

(1962) 07 AP CK 0008
In the Andhra Pradesh High Court
Case No : Appeal No. 100 of 1959

Bhookya Abbanna and Another

APPELLANT

Vs

Maramraju Seshagir Rao and Others

RESPONDENT

Date of Decision : 23-07-1962

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 9
Hyderabad Land Revenue Act, 1317 — Section 2(12)
Hyderabad Tenancy and Agricultural Lands Act, 1950 — Section 68, 72

Citation : AIR 1963 AP 208 : (1963) 1 AnWR 51

Hon'ble Judges : Umamaheswaram, J; Chandrasekhara Sastry, J

Bench : Division Bench

Advocate : Gopal Rao and G.N. Tuljapurker, for the Appellant; Triyambak Rao Deshmukh, for the Respondent

Final Decision : Dismissed

Judgement

Umamaheswaram, J.—This is an appeal directed against the judgment and decree of the Subordinate Judge of Warangal decreeing the plaintiff's suit O.S. No. 22 of 1958. the suit was instituted by six plaintiffs for a declaration that they were the owners of the suit lands, and for recovery of possession and for recovery of arrears of rent. It was stated in paragraph 1 of the plaint that as the result of partition entered into between plaintiffs 1 to 5 and the 6th plaintiff the properties fell to the share of plaintiffs 1 to 5. According to paragraph 2 of the plaint, the defendants are the "asamees" cultivating the suit lands. As they defaulted to pay rent, a suit was instituted in Mahboobabad Tahseel for eviction and for recovery of arrears of rent. the suit was decreed. The defendants thereupon trespassed on the plaint schedule lands. A suit was once again filed in Mahboobabad Tahseel on 17-3-1958. There was a compromise entered into between the plaintiffs and the defendants under which the defendants agreed to purchase the wet lands at the rate of Rs. 2,000/- per acre, dry land at the rate of Rs. 275/- per acre and "bagat" lands at Rs. 500/- per acre. They once again defaulted to pay the sale price as agreed to between them. In paragraph 4 of the

plaint if is alleged that they obtained Shikmeedsry certificates with the assistance of Narasimha Rao, appointed as Gumasta Patwary of Betole. Later on they got their names entered as the owners of the lands. The suit was therefore instituted for a declaration that they were the owners and that the defendants were not the owners.

2. In the written statement filed by the defendants it was admitted that they were Shikmidars.

3. The Court below held that the plaintiffs are the owners and that as the defendants, the shikmidars, defaulted to pay rent, they were liable to be evicted. A decree for arrears was also passed. It is as against this judgment and decree that the appeal has been preferred to this Court.

4. The only question that was argued by Sri Gopalrao Tuljapurkar was that the Civil Court had no jurisdiction to entertain the suit for eviction. Both the parties admitted that the defendants are shikmidars within the meaning of the Hyderabad Land Revenue Act (VIII of 1317 Fasli), hereinafter referred to as "the Act", "Shikmidar" is defined in Section 2(12) of the Act as follows:

" "Shikmidar" means the person who like a "Pattadar" possesses a title to the land or who from the beginning has been jointly in possession of the land with the pattadar, or who, before the commencement of this Act, has acquired by virtue of any regulation in force, or may acquire by virtue of that law the right of a Shikmidar."

The question as to whether a Shikmidar is governed by the provisions of the Hyderabad Tenancy and Agricultural Lands Act (XVI of 1960) hereinafter referred to as the Tenancy Act", was discussed by Kumarayya, J. in Syed Hassan v. Sandaiah 1959 2 Andh WR 75. The learned Judge, after a discussion of the relevant provisions of both the Acts, came to the conclusion that the Hyderabad Tenancy and Agricultural Lands Act does not apply to Shikmidars. the learned Judge observed at page 77 as follows:

"The concept of Shikmidar in the Hyderabad Revenue Act (VIII of 1317 F.) has certain Characteristic features and legal incidents. The Hyderabad Tenancy and Agricultural Lands Act does not appear to be concerned with such concept. It is concerned only with the tenants and protected tenants."

The learned Judge added that the mere fact that the protected tenants have majority of such rights as are enjoyed by Shikmidars does not bring the case within the purview of Section 99 of the Tenancy Act as to bar the Jurisdiction of the Civil Court. He wound up by saying:

"Suffice it to say that the expression "Shikmidar" is different from the term "protected tenant" and the Tenancy Act is not concerned with the former which is the creature of Land Revenue Act and the rights and duties are regulated by that Act."

We agree with the reasoning of the learned Judge and hold that a Shikmidar is not governed by the provisions of the Tenancy Act but is only governed by the provisions of the Hyderabad Land Revenue Act (VIII of 1317 F.).

5. The next question is whether there are any provisions in the Act which bars the Civil Court from entertaining the suit for eviction and collection of arrears of rent. Section 72 of the Act provides that an application for recovery of arrears of rent may be filed before the Tahsildar within three years from the date of its becoming due. The section makes it clear that this procedure shall not be a bar to seek remedy in the Civil Court, the suit for recovery of arrears of rent is consequently cognizable by a Civil Court under the express terms of Section 72 of the Act.

6. The next question is whether the suit for eviction is barred by any of the provisions of the Act. Sri Gopala Rao Tuljapurtar strongly relied on the terms of Section 67 of the Act which runs in the following terms:

"Where no agreement has been made between the pattadar and Asami Shikmi pertaining to the period of possession, and the possession by the Asami Shikmi has been for a continuous period of twelve years he shall be deemed to be a Shikmidar and he shall have permanent right as against the pattadar." xx xx xx xx xx"

The learned Advocate added that as his clients have permanent rights against the pattadar, they are not liable to be evicted. Section 63 of the Act enacts as follows:

"A shikmidar shall pay on the land held by him only so much of fixed rent or share of produce as may be due in accordance with the agreement entered into Between him and the pattadar or potepattadar; and if no such agreement has been entered into as much as he was paying in accordance with the usage in the previous years, and so long as he continues to pay the rent he shall not be evicted from the land in his possession."

The last clause in the section clearly implies that if a Shikmidar does not pay the rent, he shall be evicted from the land in his possession. A Full Bench of the Hyderabad High Court construed the terms of Section 68 of the Act in Kondapallj Ranga Rao v. Dasa Veeranna 36 Dec. LR 909. The learned Judges held that the Shikmidar is liable to be evicted by the Civil Court if he does not pay the rent. Sri Gopalrao Tuljapurkar contended that as the learned Judges found that the person in occupation was not a shikmidar but only an asami shikmi, the observations of the learned Judges in regard to the construction of Section 68 of the Act are obiter. Even assuming that the observations are obiter they are entitled to great weight. Moreover their view is in accordance with the construction which we place upon the section, we are inclined to think that a Shikmidar is liable to be evicted in a Civil Court under the terms of Section 63 of the ACT. If he does not pay rent. Our attention has not been drawn to any section in the Act corresponding to Section 99 of the Tenancy Act which bars the jurisdiction of the

Civil Court. Section 9 of the CPC has to be given due effect to. It provides that the Court shall have jurisdiction to try all suits of civil nature excepting suits in which their cognizance is either expressly or impliedly barred. As such a suit is not expressly or impliedly barred by the provisions of the Act, we hold that the Court below had ample jurisdiction to entertain the suit and direct eviction of the shikmidars.

7. In the result, we confirm the judgment of the Court below and dismiss the appeal with costs.