.P. (Andhra Area) Tenancy Act and R-11 is the appellate authority. The tenant-Pericherla Jagapathi Raju filed E.A. No. 583/90 on the file of Principal District Munsif, Kovvur, for declaration of his cultivating tenancy rights and for restitution of the property over which he claimed to be the tenant. He also filed A.T.C. No. 94 of 1989 on the file of Special Officer-cum- District Munsif, Kovvur for declaration of his cultivating tenancy rights on the file of Special Officer-cum-District Munsif, Kovvur. Both the proceedings subsequently came to be transferred to the file of Special Officer-cum-Principal District Munsif, Tadepalligudem. Consequent on transfer, E.A. No. 583/90 and A.T.C. No. 94/89 came to be re-numbered as E.A. No. 6/91 and A.T.C. No. 137/91. The learned Special Officer-cum-Principal District Munsif, Tadepalligudem, disposed of E.A. No. 6/91 and A.T.C. No. 137/91 by a common order dated 30-12-1991 whereby and whereunder the learned Special Officer declared the cultivating tenancy rights of P. Jagapathi Raju and directed the judgment debtor- Ambati Narsaiah to deliver the land within three months from the date of the order. Assailing the order passed in E.A. No. 6/91, the LRs of Ambati Narsaiah filed C.R.P. No. 816/97. Whereas assailing the order passed in A.T.C. No. 131/91, they filed A.T.A. No. 7/97 on the file of District Judge, W.G. at Eluru. The learned District Judge on re-appreciation of the evidence brought on record allowed the tenancy appeal and dismissed the tenancy application filed by Pericheria Jagapathi Raju for declaration of his cultivating tenancy rights over the land by judgment dated 30-8-97. Assailing the judgment passed in A.T.A. No. 7/97, the appellant therein-tenant (Pericheria Jagapathi Raju) has filed C.R.P. No. 4886 of 1997. Since both the Civil Revision Petitions, one preferred by the LRs of the landlord- Ambati Narsaiah and another by the tenant- Pericherla Jagapathi Raju are in respect of one and the same land, they are being disposed of under this common order.

4. Brief facts of the case giving rise to filing of these two revisions, one by the tenant and the other by the LRs of the landlord are as follows.

5. One Maddala Subba Rao filed O.S. No. 881/73 against Ambati Narsaiah for recovery of Rs. 1,500/- on the basis of a pronote dated 14-10-1970. The said suit ended in decree and the decree holder filed E.P., brought the land to sale in E.P. 350/75 in realization of the decretal amount. Sale was held on 23-3-76 for Rs. 17,000/- and Pericheria Ramachandra Raju became the highest bidder and the sale in his favour was confirmed on 31-5-76. On 26-7-96 the judgment debtor-Ambati Narsaiah filed E.A. No. 720/76 under Order 21 Rule 90 CPC to set aside the sale. The said application ended in dismissal on 9-4-1979. He

unsuccessfully challenged the order passed in E.A. No. 720/76 by filing C.M.A. No. 24/79, which ended in dismissal on 27-9-1984. In the meanwhile the auction purchaser obtained delivery of the land through process of court on 19-7-76. The judgment debtor unsuccessfully filed C.R.P. No. 3750 of 1984 questioning the orders passed in CM.A. No. 24/1979. He carried the matter in appeal to the Supreme Court which allowed the appeal in C.A. No. 4159/89 and set aside the impugned sale and directed the executing court to put the appellant-judgment debtor in possession of the land in question and then refund the sale amount to the auction purchaser. The executing court restored the E.P. to file on 8-11-89 and issued delivery warrant. Pericheria Jagapathi Raju claiming to be a tenant resisted the delivery and sought for declaration of his cultivating tenancy rights. He filed E.A. No. 1070/89 resisting the delivery and seeking declaration of his cultivating tenancy rights. The application filed by him ended in dismissal on 27-6-90. Assailing the orders passed in E.A. No.1070/89 he filed the Civil Revision Petition. He also filed I.A. Nos. 1 and 2 of 1990 in C.A. No. 4159/89 and the Supreme Court directed the executing court to make an enquiry after giving reasonable opportunity to both the parties and pass appropriate orders within two months. The order passed by the Supreme Court on 3-9-90 reads as follows:

