

(1997) 02 AP CK 0005

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No's. 3563 of 1992 and Batch

Dande Venkata Swamy and Others

APPELLANT

Vs

Gummidi Satyanarayana and Others

RESPONDENT

Date of Decision : 18-02-1997

Acts Referred:

Specific Relief Act, 1963 — Section 6

Citation : (1997) 3 ALT 708 : (1997) 2 APLJ 392 : (1997) 2 CivCC 182

Hon'ble Judges : V. Bhaskara Rao, J

Bench : Single Bench

Advocate : E.V. Bhagiratharao, for the Appellant; M. Kesava Rao, for the Respondent

Final Decision : Allowed

Judgement

V. Bhaskara Rao, J.—This batch of Civil Revision Petitions are filed against the judgments and decrees in O.S. Nos. 43/87, 44/87, 45/87, 46/87, 47/87, 48/87, 49/87 and 50/87 on the file of the Principal District Munsif at Yellamanchili, Visakhapatnam, dated 27-8-1992 decreeing the suits filed by the respondents-plaintiffs u/s 6 of the Specific Relief Act for summary eviction of the Revision Petitioners.

2. As common questions of law and fact are involved in all these revision petitions they are being disposed of by a common order. The facts in brief are as under: An extent of Ac. 19.67 cents of land in S. Nos. 53/3, 57/1B/2, 32/2A/2, 57/2B, 58/1, 57/1B/1, 56/1, 58/3, 39/4, 35/2, 56/3, 53/1, 329/2A/1 and 53/4 situated at Chinagummaluru village of S. Rayavaram Mandal, were surrendered by the landlords by name Smt. Posuru Sanyasamma and Posuru Gangu Naidu u/s 10(3) of the A.P. Land Reforms (Ceiling on Agricultural Holdings) Act, 1973. Having accepted the surrender, the authorities issued proceedings in LCC No. 0/6,1133/75, dated 28-4-1996 assigning separate moieties to as many as 11 persons, the extents ranging from Ac.0.27 cents to Ac. 2.25 cents to various individuals who are landless poor persons. The proceedings is marked as Ex.A-1

before the Lower Court and the details of the assignments are set out therein.

3. The case of the respondents-plaintiffs is that they have been put in possession of the above moieties individually and they have been in enjoyment of the same for a period of four months and thereafter they have been dispossessed unlawfully by the Revision Petitioners-defendants and as such they have filed the suits u/s 6 of the Specific Relief Act for summary eviction. The suits have been resisted by filing a written statement. All the material averments of the plaint have been denied. It is also denied that the plaintiffs are landless poor persons. It is specifically denied that the above said land has been assigned to them or that they were put in possession of the same. It is also asserted that the Sub-Collector, Narsipatnam, directed both the parties to cultivate the lands jointly and accordingly they have been raising dry crops like Jonna, greengram, redgram, horsegram etc. The allegations that the above land has been in lawful and exclusive possession of the respondents since 20-4-1986 and that they have been dispossessed in the first week of May, 1986 by the revision petitioners are also denied. The other allegations that they trespassed into the land at the behest of Kakara Nookaraju, the local M.L.A. in the second week of September, 1986 is also denied.

4. On the above pleadings the trial Court framed the following issues which are common in all the suits:

- (1) Whether the plaintiff has title to the suit schedule land,
- (2) Whether the plaintiff is entitled to restoration of possession of the plaint schedule lands,
- (3) To what relief,

