
(2010) 07 AP CK 0088

In the Andhra Pradesh High Court

Case No : Second Appeal No. 863 of 2009

Bathinan Chennamma

APPELLANT

Vs

Bathina Ventaka Subbaiah

RESPONDENT

Date of Decision : 27-07-2010

Acts Referred:

Citation : (2010) 6 ALD 141

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : L.J. Veera Reddy, for the Appellant; V.R. Reddy Kovvur, for the Respondent

Final Decision : Allowed

Judgement

L. Narasimha Reddy, J.—The Appellant filed O.S. No. 255 of 2004 in the Court of III Additional Junior Civil Judge, Kadapa, against the Respondent for the relief of declaration of title in respect of the suit schedule property and for recovery of possession thereof, as well as a sum of Rs. 3,000/- towards arrears of rent. She pleaded that the schedule property, being house and surrounding plot of land was given to her husband, an employee in. the Chemmumiahpet Gram Panchayat, by the Government, and that he constructed a house thereon. It is stated that after his death, the Appellant succeeded to the property. She pleaded that the Respondent was a tenant in the premises on a monthly rent of Rs. 250/-, but he failed to pay the rent from January 2003 onwards, and started disputing title of the Appellant.

2. The Respondent filed a written-statement, opposing the suit. He disputed the right, title and entitlement of the Appellant over the land. He denied the existence of relationship of tenant and landlady, between himself and the Appellant. An objection was also raised as to non-joinder of the Government, as a Defendant.

3. The trial Court decreed the suit through judgment dated 30-12-2005.

Aggrieved thereby, the Respondent "filed A.S. No. 23 of 2006 in the Court of Family Judge-cum-Additional District Judge, Kadapa. The appeal was allowed on 04-06-2009. Hence this Second Appeal.

4. Sri L.J. Veera Reddy, learned Counsel for the Appellant submits that the lower Appellate Court has reversed the judgment and decree of the trial Court on the grounds, which were not even pleaded by the Respondent. He contends that the Respondent did not raise any plea as to the bar of the suit, or as to applicability of the A.P. Buildings, Lease, Rent and Eviction (Control) Act, (for short "the Act"), much less an issue was framed before the trial Court, and still, the lower Appellate Court passed its judgment on that ground. He further submits that the plea of the Respondent was self-contradictory, in that, on the one hand, he pleaded that he was, himself, permitted to occupy the plot by the Government, and on the other hand, claimed devolution under a Will, marked as Ex.B-2. According to him, the Appellant has proved her title to the property, and the inevitable conclusion is that the Respondent must be evicted.

5. Sri V.R. Reddy Kovvuri, learned Counsel for the Respondent, on the other hand, submits that the property in question is said to have been assigned in favour of the husband of the Appellant, by the Government and in a suit for declaration, the Authority, that assigned the land; is necessary party. He contends that the rent for the premises, as pleaded by the Appellant, is Rs. 250/- per month, and in that view of the matter, the provisions of the Act get attracted, and that being a pure question of law, the lower Appellate Court was certainly justified in taking that into account. The Appellant filed the suit, claiming the relief of,

- a) declaration of title, in respect of the suit schedule property;
- b) recovery of possession thereof; and
- c) recovery of a sum of Rs. 3,000/-, as arrears of rent.

6. The Appellant based her claim to the property upon a certificate, dated 29-05-1998, issued by the Mandal Revenue Officer, Kadapa, in favour of her husband, and the subsequent enjoyment of the property. It was pleaded that the Respondent is her tenant. The latter, on the other hand, asserted title in himself. He rested his claim on two events, viz., the permission accorded to him, by the Government, to occupy the land, and devolution under a Will, dated 16-01-1998, said to have been executed by one, late, Chinnakka. The trial Court framed the following issues for its consideration:

- 1) Whether the Plaintiff and her husband Bonasi Venkatasubbaiah occupied the suit schedule vacant site and erected hut and are in possession of the same as alleged by the Plaintiff ?
- 2) Whether the Plaintiff is the absolute owner of the suit schedule house?
- 3) Whether the Plaintiff preferred her title over the suit schedule property by way

of adverse possession?

4) Whether the cause of action shown by the Plaintiff is true and correct?

5) Whether the Plaintiff is entitled for declaration of right and title over the suit schedule property?

6) Whether the Plaintiff is entitled for recovery of possession of the suit schedule property?

7) Whether the Plaintiff allowed the Defendant to reside in the suit schedule property in the month of October 1999 on monthly rent of Rs. 250/- per month?

7. On behalf of the Appellant PWs 1 to 3 were examined and Exs.A-1 to A-5 were filed. On behalf of the Respondent, DWs 1 to 4 were examined and Exs.B-1 to B-7 were filed. The suit was decreed by the trial Court, but the same was reversed by the lower Appellate Court.

8. Two substantial questions of law arise for consideration, viz.,

1) Whether in a suit for declaration of title, based upon the assignment or permission, accorded by the Government, it is necessary to implead the concerned Authority of the Government ? and

2) Whether an Appellate Court can reverse the judgment and decree of a Trial Court on a point, not urged in the written-statement?

9. The Appellant based her claim on Ex.A-1, the original certificate, given to her by the Mandal Revenue Officer in 1998. In a way, this has acknowledged the existing possession of the Appellant over the property. It may, quite, well be argued, as to whether Ex.A-1 can constitute the basis for declaration of title. In this context, it needs to be observed that the declaration as to title need not be uniform or in a standard form . Much would depend upon the nature of opposition, which a Plaintiff in a suit faces, to his right, over a tangible or intangible property. If a Plaintiff, on the one hand, and the Defendant, on the other hand, claim right to the same property by way of succession, or by devolution, or the one, through succession, and the other, through a different way of acquisition of rights, the nature of scrutiny would not only be stringent, but also with reference to the settled principles of law. Where, however, the opposition to the rights of a Plaintiff is from a person, who does not hold any superior title, the considerations are bound to be slightly different. If the Court finds that the nature of right asserted by the Plaintiff is a bit superior to the one, pleaded by the Defendant, the relief can certainly be granted.

10. The burden of the Appellant would have been heavy, had the declaration sought by her was, against the Government. She did not face any problem from that circle. It is only from the Respondent, that she faced the problem. Therefore, the suit cannot be said to be bad for non-joinder of the Government, as a party to it. The Appellant cannot be compelled to fight a litigation against a person or agency, vis-a-vis whom she does not have any grievance. Therefore,

the plea taken by the Respondent, which, in turn, partly weighed with the lower Appellate Court; cannot be countenanced.

11. The Appellant, no doubt, pleaded that the Respondent is her tenant, and that the rent was Rs. 250/- per month. If it were to be for the simple relief of eviction, she was required to institute proceedings under the Act before the Rent Controller, since the property is within the premises of the Kadapa Municipal Corporation. However, she has prayed for the comprehensive relief of declaration of title, which could not have been prayed for, before the Rent Controller. Further, the plea, as to bar of suits of this nature, in the light of the provisions of the Act was not raised by the Respondent in the written-statement. No issue was framed by the trial Court, nor did the lower Appellate Court frame any point on this. Still, the decree passed by the trial Court was set aside.

12. This Court is of the view that the judgment rendered by the lower Appellate Court cannot be sustained in law.

13. The Second Appeal is accordingly allowed, and the judgment rendered by the lower Appellate Court in A.S. No. 23 of 2006 is set aside.

14. There shall be no order as to costs