(1977) 12 AP CK 0010

In the Andhra Pradesh High Court

Case No : C.R.P. 1369 and 1370 of 1977

Birudavolu Ramachandra Reddy APPELLANT

Vs

State of Andhra Pradesh RESPONDENT

Date of Decision : 27-12-1977

Acts Referred:

Andhra Pradesh Agricultural Lands (Prohibition of Alienation) Act, 1972 — Section 6
Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 — Section 17, 17(2), 4, 5, 6(b)
Transfer of Property Act, 1882 — Section 53A

Citation : (1977) 12 AP CK 0010

Hon'ble Judges : Madhava Reddy, J

Bench : Single Bench

Advocate : P. Babul Reddy, for the Appellant;

Final Decision : Allowed

Judgement

Mr. Madhava Reddy, J.—These two revision petitions are by the declarants in C.C. Nos. 1246/76 KVR and 1277/75 KVR on the file of the Land Reforms Tribunal (Kavali Division), Kavali, and are directed against the common order in A.C. Nos. 671 and 672 of 1976 on the file of the Land Reforms Appellate Tribunal, Nellore. The petitioner in C.R.P. No. 1369/77 (who is hereinafter referred to as ''the 1st petitioner'') is the father of the petitioner in C.R.P. No. 1370/77. They filed two separate declarations and in each of these cases, the Land Reforms Tribunal determined that they are holding 0.7649 standard holding in excess of the ceiling area to which they are respectively entitled. The petitioners had pleaded that the lands covered by the registered sale-deeds, Exs. x-3 and x-4 dated 24-6-1971, Exs.A-1 and A-2 dated 1-5-1972, and Ex.A-4 dated 2-5-1972 should be excluded form the holding of the petitioners'' family units. The Tribunals rejected the petitioners'' plea, mainly on the ground that they are subsequent to 24-1-1971 and were to be disregarded u/s 7(1) of the A.P. Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 or they were to be disregarded under Sec.7(2) of the Act,

2. Under Ex.X-3, the registered sale-deed dated 24-6-1971, an extent of Ac.3-87 cents of land situated in Nayudupalem, and, under Ex.X-4, registered sale-deed, dated 24 6-1971, an extent of Ac.2-00 in Nayudupalem were sold by the 1st petitioner. These lands were mortgaged under a registered mortgage deed dated 26-2 1969 with the 1st petitioner. The mortgagor was unable to discharge the debt due under the mortgage-deed. It is the case of the petitioners that the only mode of recovering the mortgage debt was to purchase these lands. The first petitioner therefore acquired the same under the sale deed dated 2-9-1970. But, these lands situated in Nayudupalem Village 16 miles away from the native place of the 1st petitioner, Utukur'' where he was residing. The petitioners never intended to purchase these lands and carry on cultivation. The purchase was solely with a view to realize the debt due to them. As they were situated far away from their place of residence, they sold away at the earliest opportunity. They had no other lands in Nayudupalem Village. These facts are established by the evidence of the declarants which is not challenged by way of cross-examintion. There is nothing to disbelieve this evidence. The sale under Exs.X-3 and X-4 cannot, in these circumstances, be deemed to be one made with a view to avoid or defeat the provisions of the law relating to the reduction of the ceiling on agricultural holdings. That apart, it is established by the evidence that the declarants have received consideration and put the purchase in possession of these lands. The sales effected are true and genuine and therefore they cannot be disregarded under Sec. 7 (I) of the Act as held by a division bench of this Court (to which I am a party). The extent covered by these two sale deeds has, therefore, to be excluded in computing the holding of the petitioners.

3. An extent of Acre 3-75 cents was sold under a registered sale-deed, Ex. A-I dated 1-5-1972. Another extent of Ac. 2-75 cents was sold under a registered sale-deed, Ex. A-2, dated 1-5-1972. These sale-deeds which were executed on 1-5-1972 were registered the next day, that is on 2-51972. The reason for the sale of these lands is stated to be that they are high-level lands and it was difficult and not profitable to cultivate the same. It is contended that these lands were effected in the ordinary course of management of his affairs are not intended to avoid the provisions of the impending Land Ceiling Act. The payment of consideration and delivery of possession are proved by evidence. The vendee has shown these extents in his declaration and that declaration is Ex. A-I. The Tribunal''s order in this behalf is Ex. A-3 which shows that these extents were included in his holding and after allowing the ceiling area to which he was entitled, he was declared to be holding an excess of O. 4640 standard holdings and was directed to surrender the same. It was accordingly surrendered. The alienation in favour of another person who himself was a surplus holder could not by any stretch of imagination be deemed to be with a view to avoid or defeat the provisions of the law relating to the reduction of ceiling on agricultural lands. That apart, the sales being true and genuine and having been accepted as such by the Tribunal itself under its order, Ex. A-3, it cannot again include that very extent in the holding of the vendor, as held by this Court in C. R. P. No. 1395/76

dated 23-12-1977.

4. It is however contended by the learned Government Pleader that the sates effected under Exs. A-l and A-2 are null and void as the documents were registered on 2-5-1972 after the Andhra Pradesh Agricultural Lands (Prohibition of Alienation) Ordinance, 1972 (which was replaced by the A.P. Agricultural Lands (Prohibition of Alienation) Act, 1972 came into force. It is true that the said Act came into force on 2nd May, 1972. Section 5 thereof prohibits alienation of agricultural by persons holding land in excess of the specified limit, the specified limit u/s 4 thereof being 4 hectares of wet lands or 10 hectares of dry land. The vendor in these sale-deeds admittedly held lands in excess of the limits specified u/s 4 of the said Act and if the sale effected thereunder comes within the ambit of Section 5 of and Section 7 (ii) the alienation woul undoubtedly be null and void. The question however is whether the alienation was effected under the aforesaid sale-deeds on 1-5-1972 when the documents were executed, or on 2-5-72 when the documents were registered.