5. During the trial, four witnesses have been examined on behalf of the respondents-plaintiffs in each case and Exs.A-1 and A-2 have been marked. In rebuttal the revision petitioners examined themselves as DW1 in each case and they also examined DWs 2 and 3 and got marked Exs.B-1 to B.3. The Trial Court scrutinised the above evidence. PWs 1 to 4 have asserted in their evidence that they have been assigned the land in question individually and that they have been put in possession, but the revision petitioners-defendants have trespassed into the land and dispossessed them and, therefore they are entitled for recovery of possession. Ex.A-1 is the proceedings wherein the above lands have been assigned to them by the Sub-Collector and Ex.A-2 is the certified copy of the judgment in C.C. No. 182/86 on the file of the Addl. Munsif Magistrate, Yellamanchili wherein the revision petitioners herein and some others have been charge-sheeted and they have been convicted for the offence u/s 447 IPC and released u/s 360(1) Cr.P.C. on executing bonds for Rs. 1000/- for maintaining good conduct and behaviour for a period of one year. Exs.B-1 to B-3 relied upon by the revision petitioners are the certified copies of the settlement file, 10 (1) account and copy of representation of Danda Venkata Swamy one of the revision petitioners. The learned Munsif scrutinised the above oral and documentary

evidence and held that the respondents-plaintiffs have got title to the plaint schedule property and that they have been put in possession of the same and they have cultivated the lands for a period of four months. It is further held that the revision petitioners forcibly trespassed and evicted the respondents and that the respondents are entitled for recovery of possession within six months from the date of dispossession u/s 6 of the Specific Relief Act. The suits are accordingly decreed with costs.

6. Aggrieved by the findings, judgments and decrees, the defendants filed these revision petitions. The point for consideration is whether the respondents are put in possession of the plaint schedule land and whether they have been dispossessed within six months from (sic. before) the date of the suits.

7. Sri E.V. Bhagiradharao, learned Counsel for the revision petitioners contended that the approach of the Trial Court in deciding the question of title to the property is not correct so much so that title is not relevant in a suit u/s 6 of the Specific Relief Act. He has taken me through the impugned judgment and pointed out various portions therein and assailed the same on the ground that at one stage it is held that there is no specific finding so as to show the actual physical possession of the parties. It is noteworthy that at one place it is held that the plaintiffs were put in possession of the land under Ex.A-1 and at some other place it is held that the plaintiffs might have occupied the plaint schedule property under the guise of Ex.A-1 proceedings. Thus he argued that there is no definite finding as to the previous possession of the respondents-plaintiffs or that they have been dispossessed within six months before the suit and hence the impugned judgments and decrees cannot stand.

8. On the other hand, Mr. M. Kesava Rao, learned Counsel for the respondents-plaintiffs contended that Ex.A-1 proceedings of the Sub-Collector and Ex.A-2 certified copy of the judgment of the criminal Court convicting the revision petitioners for the offence of trespass into the very same land coupled with the oral evidence of PWs 1 to 4 would go to show that they have been in lawful possession of the plaint schedule land for four months and thereafter they have been dispossessed unlawfully by the revision petitioners. Since the suit is filed within six months from the date of dispossession they are entitled for summary eviction of the revision petitioner u/s 6 of the Specific Relief Act. Thus, he supported the impugned judgments and findings.

9. I carefully considered the contentions of both sides and perused the entire record. It is not in dispute that an extent of Ac. 19.67 cents in various survey numbers has been surrendered by two surplus landholders under the provisions of the Land Reforms Act. That land is said to have been divided into several pieces and it was sought to be assigned by the revenue authorities to various landless poor persons belonging to the Scheduled Caste community. It is asserted by Sri Kesavarao that the revenue authorities not only assigned the above land to the respondents-plaintiffs but they have also put them in possession of their separate moieties. He relied upon Ex.A-1 for the above

purpose. Whereas Mr. Bhagiratha Rao pointed out that the concerned Mandal Revenue Officer has been directed in that very same proceedings to put the assignees in possession of the above land and in view of that direction it cannot be said that they were already put in possession under Ex.A-1. He asserted that no revenue officer has been examined to establish that the above land has been handed over to the respondents-assignees. I perused Ex.A-1. The relevant portion pointed out by Mr. Bhagiratha Rao reads as under:-(Telugu version in English letters:

"Pai Aasameelaku Varki lotterilo palikina Bhoomulu Takshanam yee karyanartanamulato batu varki Bhoomulanu kudaa Swadhinaparchavalasinathiga, S. Rayavaram Mandaladhikari garni koradamainathi. Varivaddanundi voppagintha Raseedulu the esukoni yee karyalayamunaku pampincha valayunu")

It is evident from the above circular proceedings that the Mandal Revenue Officer, S. Rayavaram, has been directed to hand over copies of these proceedings and also the land and obtain receipts and forward the same to the Sub-Collector. Obviously it cannot be said that possession was handed-over under Ex.A-1. It is a well known fact that in all proceedings under the Land Reforms Act where possession, is taken by the revenue authorities, panchanama is drawn up to evidence such a fact and thereafter another panchanama is also drawn up for handing over possession of the assigned land to various assignees. A receipt is also obtained from the assignee to the effect that he has taken possession of that land. Neither any panchanama nor any such receipt is there in this case. Then we are left with the oral evidence of P.Ws. 1 to 4 on one hand and D.Ws. 1 to 3 on the other. It is noteworthy that P.Ws. 1 to 4 have asserted that they have cultivated the lands for a period of four months and that they have been forcibly dispossessed by the revision petitioners but D.Ws. 1 and 2 on the other hand swear to the fact that they have been continuously in enjoyment of the above land. When the factum of handing over possession could have been proved by documentary evidence it is not known as to how reliance can be placed on oral testimony of P.Ws. 1 to 4. Moreover, the evidence on both sides will have to be eschewed from consideration as it is oath against oath. Thus, I hold that there is no acceptable legal evidence either to establish that the respondents-plaintiffs have been put in possession of various moieties or that they have cultivated the same for a period of four months or that they have been dispossessed. This factual background will be kept in view to decide the questions raised in these revision petitions.

10. It is firstly contended by Sri Bhagiratha Rao that the question of title is irrelevant in a suit u/s 6 of the Specific Relief Act. To support his contention he relied on a decision of the Supreme Court in "Yeshwant Singh v. Jagdish Singh" AIR 1968 SC 620 wherein it is held that u/s 9 (sic. 6) of the Specific Relief Act it is well settled that question of title is irrelevant in a suit under that section.

11. It is well settled that the basis for a suit u/s 6 of the Specific Relief Act is previous possession and not title and hence the Trial Court should not have

framed an issue regarding title of the respondents-plaintiffs as Issue No. 1 and no finding in that regard should have been recorded. Following the ratio of the aforesaid Supreme Court Judgment, I have no hesitation to hold that the Lower Court has committed an error in its approach to decide the question of title between the parties.

12. It is contended by Mr. M. Kesava Rao that Ex.A-2 certified copy of the judgment of the criminal Court is a good piece of evidence to establish that the revision petitioners have trespassed into the plaint schedule land. Whereas Sri Bhagiratha Rao contended that the judgment of criminal Court is not at all relevant in a civil suit and that the questions involved in this suit have to be decided independently on the evidence adduced before the Civil Court. To support his contention he cited a decision of the Supreme Court in Anil Behari Ghosh Vs. Smt. Latika Bala Dassi and Others, wherein it is held:

"Where in a proceeding for revocation of the grant of probate u/s 263, Succession Act, the question is whether the son of the testator murdered him, it cannot be assumed on the basis of a previous judgment of a Criminal Court convicting the son of the murder of his father and sentencing him to transportation for life, that the son was the murderer of the testator. The judgment of the Criminal Court is relevant only to show that there was such a trial resulting in the conviction and sentence of the son to transportation for life. It is not evidence of the fact that the son was the murderer of the testator. The question has to be decided on evidence". He further relied on a decision in Onkarmal and Another Vs. Banwarilal and Others, wherein it is held:

"A judgment of acquittal in a Criminal Court is irrelevant in a civil suit based on the same cause of action, just as a judgment of conviction cannot, in a subsequent civil suit, be treated as evidence of facts on which the conviction is based. The Civil Court must independently of the decision of the criminal Court investigate facts and come to its own finding".

