

(2010) 03 SC CK 0057

In the Supreme Court Of India

Case No : Civil Appeal No's. 2011, 2012 and 2014 of 2002

Chittoor Chegaiah and Others

APPELLANT

Vs

Pedda Jeeyangar Mutt and Another

RESPONDENT

Date of Decision : 08-03-2010

Acts Referred:

Andhra Pradesh (Andhra Area) Tenancy Act, 1956 — Section 13, 2
Civil Procedure Code, 1908 (CPC) — Section 11
Constitution of India, 1950 — Article 227
Tamil Nadu Hindu Religious and Charitable Endowments (Amen)

Citation : AIR 2010 SC 1278 : (2010) 3 ALT 50 : (2010) 2 JT 558 : (2011) 1
MLJ 375 : (2010) 2 SCALE 724 : (2010) 3 SCC 776 : (2010) 3 SCR 123 : (2010)
3 UJ 1521

Hon'ble Judges : P. Sathasivam, J; H. L. Dattu, J

Bench : Division Bench

Advocate : M.N. Rao, K. Ramamoorthy, S. Thananjayan, V. Sridhar Reddy,
Abhijit Sengupta, V.N. Raghupathy, K.L. Sastry, Amit Kr. Srivastav, R.V.
Kameshwaran, B.A. Ramagandhan, A. Subhashini, V. Rangam, D. Julius Raimei,
G. Gangmai and Sridhar Potaraju, for the Appellant;

Final Decision : Dismissed

Judgement

P. Sathasivam, J.

Civil Appeal No. 2012 of 2002:

1. This appeal is directed against the judgment and order dated 17.11.2000 passed by the High Court of Judicature, Andhra Pradesh at Hyderabad in Civil Revision Petition No. 2124 of 1996 whereby and where under the High Court has dismissed the petition filed by the appellants herein.

Civil Appeal No. 2014 of 2002:

This appeal is directed against the judgment and order dated 17.11.2000 in Civil Revision Petition No. 2322 of 1996 whereby the High Court has dismissed the petition filed by the appellants herein by following its judgment passed on the

same day in C.R.P. No. 2124 of 1996.

Civil Appeal No. 2011 of 2002:

This appeal is filed by the appellants who were not parties before the High Court against the judgment and order dated 17.11.2000 passed by the High Court of Andhra Pradesh in C.R.P. No. 2322 of 1996.

(a) Since the issues which arose in these appeals are similar, they were heard together and are being disposed of by this common judgment. The facts in Civil Appeal No. 2012 of 2002 are sufficient for the disposal of all these appeals. They are as under:

(b) A property consisting of 29 acres 59 cents in T.S. No. 11 and old T.S. No. 507 of Tirupathi town originally belonged to the Plaintiff - Pedda Jeeyangar Mutt (hereinafter called 'the Mutt') - respondent herein. The then head of the Mutt granted a permanent lease in respect of 12 acres of land to one Kotilingam Subbaraya Chetti under a registered lease deed dated 8.01.1900. He also granted a permanent lease in respect of 15 acres of land to one Shaik Budan Saheb under a registered lease deed dated 29.11.1915. Shaik Budan Saheb sold the leasehold rights in equal halves to Narasimhaiah under a deed dated 01.12.1919 and Mandaram Munikannaiah under a deed dated 19.08.1922. Narasimhaiah sold his half share purchased under deed dated 1.12.1919 to Mandaram Munikannaiah under a registered lease deed dated 19.08.1922. Thus Mandaram Munikannaiah got 15 acres from the said property and out of that he leased out 12 acres of land to Kotilingam Subbaraya Chetti by a registered lease deed dated 06.01.1919. The Mutt filed O.S. No. 152 of 1930 on the file of the District Munsif's Court, Tirupathi, against Mandaram Munikannaiah in respect of total land. During the pendency of the suit, there was a compromise and the Mutt executed a registered permanent patta dated 11.03.1931 in favour of Mandaram Manikannaiah for the total land and he sold 10 acres of land to Pappaiah under a registered sale deed dated 21.09.1935 and after his death, his son Polaiah sold the said land to Chittoor Siddaiah under a registered sale deed dated 25.05.1938. Polaiah created usufructory mortgage of the property in favour of Chithoor Siddaiah under a registered deed dated 07.06.1937 and ever since he is in possession of the property. On 07.08.1964, the Mutt filed O.S. No. 59 of 1964 before the Sub-Court, Chittoor for declaration and possession which was transferred to Sub-Court, Tirupathi and renumbered as O.S. No. 7 of 1971 and the same was dismissed by the subordinate Judge. Against the said judgment, Chittoor Siddaiah (defendant No. 3 in the suit) preferred A.S. No. 130 of 1973 and one S. Veeraswamy Naidu (defendant No. 4 in the suit) who was a purchaser from Mandaram Munikannaiah filed A.S. No. 243 of 1973 on the file of the High Court of Andhra Pradesh. The High Court allowed the said appeals. In the year 1980, the Mutt - respondent herein, filed eviction petition bearing A.T.C. No. 35 of 1980 and the same was dismissed by the Principal District Munsif-cum-Special Officer, Tirupathi by order dated 24.08.1987. During the pendency of A.T.C. No. 35 of 1980, the Mutt filed O.S. No. 176 of 1981 on the file of the

