

(1979) 07 AP CK 0021
In the Andhra Pradesh High Court
Case No : C.R.P. 2552/78

C. Nagamani Bai and others

APPELLANT

Vs

Authorised Officer Land Reforms Tahsildar, Madanapalli and
Others

RESPONDENT

Date of Decision : 25-07-1979

Acts Referred:

Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 — Section 10(5)(a)(ii), 3, 3(i), 3(i)(v)
Transfer of Property Act, 1882 — Section 53A

Citation : (1979) 07 AP CK 0021

Hon'ble Judges : Seetharam Reddy, J

Bench : Single Bench

Advocate : K.V. Subrahmanya Narsu, for the Appellant;

Final Decision : Allowed

Judgement

Seetharam Reddy

1. The only question that arises in this revision is, whether surrender can be refused u/s 10 (5) (a) (ii) of the A.P. Land Reforms (Ceiling on Agricultural Holdings) Act. hereinafter referred to as "the Act" unless the provisions as enacted in Section 3 (i) (v) of the Act are established. For a proper understanding of the case, Section 10 (5) (a) (ii) and Section 3 (i) (v) of the Act are extracted hereunder:

Section 10 (5) (a) (ii):

Notwithstanding anything in this section it shall be open to the Tribunal to refuse to accept the surrender of any land--

(i).....

(ii) the surrender of which is not acceptable on account of a dispute as to the title to the land or an encumbrance on the land or on account of the land being in

the possession of any person mentioned in item (ii) or item (v) of clause (i) of Section 3 or on account of the land proposed to be surrendered becoming inaccessible by reason of its severance from the remaining part of the holding; and the Tribunal shall, in every such case, serve a notice on the person concerned requiring him to surrender any other land in lieu thereof ; and thereupon the provisions of sub-section (3) and (4) shall, mutatis-mutandis apply to such surrender:

Provided that where land proposed to be surrendered under this section is burdened with a mortgage, the Tribunal may, ON an application made by the mortgager with the consent of the mortgagee, by order, transfer such mortgage from the land so proposed to be surrendered to the residuary holding of the mortgager or to any part thereof.

Section 3 (i) (v).

"holding" means the entire land held by a person,--

(i).....

(ii).....

(iii).....

(iv).....

(v) Who it in possession by virtue of a mortgage by conditional sale or through part performance of a contract for the sale of land or otherwise; or in one or more of such capacities; and the expression "to hold land" shall be construed accordingly;

Explanation : Where the same land is held by one person in one capacity and by another person in any other capacity, such land shall be included in the holding of both such persons.

2. The facts of the case are simple. The petitioners herein are the legal representatives of the deceased declarant, being his wife and daughter respectively. The final computation of the holding was made and certain excess was declared the declarant sought to surrender certain land and a dispute was raised by the 2nd respondent herein contending that the land in question was in his possession in part performance of a contract of sale and therefore, the same should not be allowed to be surrendered as there is a dispute with regard to the title of the land within the meaning of Section 10 (5) (a) (ii) of the Act. It was contended before the Appellate Tribunal that no written contract of sale was in existence and even according to the 2nd respondent herein it was only an oral contract of sale set up by him and, therefore, Section 53A of the Transfer of Property Act, was of no avail. The Appellate Tribunal, however, decided that as per Item (v) of Section 3 (i) of the Act, no written contract is required and even for an oral contract. Section 53A of the Transfer of Property Act is applicable. So, on the basis of the part performance of the contract, the 2nd respondent here in

was said to be in possession of the land and hence he was entitled to raise the objection and the same shall sustain.