"In allowing the appeal, we have directed that the appellant would be restored to possession by restitution. The executing court now appears to be of the opinion that the appellant should be put into physical possession of the property. It was said that before the property was put to Court sale the applicant in I.A. No. 1 was a tenant and he still claims to be a tenant in occupation of the property in question. If that is so, the appellant is not entitled to physical possession of the property. These facts, however have got to be necessarily investigated by the executing Court before making any order in the restitution proceedings. We accordingly direct the executing court to make an enquiry with reasonable opportunity to both the parties and pass an appropriate order within two months. In view of this order, counsel for the applicant states that he would withdraw the revision petition filed by him before the High Court. I. As are accordingly disposed of."

6. It appears the tenant withdrew the Civil Revision Petition filed by him questioning the order passed in E.A. No. 170/89, and he filed E.A. No. 6/91 (old E.A. No. 583/90) for declaration of his cultivating tenancy rights and for restitution of the land covered under tenancy. Prior to that, he filed A.T.C. No.94/89 against Ambati Narsaiah-landlord, Pericherla Ramachandra Raju-auction purchaser and Maddala Subba Rao-decree holder for declaration of his cultivating tenancy rights over the land. It appears the landlord died pending the enquiry before the Special Officer and his legal representatives came on record as parties to the proceedings. E.A. No. 6/91 and A.T.C. No. 137/91 came to be tried together and evidence came to be recorded in E.A. No.6/91. The tenant besides examining himself as P.W. 1 examined Thotakura Subba Rao as P.W. 2, Indukuri Satyanarayanaraju as P.W. 3, Namburi Ramachandraraju as P.W. 4 and Konapureddy Saibaba as P.W. 5 and marked 23 documents as Exs. A-1 to A-23

and the admissions made by the landlord in the earlier proceedings as Exs. C-1 to C-5. On behalf of the landlord, he got himself examined as R.W. 1 besides examining T. Rajayya as R.W. 2, Madhyanapu Seetayya as R.W. 3 and Addala Swami Naidu as R.W. 4 and marked 13 documents as Exs. B-1 to B-13. The learned Special Officer-cum-Principal District Munsif, Tadepalligudem, on appreciation of evidence brought on record and on hearing counsel for both the parties, allowed E.A. No. 6/91 and A.T.C. No. 137/91 declaring Pericherla Jagapathi Raju as the tenant of the land and directing the LRs of Ambati Narsaiah to re-deliver the land to him by an order dated 30-12-1996. The LRs of the landlord-Ambati Narsaiah filed C.R.P. No. 816/97 questioning the order passed in E.A. No. 6/96, and A.T.A. No. 7/97 questioning the order passed in A.T.C. No. 137/91. The learned appellate authority under A.P.(A.A.) Tenancy Act, on re-appreciation of the evidence brought on record, allowed the appeal by judgment dated 30-8-97 and consequently dismissed the application of the tenant in A.T.C. No. 137/91. The principal reasons assigned by the appellate authority for dismissal of the application filed by the tenant are:- Firstly, there is no relationship of landlord and tenant between Pericherla Jagapathi Raju and Ambati Narsaiah; secondly the provisions of tenancy Act are not applicable to the land in question since the same comes under the exception as provided in Section 18 of the Tenancy Act. Assailing the order passed by appellate authority in A.T.C. No. 7/97, the tenant-Pericherla Jagapathi Raju filed C.R.P. No. 4886/97.

7. For the sake of convenience the parties hereinafter be referred to as they are arrayed in C.R.P. No. 816 of 1997.

8. The petitioners are the LRs of the landlord-Ambati Narsaiah. R-1 Pericherla Jagapathi Raju is the tenant. R-2 Pericherla Ramachandra Raju is the auction purchaser and R-3 Maddala Subba Rao is the decree holder. The dispute is between the landlord and the tenant. Since the landlord died pending enquiry before the Special Officer- cum-Principal District Munsif, Tadepalligudem, the petitioners herein came on record as his legal representatives.