Additional sub-Court, Tirupathi for declaration and permanent injunction and the same was disposed of by holding that the plaintiff is entitled for declaration as permanent owner but without a right to recover possession. Against the order passed in A.T.C. No. 35 of 1980, the Mutt filed ATC No. 9 of 1987 under the A.P. Tenancy Act and the same was allowed by the Additional District Judge vide order dated 03.06.1996. Aggrieved by the said order, the appellants herein filed Civil Revision Petition No. 2124 of 1996 before the High Court which was dismissed by the High Court on 17.11.2000. Following the judgment in Civil Revision Petition No. 2124 of 1996, on the same day, the High Court dismissed Civil Revision Petition No. 2322 of 1996. Hence the present appeals have been filed before this Court by way of special leave petitions.

2. Heard Mr. M.N. Rao, learned senior counsel for the appellants and Mr. A.V. Rangam, learned Counsel for the respondents.

3. Before going into the merits of the claim made by both the parties, it is useful to refer the definition of "cultivating tenant" in Section 2(c) and "landlord" u/s 2(f) of the Andhra Pradesh (A.A.) Tenancy Act, 1956 (hereinafter referred to as 'the Act'):

Section 2 (c)

Cultivating tenant" means a person who cultivates by his own labour or by that of any other members of his family or by hired labour under his supervision and control, any land belonging to another under a tenancy agreement, express or implied, but does not include a mere intermediary;

Section 2 (f)

landlord" means the owner of a holding or part thereof who is entitled to evict the cultivating tenant from such holding or part, and includes the heirs, assignees, legal representatives of such owner or person deriving rights through him:

With these statutory definitions and the Mutt having approached the authorities under the Act for eviction of the appellants, let us consider the rival claims. In the earlier part of the pleadings, we have adverted to the case of both the parties, however, it is useful to trace the rival claim briefly hereinafter. As early on 29.11.1915, permanent lease was executed in favour of Sheik Budan Saheeb in respect of 15 acres of land. The suit land was sold by him into two halves one to Shri Narasimhaiah and another to Mandaram Munikannaiah. Narasimhaiah sold his share to Mandaram Munikannaiah by sale deed dated 19.08.1922.

4. The Mutt granted 12 acres of land on permanent lease to one Kotilingam Subbaraya Chetti in the year 1919 and this land was occupied by Mandaram Munikannaiah. It was pointed out that there is a condition in the lease deed dated 19.11.1915 that those land shall always remain as Modati Eedu (1st Charge) for cist and pay Jodi payable to the Government.

5. The Mutt filed O.S. No. 152 of 1930 against Mandaram Munikannaiah in respect of the land occupied by him. During the pendency of the suit, there was a compromise and the Mutt executed a registered permanent lease Patta (though not a permanent lease) on 11.03.1931 in favour of Mandaram Munikannaiah for the total extent of land, namely, 29 acres-59 cents. It is useful to refer the terms of permanent lease patta dated 11.03.1931:

i) Mandaram Munikannaiah shall enjoy entire schedule property by paying Rs. 25/- to the Mutt from Fasali 1340.

ii) In future Mandaram Munikannaiah or his legal heirs can transfer etc. the schedule mention land to any one and such fact shall be intimated to Pedda Jeeyangar the Matadhipathy, and transfer deed shall be got executed with his consent by the transferer.

iii) The schedule mention land shall always been first Eedu (1st Charge) for the said permanent lease amount.

iv) The pedda Jeeyangar alone shall pay the usual jodi, Cess, etc. and cist to Government.

v) Further Pedda Jeeyangar shall have a right to claim the excess amount paid, if any, to Government from Mandaram Munikannaiah.

vi) Mandaram Munikannaiah shall have absolute and unlimited rights in respect of schedule mentioned land and shall enjoy the same as per his wishes in perpetuity.

vii) The Pedda Jeeyangar have no manner of right in respect of the land except the right to recover theerva (rent).