3. Learned counsel for the Petitioners herein contends that it is now well settled by the decisions of this Court that Section 53A of the Transfer of Property Act will not be available to a person unless he establishes various ingredients, inter alia (1) written agreement, of sale, and (2) entering into possession by way of part performance. He relied on the decisions in *M. Narasinga Rao vs. the Land Reforms Tribunal, Penakonda 1977-1, APLJ 21=1977 ALT 44 (NRC)* and *Authorised Officer vs. K.C.V. Narasayya 1978 (1) ALT 112=1978-1, APLJ 98*. In the former decision, it has been held:

In the case of agreement of sale in respect of which the provisions of Section 53A of the Transfer of Property Act are sought to be included, it should be established by clear evidence that all the ingredients of Section 53A of the Transfer of Property Act have been complied with, namely, (1) that there was a contract to transfer immovable property in writing signed by the transferor or on his behalf, (2) that the terms necessary to constitute the transfer can be ascertained with reasonable certainty, (3) that the transfer was for consideration, (4) that the transferee has in part performance of the contract taken possession of the property or in part thereof, (5) that the transferee being already in possession continues in possession in part performance of the contract and (6) that the transferee had performed or is willing to perform his part of contract. Unless all these ingredients are established, the provisions of Section 53A cannot be invoked either by the transferor or by transferee in order to claim exclusion of the lands covered by the said agreement of sale in computation of his holding.

4. In *Authorised Officer vs. K.C.V. Narasayya 1978 (1) ALT 112=1978 (1) APLJ 98* Madhava Reddy, J., speaking for the Division Bench, held.

In the definition of the term "holding" Sec. 53A of Transfer of Property Act is not specifically referred. It refers to a person in possession through part performance of a contract for sale of land which is the principle statutorily recognised under Sec 53-A. That provision, as is well known, declares that where any person contracts to transfer for consideration any immovable property by writing signed by him or on his behalf from which the terms necessary to constitute the transfer can be ascertained with reasonable certainty and the transferee, has in part performance of the contract, taken possession of the property or any part thereof, or the transferee, being already in possession, continues in possession in part performance of the contract and has done some act in furtherance of the contract and the transferee has performed or is willing to perform his part of the contract then, notwithstanding that the contract though required to be registered, has not been registered, or, where there is an instrument of transfer, that the transfer has not been completed in the manner prescribed thereof by the law for the time being in force, the transferor or any person claiming under him shall be debarred from enforcing against the transferee and persons claiming under him any right in respect of the property of which the transferee has taken

or continued in possession, other than a right expressly provided by the terms of the contract.

5. Learned counsel for the petitioner, therefore, argues that in order to substantiate the claim of the 2nd respondent herein for availing the benefit of Section 53A of the Transfer of Property Act, it is Sine quo non to establish, inter alia, (1) that the agreement is in writing, and (2) that in pursuance of that agreement, possession of the immovable property was taken, I see sufficient force in the contention of the learned counsel for the petitioners. Admittedly, the agreement of sale is not in writing and, therefore, the conclusion arrived at by the Appellate Tribunal is obviously misconceived and erroneous. It is the positive case of the 2nd respondent herein that he has entered into possession in part performance of the contract by virtue of an agreement and wants to avail the benefit of Section 53A of the Transfer of Property Act and fortiori the benefit of Section 3 (i) (v) of the Act. If that is so, he has failed to establish the ingredients required to avail oneself of the benefit of Section 53A of the Transfer of Property Act. Therefore, I have no hesitation to hold that the 2nd respondent herein has miserably failed to establish his case and, therefore, cannot avail himself of the benefit of Section 53A of the Transfer of Property Act and so the benefit of Section 3 (i) (v) of the Act. If that is so, it was not open to the Tribunal to refuse to accept the surrender of Ac. 6-55 cents in S. No. 689 and Ac. 0-90 cents in S. No. 690 made by the petitioners herein. In the result, the order under revision is set aside by holding that the petitioners herein are entitled to surrender the lands comprised in S. Nos. 689 and 690 to the extent of Ac. 6-55 cents and Ac. 0-90 cents respectively and the Tribunal is bound to accept the same. The Civil Revision Petition is allowed. No costs.