9. Learned counsel appearing for the petitioners submits that the executing court failed to note that R-1 Pericherla Jagapathi Raju did not place on record any proof evidencing the payment of maktha (rents) to Ambati Narsaiah and thereby erred in recording a finding with regard to the existence of the relationship between them as tenant and landlord. He further submits that the lease agreements placed on record, which have been marked as Exs. A-1, A-12 and A-13, are inadmissible in evidence and therefore no reliance can be placed on the said documents. His further submission would be that the admissions made by Ambati Narsaiah in the earlier proceedings could not be a substantive piece of evidence to establish the tenancy rights of R-1 over the land. In support of his submissions he placed reliance on the following decisions:- Bhawarlal Vs. Mathura Prasad, . Chinta Venkata Jagannatha Rao Vs. Dola Narannaidu and Others, . Ratan Lal Sharma Vs. Purshottam Harit, . Smt. Krishnawati Vs. Shri Hans Raj, . Korru Venkataramana Reddy and Another Vs. K. Venkatarami Reddy

and Others, . Basant Singh Vs. Janki Singh and Others, . O. Devarapu Narasimharao Vs. Yerrabothula Peda Venkaiah and Others, . and Yarlagadda Venkakka Choudary (dead) and Another Vs. Daggubati Lakshminarayana (dead) and Others, . In Bhawarlal v. Mathura Prasad" case (1 supra), the Madhya Pradesh High Court held that a party can show that either the admission by him was made under a mistake or under different circumstances. And unless there has been a prejudice to the opposite party on account of the admission having been acted upon or on account of any representation made by the admitting party, it would not bind the party unless it amounted to an estoppel. In V. Jagannatha Rao v. Narannaidu's case (2 supra), our High Court held that subsequent payment of stamp duty and penalty could remove disability of being unstamped document but document being lease required registration and it not having been registered could not be admitted in evidence. In Ratan Lal v. Purshottam's case (3 supra), the Supreme Court held that where the terms of the arbitration award did not transfer the share of a partner A in the assets of a firm to the other partner B either expressly or by necessary intendment but on the other hand expressly made an allotment of the partnership assets and liabilities to B making him absolutely entitled to the same in consideration of a sum of money to be paid by him to the other partner A, thereby expressly purporting to create rights in immovable property of the firm worth above Rs. 100/-, the award is compulsorily registrable u/s 17 of Registration Act, and, if unregistered, cannot be looked into and the court could not pronounce judgment in terms of award u/s 17 Arbitration Act, 1940, which presupposes the existence of an award which can be validly looked into by the court. In Krishnawati v. Hans Raj's case (4 supra), the Supreme Court held that previous self serving statements by a party in other proceedings cannot be used as substantive evidence in subsequent proceedings against that party. In K. Venkataraniana Reddy v. K. Venkatarami Reddy's case (5 supra), our High Court held that the award passed by arbitrator partitioning joint family properties among coparceners pursuant to an agreement between them is not admissible in evidence for want of registration. Para 10 of the above cited judgment reads as follows:

"10. In Roshan Singh v. Zile Singh AIR 1988 SC 881. the Supreme Court while considering the necessity to effect registration of an instrument of partition held in paragraph 9:

"Two propositions must therefore flow: (1) A partition may be effected orally; but if it is subsequently reduced into a form of a document and that document purports by itself to effect a division and embodies all the terms of bargain, it will be necessary to register it. If it be not registered Section 49 of the Act will prevent its being admitted in evidence. Secondly evidence of the factum of partition will not be admissible by reason of Section 91 of the Evidence Act, 1872. Partition lists which are mere records of a previously completed partition between the parties, will be admitted in evidence even though they are unregistered, to prove the fact of partition."

In view of the two decisions of this Court rendered by two Full benches and also of that of the Supreme Court, Ex. B-1 cannot be admitted into evidence to prove which item of property has fallen to which of the defendants as it is not a registered instrument. However, Ex. B-1 according to the decisions of the Full Benches, can be looked into to prove the factum of partition. Even this is not permissible according to the decision of the Supreme Court in Roshan Singh's case (9 supra), unless Ex. B-1 can be termed to be a simple list whereunder different items of property were partitioned between D-3 on one hand and D-1, D-2 and D-4 on the other. Even otherwise also it is well established principle of Hindu Law, as hold by their Lordships of the Privy Council and the Supreme Court, that for a severance in status, all that is required is a communication to the other members of the joint family of an unequivocal intention to separate. (Vide Suraj Narain v. Iqbal Narain (1912)40 I. A 40(PC). Giraj Bai v. Sadashi V. Dundhiraj AIR 1916 PC 104. and Addagada Raghavamma and Another Vs. Addagada Chenchamma and Another, .). This communication of intention could be done orally or by a notice in writing to the other coparceners. If the intention is expressed by reducing the same into writing such a document, though unregistered, is admissible and can be looked into. In the case on hand, Ex. X-1 is an agreement entered into between D-3 on one hand and D-1, D-2 and D-4 on the other to refer the matter to arbitration for purposes of bringing in a partition between them. This agreement, Ex. X-1, sufficiently reflects the expression that D-3 and other defendants (D-1, D-2 and D-4), intended to have a partition between themselves, and therefore de hors there is severance in joint status between D-1, D-2 and D-4 on one hand and D-3 on the other. In Umatyorupagam v. Palanarayana, AIR 1915 Mad. 892. the Madras High Court held:

"Where an agreement entered into by the members of a Joint Hindu Family provided that all the Immovable and moveable properties relating to the coparcenary were to be divided as from that date of the agreement and that from that time forward separate accounts were to be kept by the coparceners.....Held: that the intention of the parties was to divide then and there and not to wait until a complete division of the properties had been effected."

In Mst. Rukhmabai Vs. Lala Laxminarayan and Others, . the Supreme Court dealing with an unregistered instrument of partition, held that an unregistered document can effect separation in status."

In Basant Singh v. Janki Singh's case (6 supra), the Supreme Court held that an admission made by a party in a complaint signed and verified by him may be used as against him in other suits. But in other suits this admission cannot be recorded as a conclusion and it is open to the party to show that it is not true. In D. Narasimha Rao v. Y. Peda Venkaiah's case (7 supra), our High Court held that admissions made by a party in a plaint may be used as evidence against him in other suits, but such admissions cannot be recorded as conclusive in other suits

and it is open to the party to show that it is not true. In *V. Venkakka Choudary v. D. Lakshminarayana*'s case (8 supra), our High Court held that estoppel operates against a party to document and not against minors though parties to document and others not parties to document. It is further held that admissions made therein are not conclusive proof of matters admitted but they may operate as estoppel and such admission operating as estoppel can be explained under law. Para 22 of the above judgment reads as follows:

"22. A serious question is raised by Mr. Mehar Chand Noori, the learned Advocate for the plaintiffs that defendant No. 1 having admitted the execution of Ex. A-3, the burden of proving the contrary to the contents of the document should be heavily placed on him and other defendants for two reasons. Firstly, according to him defendants 1 to 3 who are parties to the document are hit by the rules of estoppel and secondly due to the prohibition under Sections 91 and 92 of the Evidence Act. The first contention appears to have come force in so far as defendant No. 1 is concerned, but not defendants 2 and 3 who were minors at the time of execution of the document and the other defendants who are not parties to the document. Such an estoppel operates against defendant No. 1 by virtue of Sections 17 and 31 of the Indian Evidence Act. That may amount to an estoppel by admission in a document. But Section 31 contemplates that such admissions are not conclusive proof of the matters admitted, but they may operate as estoppels under the provision and the law appears to be settled that such admission operating as estoppels are capable of explanation. That is what defendants 1 to 3 have done in this case. They have not only tried to explain the circumstances under which Ex. A-3 came to be executed but also that it was not intended to be acted upon and that it was not actually acted upon."

10. Learned counsel appearing for R-1 submits that the executing court considered the evidence brought on record in right perspective and declared the tenancy rights of R-1 over the land and therefore the findings recorded by the Special Officer are not required to be interfered in this revision. He further submits that the appellate authority discarded the admissions made by Ambati Narsaiah with regard to the existence of relationship between him and R-1 as landlord and tenant, on flimsy grounds. It is his further submission that Exs. A-1, A-12 and A-13 are the lease deeds and they have been admitted in evidence and therefore they can be used for collateral purpose. He would further submit that the admission of Ambati Narsaiah in the counter filed by him in A.T.C. No. 137/91 (old A.T.C. 94/89) and E.A. No. 720/76 (sale set aside petition) are themselves sufficient to establish the relationship between Ambati Narsaiah and Pericheria Jagapathi Raju as landlord and tenant and no further proof is required. He refers to Ex. A-14 certified copy of the counter filed by Ambati Narsaiah in A.T.C. No. 137/91. In support of his submissions, he placed reliance on *Bishwanath Prasad and Others Vs. Dwarka Prasad and Others*, .. It has been held in the cited decision that admissions made by a party to the suit need not be put to him when he is in the witness box. Para 8 of the aforesaid judgment reads as follows:

"8. There is no merit even in the contention that because these three statements - Exs. G, G-2 and H - had not been put to the first plaintiff when he was in the witness box or to the eighth defendant although he had discreetly kept away from giving evidence, they cannot be used against him. Counsel drew our attention to Section 145 of the Indian Evidence Act. There is a cardinal distinction between a party who is the author of a prior statement and a witness who is examined and is sought to be discredited by use of his prior statement. In the former case an admission by a party is substantive evidence if it fulfills the requirements of Section 21 of the Evidence Act: in the latter case a prior statement is used to discredit the credibility of the witness and does not become substantive evidence. In the former there is no necessary requirement of the statement containing the admission having to be put to the party because it is evidence *proprio vigore*: in the latter case the Court cannot be invited to disbelieve a witness on the strength of a prior contradictory statement unless it has been put to him, as required by Section 145 of the Evidence Act. This distinction has been clearly brought out in the ruling in *Bharat Singh and Another Vs. Bhagirathi*, . This Court disposed of a similar argument with the following observations:

"ADMISSIONS are substantive evidence by themselves, in view of Sections 17 and 21 of the Indian Evidence Act, though they are not conclusive proof of the matters admitted. We are of opinion that the admissions duly proved are admissible evidence irrespective of whether the party making them appeared in the witness box or not and whether that party when appearing as witness was confronted with those statements in case it made a statement contrary to those admissions. The purpose of contradicting the witness under Sec.145 of the Evidence Act is very much different from the purpose of proving the admission. Admission is substantive evidence of the fact admitted while a previous statement used to contradict a witness does not become substantive evidence and merely serves the purpose of throwing doubt on the veracity of the witness. What weight is to be attached to an admission made by a party is a matter different from its use as admissible evidence."

11. Exs. A-1, A-12 and A-13 are the unregistered lease deeds. All these unregistered lease deeds are executed in favour of R-1 Pericherla Jagapathi Raju. R-2 Percherla Ramachandra Raju (auction purchaser) took possession of the land through the process of court on 16-7-76. Ex. A-3 is the certified copy of the delivery receipt. R-1 Pericherla Jagapathi Raju has signed on Ex. A-3 delivery receipt as tenant of the land. It is a matter of record that he did not resist the delivery effected on 16-7-76. At the cost of repetition, I may state that R-1 Pericherla Jagapathi Raju did not raise any objection for effecting delivery in favour of R-2 on 16-7-76. The deceased-Ambati Narsaiah-iandlord admitted the existence of tenancy in favour of R-1 Pericherla Jagapathi Raju over the land in the petition (E.A. 720/76) filed by him to set aside the sale and also in the counter filed by him to the tenancy application (ATC. No. 137/91). The executing court-cum-Special officer considered the evidence brought on record in great

detail and recorded a finding that R-1 Pericherla Jagapathi Raju was a tenant as on 16-7-76. The appellate authority upset the said finding of the Special Officer on the ground that admissions made by deceased are not conclusive proof of the tenancy rights of R-1 Pericheria Jagapathi Raju over the land. It is not in dispute that deceased- Ambati Narsaiah-landlord admitted the tenancy rights of R-1 Pericheria Jagapathi Raju over the land as on 16-7-76 both in his pleadings and in his evidence while being examined as R.W. 1. It has been held by the Apex Court in Biswanath Prasad v. Dwarka Prasad's case (15 supra) that an admission made by a party is substantive evidence if it fulfils the requirement of Section 21. Section 21 of Indian Evidence Act reads as follows:

21. Proof of admissions against persons making them, and by or on their behalf:- Admissions are relevant and may be proved as against the person who makes them, or his representative-in-interest, but they cannot be proved by or on behalf of the person who makes them or by his representative-in-interest, except in the following cases:-

(1) An admission may be proved by or on behalf of the person making it, when it is of such a nature that, if the person making it were dead, it would be relevant as between third person u/s 32.