6. By pointing out the various clauses in the permanent lease, Mr. M.N. Rao, learned senior counsel for the appellants submitted that the Mutt has no right in respect of the property except to recover theerva (rent).

7. An extent of land of 10 acres which is a subject matter of the said suit was sold to Pappaiah on 21.09.1935. After the death of Pappaiah, his son Polaiah became the absolute owner of the subject matter of the suit property. By registered deed dated 07.06.1937, Polaiah created usufructry mortgage of the property in favour of Chittoor Siddaiah (father of the appellant) and ever since he has been in possession and enjoyment of the property to the knowledge of the Mutt. The materials placed further show that by a registered deed dated 25.05.1938 Polaiah sold the said 10 acres of land to Chittoor Siddaiah.

8. In order to establish its right, title and possession, the Mutt filed O.S. No. 59 of 1964 before Sub-Court, Chittoor on 07.08.1964 which was subsequently transferred to Sub-Court Tirupathi and re-numbered as O.S. No. 7 of 1971. In the said suit the Mutt is the plaintiff and Thirumala Tirupathi Devasthanam is Defendant No. 1, Defendant No. 2 - Board of Trustees of TTD, Defendant No. 3 - Chittoor Siddhaiah, father of the present appellant and Defendant No. 4 is

Veeraswamy Naidu. In the plaint, it was contended that permanent lease deed which was executed in favour of Mandaram Munikannaiah was null and void and the same was barred u/s 29 of the Madras Hindu Religious and Charitable Endowments Act, 1929. On the other hand, in the written statement, it was specifically contended that the subject matter of the land has been perfected by the predecessors of the appellant by adverse possession. On 03.10.1972, the Sub-Court Tirupathi decreed the suit holding that the defendants have failed to pay the rents as tenants and, therefore, they are liable to be evicted. The plea of adverse possession was rejected. The Court also held that Defendant Nos. 3 and 4 (appellants herein) are only entitled to compensation for the improvement effected in the field. Aggrieved by the said judgment and decree, the appellants herein filed appeal A.S. No. 130 of 1973 before the High Court. Defendant No. 4 has also filed an Appeal No. 243 of 1973. The Mutt has filed cross objections. The High Court by a common judgment dated 12.10.1976 held that the appellants have perfected the title in respect of tenancy rights by adverse possession and the suit was filed beyond the period of limitation. The High Court further held that the Act will apply to the facts of the case and observed that it would be open to the parties to take steps as may be open to them under the provisions of the Tenancy Act. With the said observation, the High Court disposed of the appeals and dismissed the cross objections filed by the Mutt. It is important to point out that the judgment of the High Court in the above appeals become final as no appeal was preferred.

9. After the judgment of the High Court in A.S. No. 130 of 1973, nearly after three years the Mutt filed ATC No. 35 of 1980 under the A.P. Tenancy Act against the appellants for eviction on the ground that the appellants herein defaulted in payment of rent from 1373 fasli (1963 onwards). It was highlighted by the appellants by filing reply contending that what was granted by the Mutt in favour of Mandaram Munikannaiah on 11.03.1931 was not a permanent lease but it was only a permanent patta. It was pointed out that the father of the appellants had purchased the suit property by way of registered sale deed dated 25.05.1938 and since then they are in continuous possession and enjoyment of the suit property. Further it was contended that the appellants even otherwise have perfected the title by adverse possession and therefore there is no relationship of landlord and tenants between the Mutt and the appellants. In the same way, the ATC filed by the Mutt is barred by limitation.