It is noteworthy that the judgment cited supra (2) is relied on by the Rajasthan High Court besides AIR 1933 Madras 429 and Ramadhar Chaudhary and Others Vs. Janki Chaudhary, . This very question came for consideration before Madras High Court on various occasions. In AIR 1933 Madras 429, Krishnan Asari and Another Vs. Adaikalam and Others, and Perumal Vs. Devarajan and Others, the same view has been taken. Be it noted that the judgment of the Supreme Court cited supra (2) has been relied on by the Madras High Court also. In view of the principles laid down by the catena of decisions cited above, I have no hesitation to hold that the judgment of the Criminal Court cannot be relied upon as one binding in civil action. It is needless to say that this Court is an offshoot of Madras High Court and hence the decisions rendered by the Madras High Court before States Reorganisation are binding on this Court. I accordingly hold that Ex.A-2 cannot be made use of for the purpose of deciding whether the respondents-plaintiffs have been put in possession of the land whether they were dispossessed by the revision petitioners herein.

13. It is also contended by Sri Kesava Rao that Ex. A 1 can be taken for handing over symbolic possession to the respondents-plaintiffs and he relied on a decision in Kumar Kalyan Prasad and Another Vs. Kulanand Vaidik and Others, " wherein it is held:

"Considering that Section 6 Specific Relief Act employs an ordinary word "dispossessed" and there being nothing in the provision either requiring construction thereof in the narrow constructed sense nor barring the wide import it is capable of, dispossession otherwise than by due course of law not only of the actual physical possession but also of other forms of possessions including that which was merely symbolical should be held to be remediable under the provisions....."

14. There can be no quarrel with the proposition that dispossession includes not only (of) physical possession but also other forms of possession including symbolic possession. But then the question is whether the respondents-plaintiffs have been put in symbolic possession or not. I have once again perused Ex.A-1 to see whether it can be said that the respondents-plaintiffs have been put in symbolic possession. When there is a specific direction to the Mandal Revenue Officer to hand over copies of the proceedings and to put them in possession and also obtain receipts from them I fail to understand as to how it can be said that symbolic possession was given to them. One peculiar feature in this case is that a total extent of Ac. 19.67 cents has been assigned to as many as 11 persons in various moieties. It is needless to say that survey was necessary to divide the above moieties by metes and bounds if at all actual possession or symbolic possession was to be given to them. There is no record to say that any such survey or division by metes and bounds was effected. I am, therefore, unable to accept the contention of Sri. Kesava Rao.

15. Turning to the factual background of this case I have already held above that there is no legal and acceptable evidence to hold that the respondents-plaintiffs have been put in actual possession of the disputed land and hence the question of their dispossession does not arise. I find force in the contention of Sri Bhagiratha Rao that the approach of the learned District Munsif in recording three inconsistent and vacillating findings regarding possession is not at all correct. It is true that there was no need for the learned Munsif to go into the question of title but he has framed an issue in that regard and he recorded a finding that the respondents-plaintiffs have got title to the disputed land which is uncalled for. So also on the question of handing over possession of the plaint schedule land the findings are inconsistent and they cannot be sustained in the eye of law. Likewise the question of dispossession by the revision petitioners does not arise. Therefore, I hold that impugned judgments and decrees are liable to be set aside.

16. In the result, the revision petitions are allowed with costs and the judgments and decrees in O.S. Nos. 43/87, 44/87, 45/87, 46/87, 47/87, 48/ 87, 49/87 and 50/87 on the file of the Principal District Munsif Court, Yellamanchili, dated

27-8-1992 are set aside. Consequently the suits filed by the respondents-plaintiffs stand dismissed with costs.