(2) An admission may be proved by or on behalf of the person making it, when it consists of a statement of the existence of any state of mind or body, relevant or in issue, made at or about the time when such state of mind or body existed, and it accompanied by conduct rendering its falsehood improbable.

(3) An admission may be proved by or on behalf of the person making it, if it is relevant otherwise than as an admission."

There is a cardinal distinction between the maker of admission by a prior statement and witness who is sought to be discredited by use of his prior statement. In the former case an admission is substantive evidence if it fulfils the requirement of Section 21 and there is necessary requirement of putting it to the maker; in the latter case a prior statement is used to discredit the witness by putting to him as required by Section 145.

12. The deceased-landlord tried to wriggle out of the situation by taking the plea that R-1 and R-2 colluded together and made him to make certain pleadings adverse to him in the sale set aside petition. I do not see any substance in his contention since the deceased-landlord made a categorical admission with regard to the tenancy rights of R-1 Pericheria Jagapathi Raju over the land not only in his pleadings but also in his evidence while being examined as R.W. 1. The appellate authority i.e. District Judge without considering the proposition of law laid down by the Apex Court, with regard to the evidentiary value of admissions, interfered with the finding recorded by the Executing Court-cum- Special Officer in that regard. Since the finding recorded by the appellate authority with regard to evidentiary value of admissions made by the deceased-Ambati Narsaiah in earlier proceedings is contrary to the proposition of law laid down by the

Supreme Court in *Biswanath Prasad v. Dwarka Prasad* case (15 supra), the same is liable to be set aside and the finding of the Executing Court-cum-Special Officer in that regard is required to be restored.

13. It has been vehemently urged by learned counsel for the petitioners that Exs. A-1, A-12 and A-13 are unregistered lease deeds and therefore they have no evidentiary value. A question came up for consideration before a Division Bench of this Court as to whether unregistered lease deed is admissible in evidence for collateral purpose in *A. Kishore @ Kantha Rao v. G. Srinivasulu*, CRP No. 3273/2003 dt.22-4-2004 - Reported in 2004(2)An. W.R. 1. wherein it has been held that an unregistered lease deed which is compulsorily registrable can be used for the purpose of proving the nature of possession. In view of the settled position of law that though Exs. A-1, A-12 and A-13 are unregistered lease deeds they can be used for the purpose of proving the nature of possession of R-1 over the land.

14. Whatever rights R-1 Pericherla Jagapathi Raju had as on 16-7-76, he had given go-by to those rights and he took the land on lease afresh from R-2 Pericherla Rama Chandra Raju under Ex. A-13. It is a matter of record that the deceased-Ambati Narsaiah took possession of the land with the assistance of police aid on 1-7-90 and since then he has been in possession and enjoyment of the same. The question is what was the nature of possession of R-1 Pericherla Jagapathi Raju as on 1 -7-90. It is useful to refer to the pleading of R-1 Pericherla Jagapathi Raju (the petitioner in E.A. No. 6/91) in the petition filed under Sections 144 and 151 and Order 21 Rule 99 CPC(E.A. 6/91) and it is thus:

"9. Petitioner and Respondent No. 2 have entered into mutual agreement which was later reduced to writing under the agreement, dt. 10-1-1978 as per which the 2nd respondent has been alleged to raise fruit bearing trees in the petition schedule land and carry on necessary improvements in the land, such as the borewell, to the makam shed etc. and the petitioner is to share the usufruct of the trees raised therein towards his share be a tenant."

What is to be inferred from the pleading of R-1 Pericherla Jagapathi Raju is that he allowed R-2 Pericherla Ramachandra Raju (auction purchaser) to raise fruit bearing trees in the land and carry on necessary improvements and agreed to receive a share in the usufruct of the trees raised therein. The deceased took specific plea in the counter filed in A.T.C. No. 137 of 1991 opposing the tenancy application of R-1 that the tenancy Act is not applicable to the land. The Executing Court-cum-Special Officer held that a part of the land still being used for raising paddy and therefore tenancy Act is applicable. Whereas the appellate authority upset the finding of the Special Officer on the ground that the land comes within the exception as provided in Section 18(1)(b) of A.P.(A.A.) Tenancy Act. A Commissioner was appointed by the Executing Court to inspect the land and accordingly Commissioner inspected the land on 17-3-1991 and filed report. As per the Commissioner's report there is no possibility of cultivation in view of the thick growth of the trees except the paddy found to an extent of 97 cents.

