**(1978) 07 AP CK 0005**

**In the Andhra Pradesh High Court**

**Case No :** Civil Revision Petition No. 1287 of 1978

Chaparala Nageswara Rao — APPELLANT

Vs

Authorised Officer Land Reforms, Gudivada, Krishna District — RESPONDENT

**Date of Decision :** 03-07-1978

**Acts Referred:**

Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 — Section 8(I)

**Citation :** AIR 1979 AP 21

**Hon'ble Judges :** Jayachandra Reddy, J

**Bench :** Single Bench

**Advocate :** Y.B. Tata Rao, for the Appellant; Govt. Pleader for G.A.D., for the Respondent

## Judgement

Jayachandra Reddy, J.—The declarant is the petitioner. He filed a declaration u/s 8(1) of the Andhra Pradesh Land Reforms (Ceiling and Agricultural Holdings) Act (Act 1 of 1973). The first Tribunal held that he holds an excess of 0.0580 standard holdings. On appeal, the Appellate Tribunal gave some relief and the surplus got reduced to 0.0256 standard holdings.

2. In this revision, Shri Tatarao, the learned counsel for the petitioner contends that the declarant sold an extent of Ac. 2-28 cents an 22-10-1971 to one Potluri Mallikharjuna Rao, P. W. 2. and it was registered On 30-10-1971 and ever since the sale, the purchaser has been in possession and enjoyment of the said land and therefore, the same ought to have been excluded. The lower Appellate Tribunal rejected this contention mainly on the ground that the transferor has not satisfactorily established the necessity for selling the land and that the cist receipts for all the continuous faslies have not been filed and ultimately held that the transaction was not a genuine and bona fide one. This finding of the lower Appellate Tribunal is erroneous. Admittedly, the land has been sold under a registered sale-deed executed on 30-l0 1971. The recitals in the document show that the property was sold with a view to improve the other property. It also

mentions that Re. 3,500/- was paid in Cash at the time of execution of the document and the balance of consideration of Rs. 7,500/- is paid by executing a promissory note in favour of the vendor. The promissory note dated 22-10-1971 is also marked as Ex. A-2 by the Tribunal. That apart, the land revenue receipts filed. viz. Exs. A-4 to A-6, would show that the purchaser, P.W.2 paid the land revenue for the year 1975-76. The declarant stated that the revenue receipts for the earlier years have been lost. So, under these circumstances, the question is whether the transaction was a genuine one or not. The nature of evidence insisted upon by the Appellate Tribunal would be needed in a case where the transaction is merely under an agreement of sale. But in a case of sale-deed executed prior to 2-5-1972, the nature of proof required to show that it is not a sham and nominal one is different. In C. Pitchamma v state of Andhra Pradesh, (1978) 1 APLJ 35, Ramachandra Raju, J., held that if the surrounding circumstances show the transfer to be a Sham and nominal one then only the question of the proof that it is a true and genuine one arises and the declarant has to discharge the necessary burden. In this case, the transfer is under a registered Sale-deed. There should be strong circumstance to indicate that transfer is a sham and nominal one and was entered into with a view to avoid and defeat the objects of Act 1 of 1973. Such circumstances are not to be found. The sale itself is in favour of a stranger and at least Exs. A-4 to A-6 show that the transferee has paid the land revenue for some years, P. W. 1 as transferee entered into the witness box and deposed that he has been the cist. That apart there is ample material to show that the declarant had some necessity and accordingly add the lands. A Division Bench of this Court in State of Andhra Pradesh v. Balarami Reddy, (1977) 1 APLJ 452, held further that a landholder can even sell the land with a view to reduce his ceiling area and if such transfers are true and valid and if they have been acted upon, they should be accepted and that by satisfactory evidence, the declarant can discharge the necessary burden. These principles very much apply to the facts of this case.

3. In the result, the Civil Revision Petition is allowed. The Land Reforms Tribunal is directed to exclude the extent of 2-28 cents, which was sold by the declarant under EX A-2, and determine the surplus, No costs. Advocate''s fee Rs. 100/-.

4. Petition allowed.

 