10. During the pendency of ATC No. 35 of 1980, the Mutt filed O.S. No. 176 of 1981 on the file of additional Sub- Court Tirupathi for declaration and permanent injunction. The suit was disposed of holding that the plaintiff therein is entitled for declaration as permanent owner but without right to recover possession. Here again, the said finding become final as the Mutt has not challenged the same, however, appeal was filed by the appellant herein against the order of granting injunction by the learned Judge in O.S. No. 176 of 1981. The appeal A.S. No. 75 of 1989, which was also dismissed and second appeal filed by the appellants herein that is S.A. No. 1081 of 2000 is still pending on the file of High Court of

Andhra Pradesh at Hyderabad.

11. On 24.08.1987, learned Judge dismissed ATC No. 35 of 1980 holding that the appellants perfected title by adverse possession. On 03.06.1996, ATA No. 9 of 1987 filed by the Mutt was allowed without taking note of the dismissal of ATC 35 of 1980 filed by the very same Mutt. In those circumstances, Civil Revision No. 2124 of 1996 was filed by the appellants before the High Court under Article 227 of the Constitution of India. Among the several contentions, the main contention raised by the appellants herein is that the judgment of the High Court in appeal A.S. No. 130 of 1973 became final and the Mutt has lost the right to recover the land from the appellants herein. The judgment would operate as res judicata against the Mutt. However, on 17.11.2000, the High Court dismissed the Civil Revision No. 2124 of 1996 by holding that the relationship of landlord and tenant between the appellants and the first respondent-the Mutt, does not suffer from any legal infirmity, not barred by any res judicata dismissed the revision. As observed earlier, challenging the said order three appeals have been filed before this Court.

12. Now, we have to consider whether the decision of the High Court in holding that the findings given in A.S. No. 130 of 1973, the earlier judgment on the same subject matter, would not operate as res judicata, when in the said decision the High Court had categorically held that the appellants perfected their title by adverse possession in the schedule property and the suit is barred by limitation. In addition to the same, we have also to consider whether the High Court is correct in holding that the Mutt is entitled to recover the suit lands when there is irrevocable condition in the lease patta dated 11.03.1931 wherein it is stated that the Mutt is entitled only for recovery of theerva (rent) and not the possession.

13. The common judgment of the High Court dated 12.10.1973 in A.S. No. 130 and 243 of 1973 with cross objections are available and placed before this Court as Annexure-P1. After narrating the entire events commencing from permanent lease patta, the High Court came to the conclusion a) the suit for eviction of the appellants and for recovery of possession is not maintainable before a Civil Court b) a proceeding in that direction is maintainable only before the statutory designated authority under the Andhra Pradesh Tenancy Act, 1956 c) the suit is barred by limitation and d) the appellants have perfected their title to the suit properties with respective tenancy rights.

14. Res Judicata is defined u/s 11 of the CPC [CPC] as under:

No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court."

Explanation I- The expression "former suit" shall denote a suit which has been decided prior to the suit in question whether or not it was instituted prior thereto.

Explanation II.- For the purposes of this section, the competence of a Court shall be determined irrespective of any provisions as to a right of appeal from the decision of such Court.

Explanation III.- The matter above referred to must in the former suit have been alleged by one party and either denied or admitted, expressly or impliedly, by the other.

Explanation IV.- Any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit.

Explanation V.- Any relief claimed in the plaint, which is not expressly granted by the decree, shall, for the purposes of this section, be deemed to have been refused.

Explanation VI- Where persons litigate bona fide in respect of public right or of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purposes of this section, be deemed to claim under the persons so litigating.

Explanation VII.- The provisions of this section shall apply to a proceeding for the execution of a decree and reference in this section to any suit, issue or former suit shall be construed as references, respectively, to proceedings for the execution of the decree, question arising in such proceeding and a former proceeding for the execution of that decree.

Explanation VIII.-An issue heard and finally decided by a Court of limited jurisdiction, competent to decide such issue, shall operate as res judicata in as subsequent suit, notwithstanding that such Court of limited jurisdiction was not competent to try such subsequent suit or the suit in which such issue has been subsequently raised.

From the above, it is clear that a court is barred from entertaining an issue which has already been decided previously by any court of law.

15. The appellants in the present case have argued that the decision of the High Court in A.S. No. 130 of 1973 fully resolved the issues arising in the present case and, thus, would bar their agitation now. In order to determine this question, we must look closely at the decision of the High Court and see what the Court actually held.