5. u/s 23 of the Indian Registration Act, 1908 (Act No 16 of 1908), a sale-deed once executed may be presented for registration within four months from the date of its execution. But, in view of Sec. 47 of Act No. 16 of 1908, a "registered document shall operate from the time from which it would have commenced to operate if no registration thereof had been required or made, and not from, the time of its registration." That being so, under the general law, although Exs.A-1 & A-2 were registered on 2-5-1972, they would operate from 1-5-1972 when they were executed. The documents recite that possession also was delivered to the vendees in pursuance of the said sale-deeds. In view of the above provisions of the Transfer of Property Act and Act No 16 of 1908, both title and possession passed to the vendees under Exs.A-1 and A-2 on.1-5-1972. However, it is contended that having regard to the special provisions contained in Section 6 of the A.P. Agricultural Lands (Prohibition of Alienation) Act, 1972, the transactions covered by Exs.A-1 and A-2 could be effective only from 2-5-1972 and therefore are null and void. Section 6 of the said Act reads as follow:

"6. Notwithstanding anything contained in the Registration Act, 1908-

a) no document relating to alienation or partition of any land or the creation of a trust in respect of any land shall be registered by any registering officer appointed under the said Act, unless the person presenting the document furnishes a declaration by the transferor in the prescribed form which shall be subject to verification in the prescribed manner, that the holding of such transferor does not exceed the specified limit and in case where such transferor is a member of a family that the holdings of all the members of the family of which the transferor is a member, in the aggregate, do not exceed the specified limit; and

b) a document relating to alienation or partition of any land or the creation of any trust of any land registered on or after the commencement of this Act, shall, for the purposes of Section 5, take effect and operate only from then time of such registration, notwithstanding that such a document has not been registered within this state."

It is significant to note that this Section does not declare that notwithstanding anything contained in Section 47 of the Indian Registration Act, the transactions will be effective only from the date of such registration. It merely declares that the document would take effect and operate only from the time of such registration. It does not touch the transaction itself. In other words, the transaction of sale which was effective from 1-5-1972 is not touched. It continues to be effective. In other words, that land ceased to form part of the vendors holding and continues as such. Thus, only transactions entered into and in respect of which documents are executed on or after 2-5-1972 would be covered by Section 6 of the Andhra Pradesh Agricultural Lands (Prohibition of Alienation) Act, 1972 but not documents executed prior to 2-5-1972 but presented for registration and thereafter. In order to appreciate the distinction between the document being effective and the transaction being effective, one may read the provisions contained in Section 17 of the Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act, 1973, which prohibits alienation of holding by a person who hold.; land in excess of the ceiling area at any time subsequent to the notified date. Sub-section (2) of Section 17 of the said Act, which is relevant in this behalf, reads as follows:

"(2) For the purposes of determining whether any transaction of the nature referred to in sub-section (1) in relation to a land situated in this State, took place on or after the notified date, the date on which the document relating to such transaction was registered shall, notwithstanding anything in section 47 of the Registration Act, 1908, be deemed to be the date on which the transaction took place, whether such document was registered within or outside the State."

6. It would be noticed that u/s 17 (2), notwithstanding anything contained in Section 47 of the Registration Act, 1908, irrespective of the date on which a sale-deed is executed, the transaction itself is deemed, for the purpose of the Act, to have taken place on the date on which the document is registered and not on the date on which the document is executed, as envisaged by Section 47 of the Registration Act. The Legislature was obviously aware of the distinction between the transaction being effective and the document being effective and did not intend to touch the effectiveness of the document from the date of the execution in enacting Section 6 (b) of the Andhra Pradesh Agricultural Lands (Prohibition of Alienation) Act, 1972. That being so, the sales effected under Exs.A-1 and A-2 must be deemed to be effective on 1-5-1972 and are, therefore, not covered by Section 7(2) of the Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act, 1973, and are consequently not null and void. The extent covered by these saledeeds has to be excluded from the holding of the petitioners.

7. Further, on 1-5-1972, Exs. A-1 and A-2 were unregistered saledeeds under which possession was delivered to the transferee for consideration in part

performance of the said sale-deeds. As held by this Court in Yenugu Achayya and Another Vs. Ernaki Venkata Subba Rao and Others and also by the Madhya Pradesh High Court in Devi Sahai Premraju vs. Govind Rao Balwantarao And Others AIR 1965 M.P. 275 the transferee would be entitled to claim the benefit of Section 53-A of the Transfer of Property Act, 1882, and the said land would form part of the holding of the transferee. As held by this Court in C.R.P No. 1395/70 dated 23-12-1977, these extents have to be excluded from the holding of the transferor even on this footing.

8. So far as the transfer covered by Ex. A-4 sale-deed dated 2-5-1972, which was executed and registered on 2-5-1972, the transaction squarely comes within the ambit of Section 7(2) of the Act and is therefore null and void. The extent covered by this sale-deed cannot therefore be excluded in computing the holding of the petitioners.

9. In the result, the finding of the Appellate Tribunal is set aside so far as the sales under Exs. A-1, A.2 X-3 & 1, X-4 are concerned and the finding of the Appellate Tribunal is upheld in respect of Ex. A-4 and all other issues. The holding of the two petitioners has to be computed after further excluding the extents covered by the registered sale-deeds, Exs. A-1, A-2 X-3, and X-4. If on such computation the Land Reforms Tribunal finds that the petitioners still hold any land in excess of the ceiling area, to which their respective family units are entitled, it may issue notices in Form No. 6 to the petitioners. These two Civil Revision Petitions are accordingly allowed to the extent indicated above.