The report of the Commissioner has been referred by the Executing Court. I deem it appropriate to refer the relevant portion of the order of the Executing Court wherein the Commissioner's report is mentioned and it is thus:

"...The Commissioner is also stating that big coconut plants were aged about 15 to 20 years and Guava plants are only three years. He visited the land on 17-3-1991. All the coconut trees and Guava Trees might have been planted prior to Ex. B-3 and after Ex. A-3. These plants as stated by the petitioner were planted by the 2nd respondent and reared by the petitioner as agreed under Ex. A-13 and as per the Commissioner there is no possibility of cultivation in view of the thick growth of the trees except paddy field found by him in an extent of Ac. 0-97 cents. He also found mirchi plants which are grown for domestic use. So, it seems from the date of Ex. A-3 the land for growing the crops, was reduced due to growing of coconut and guava trees. Even though the petitioner is stating that he raised tobacco and sugarcane it must be in a less extent which was being reduced from year to year. In view of the clinching evidence of Ex. A-3 I have no hesitation to hold that petitioner is continuing as tenant from the date of Ex. A-3."

Ex. A-13 is the lease deed whereunder R-1 Pericherla Jagapathi Raju took the land on lease from R-2 Pericherla Ramachandra Raju (auction purchaser). According to R-1, he is entitled to a share in the usufruct of the trees raised in the land. When such is the agreement between R-1 and R-2 as on 1-7-90, whether R-1 is entitled for declaration of his cultivating tenancy rights and for restitution of the land to him. The answer could be found by referring to Section 18 of A.P.(A.A.) Tenancy Act, Section 18 reads as follows:

"18. Savings:-

(1) Nothing contained in this Act shall apply-

- (a) to lands in which plantation crops are raised;
- (b) to orchards, where the tenancy is for the enjoyment only of the usufruct of the trees;
- (c) to lands owned by (the Central Government or the State Government); and
- (d) to lands leased for grazing purposes;
- (e) to lands held by any Corporation established by or under a Central or Provincial or State Act, or any Government Company as defined in Section 617 of the Companies Act, 1956 or any Port Trust."

(2) The provisions of Sections 3, 4, 5, 6, and 7 shall not apply to any lease of land belonging to or given or endowed for the purpose of any charitable or religious institutions or endowment, falling within the scope of sub-sec. (1) of Section 74 of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1966 (Act 17 of 1966), but the provisions of other Sections of this Act, shall apply to every lease subject to the following modifications, namely:

(i) the word "rent" in relation to such land shall construed as rent in force at the commencement of the Andhra Pradesh (A.A) Tenancy (Amendment) Act, 1974: and where reasonable rent has been fixed under clause (e) of the said sub-section (I) of Section 74, the word "rent" shall be construed as the reasonable rent so fixed; and

(ii) in sub-section (3) of Section 10 and in sub-section (3) of Section 12, for the expression "subject to the provisions of Sections 3 and 6" the expression "subject to the provisions of clause (e) of the said sub-section (1) of Section 74" shall be substituted."

It is explicit from the above section that where tenancy is for enjoyment only of the usufruct of the trees, the tenancy Act is not applicable. R-1 has pleaded in the petition filed u/s 144 and 151, Order 21 Rule 99 of CPC (E.A. 6/91) that he is entitled to a share in the usufruct of the trees raised in the lands. Therefore, the Tenancy Act is not applicable to the land in question. Accordingly, R-1 cannot be declared as a tenant within the meaning of A.P.(A.A.) Tenancy Act. When once he is not a tenant within the meaning of A.P.(A.A.) Tenancy Act, he is not entitled for restitution of land.

14. In the result, C.R.P. No. 816 of 1997 is allowed setting aside the order dated 30-12-1996 passed in E.A. No. 6 of 91 in E.P. No. 2 of 91 in O.S. No. 881 of 1973 on the file of Principal District Munsif, Tadepalligudem, and consequently E.A. filed by R-1 is dismissed. C.R.P. No. 4886 of 1997 is dismissed confirming the order dated 30-8-97 passed in A.T.A. No. 7 of 1997 on the file of District Judge, W.G. at Eluru. No costs.