16. The Mutt had approached in appeal to the High Court in A.S. No. 130 of 1973 for declaration of the title of the concerned property in their favour. The Court held that it did not have jurisdiction to entertain a suit for possession against the defendants owing to the A.P. Tenancy Act, 1956. It was held that it was the Tahsildar acting under the Act who was competent to entertain such matters

relating to the termination of tenancy and the eviction of the cultivating tenant. The court reached this conclusion by examining the Act holding that the relationship of Tenant-Landlord is established, thus confirming the jurisdiction of the Act and ousting the jurisdiction of a Civil Court. Nevertheless, the court went on to determine the title of the property itself. Arguments were raised that the permanent lease or patta entered into would be in violation of Hindu Religious Endowments Act, and thus be infructuous. It was pointed out that the permanent lease deed 29.11.1915 is ab initio void as sanction was not obtained from the Endowment Authorities as prescribed under the Madras Hindu Religious and Charitable Endowments Act, 1929 which prohibits any alienation, lease, sale or mortgage exceeding five years and the appellants who had purchased in good faith and continuing in possession without any interruption since 1931, have perfected their title by adverse possession. The court on this point held that since the suit had not been brought within the limitation period of 12 years, the appellants had perfected their title with respect of tenancy rights on the basis of adverse possession.

17. Therefore, the High Court in that instance held two things, (1) that the court did not have jurisdiction over the matters owing to the special process prescribed under the Tenancy Act; and (2) the title with respect of tenancy rights was perfected owing to adverse possession. These two rulings are not in conflict with each other, and are equally binding. The jurisdiction of the High Court was ousted only to a limited extent, i.e. with respect to the eviction of the tenants and possession of the property, as the procedure for that was provided under the Act. But the Court continued to have jurisdiction with respect to the determination of the title of the property.

18. The appellants seem to have misunderstood the import of the High Court decision while relying on it for the purposes of res judicata. The court, in no uncertain terms, held that the title of ownership belongs to the present respondents, but the present appellants had the title with respect of tenancy rights. This decision was perfected by non-appeal and is binding on the parties. Thus, the present appellants are not the owners of the property, but tenants on conditions prescribed under the permanent lease patta dated 11.03.1931 mentioned above. Thus, we hold that the decision of the High Court in 1973 would not bar any proceedings under the Tenancy Act as the issue decided by the court in that instance was merely the tenancy title in favour of the appellants, while the present case is eviction of tenants u/s 13 of the Act.

19. Coming to the next question, it has to be determined whether a permanent lease gives rise to a tenant-landlord relationship within the meaning of the Act. The appellants have relied upon Chinnappa Reddy, J.'s opinion in *G. Veeraswamy v. Uppardasta Papanna* 1969 An. W.R. 359 where it was held that the Act applies only to tenancy agreements and not to permanent tenancies. We must also note two other opinions regarding the interpretation of the application of the Act. In *U. Pappanna Sastri Vs. V. Naga Venkata Satyavati*, the Court placed reliance on

K. Sesharatnamma v. A. Satyanarayana 1963 (2) An. W.R. 32. It was held that the pre-condition for establishing the tenant-landlord relationship is that the landlord should have reserved for himself the right to evict the tenant.

20. Thus, a person shall qualify to be a landlord under the meaning of the Act if he is entitled to evict the tenant. Such entitlement can arise either directly due to the agreement entered into (i.e. by providing the time period of tenancy) or by providing the conditions or terms of tenancy violating which the tenant may be evicted u/s 13. We find no reason why a permanent lease which provides terms would not result in a tenant- landlord relationship since it is implied in such an agreement that non fulfillment of the prescribed terms would give the right to the landlord to evict the tenant. One such term can be payment of periodic rent, which exists in the present case. Thus, the respondents in the present case do qualify as landlords.

21. For the aforementioned reasons, we hold that the present proceedings emerging from the ruling of the IIIrd Additional District Judge, Tirupathi, exercising the powers of Appellate Authority under the A.P. Tenancy Act does not suffer from any legal infirmity as the proceedings are not barred by res judicata. Furthermore, the parties qualify as tenant-landlord and are, thus, amenable to the jurisdiction of the Tenancy Act. In view of categorical finding of the Appellate Authority that the tenants have committed default in payment of rent from fasli 1372 and never paid rent, they are liable to be evicted as per Section 13 of the Act which was rightly affirmed by the High Court. We thus find no reason to interfere in the order of the High Court, consequently, all the three appeals are dismissed with no order as to cost.