
(2000) 07 AP CK 0006
In the Andhra Pradesh High Court
Case No : SA No. 480 of 1992

Edla Venkat Raj Reddy

APPELLANT

Vs

Edla Linga Reddy (died) per LRs. and others

RESPONDENT

Date of Decision : 24-07-2000

Acts Referred:

Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands Act, 1950 — Section 34, 37, 38
Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 — Section 8
Evidence Act, 1872 — Section 17, 21
Land Acquisition Act, 1894 — Section 30

Citation : (2000) 5 ALD 654 : (2000) 5 ALT 299

Hon'ble Judges : Vaman Rao, J

Bench : Single Bench

Advocate : Mr. A. Pulla Reddy, for the Appellant; Mr. L. Prabhakar Reddy and Mr. A. Anantha Reddy, for the Respondent

Judgement

1. This appeal is directed against the judgment of the District Judge, Ranga Reddy, rendered in AS No.25 of 1989 under which the appeal directed against the judgment of the District Munsif, Ibrahimpatnam, dated 26-4-1989 decreeing the suit of the plaintiff for partition for all the suit schedule items of the properties was set aside and a preliminary decree for partition of only one item of the property was passed.

2. The plaintiff in the suit is the appellant herein and the defendants are the respondents. The first appeal was filed by the first defendant in the suit. For the sake of convenience, the parties hereinafter will be referred to as they were arrayed in the suit. The plaintiff filed the suit against defendants for partition of lands to an extent of Ac.5.27 gts. in Sy. No.374, Ac.3.15 gts. in Sy. No.372, Ac. 1.29 gts. in Sy. No.378, Ac. 1.08 gts. in Sy. No.379, Ac.2.17 gts. in Sy. No.380, Ac.9.01 gts. in Sy. No.381 and Ac.9.33 gts. in Sy. No.382 of Tulekalam Village, Ibrahimpatnam, hereinafter to be referred to as the suit lands, into eight shares by metes and bounds and for allotment of two such shares to him. It is averred

that the plaintiff and the 1st and second defendants are brothers and defendants 3 and 4 are their cousins and the suit lands are joint family properties of the plaintiff and defendants and that all of them have been jointly enjoying possession of the suit properties. It is stated that the plaintiff and second defendant are entitled to 1/4th share each, defendants 3 and 4 together are entitled to the remaining 1/4th share in the suit lands. It is further stated that the lands in Sy. Nos.377 to 382 stand in the name of the plaintiff and the third defendant though all the suit lands are the joint family properties. In view of differences having cropped up, the suit for partition has been filed. (The first defendant, aggrieved by the judgment of the trial Court filed the appeal in the District Court). In his written statement, the first defendant admitted the relationship between the parties. It is stated that the suit lands are not the joint family properties. It is further stated that after the death of his father, he (defendant No.1) acquired the suit lands on lease from the original pattadar prior to the year 1950 and in the year 1950 a protected tenancy certificate was issued in his name in respect of the suit lands. In the year 1975 a certificate u/s 38-E of A.P. (Telangana Area) Tenancy and Agricultural Lands Act, 1950, hereinafter referred to as the Tenancy Act, was issued in his name in respect of the suit lands, except the land in Sy. No.374. It is stated that in respect of the land in Sy.No.374 a certificate u/s 38-E of the Tenancy Act was wrongly issued in the name of the 3rd defendant. The 1st defendant in his capacity as absolute owner permitted the plaintiff and other defendants to cultivate the land in Sy. No.378 along with him and thus the plaintiff, defendants 3 and 4 are in possession of the lands along with him and their names have been shown as cultivators in the pahanies. It is stated that taking advantage of the entries in the pahanies, the plaintiff in collusion with defendants 3 and 4 filed the suit with mala fide intention.

3. Defendants 3 and 4 remained exparte in the trial Court though it appears in the trial Court's judgment it was mentioned as if these defendants were also represented by an advocate as pointed out in the judgment of the District Court.

4. Issues were framed by the trial Court. The plaintiff examined himself as PW1 and defendants 2 and 3 were examined as PWs.2 and 3 respectively. Exs.A1 to A18 and Exs.X1 to X3 were marked in support of the plaintiff's case. On behalf of the first defendant, he examined himself as DW1 and examined another witness as DW2. Exs.B1 and B2 were marked on his behalf. On this material, the trial Court decreed the suit.

5. The first defendant filed appeal before the District Court. The first appellate Court framed the point for consideration as follows :

"Whether the first respondent (plaintiff) is entitled to and if so to what share in what properties covered by the suit."

The learned District Judge held that there was an earlier partition of the family properties including the land in Sy. No.365. He also held that inasmuch as the certificate u/s 38-E of the Tenancy Act stands in the name of the first defendant

alone, which was issued after the earlier partition between the brothers the lands covered by the certificate u/s 38-E of the Tenancy Act are exclusive property of the defendant No. 1 and cannot be deemed to be the joint family property and accordingly allowed the appeal. However, in respect of the land in Sy. No.374 among the suit schedule lands, the learned first appellate Judge found that there was no material to show that the certificate u/s 38-E of the Tenancy Act was issued in respect of those lands in favour of the 3rd defendant and at any rate in view of his admission as PW3 that the plaintiff has 1/4th share in the suit lands, decreed the suit of the plaintiff for 1/6th share in the joint family properties viz., Sy. No.374 and held that the plaintiff is not entitled to any share in the remaining suit schedule properties.

6. The plaintiff filed this second appeal.

7. The contention of the learned Counsel for the appellant Sri A. Pulla Reddy is that the trial Court rightly decreed the suit holding that the suit lands in Sy. Nos.377 to 382 situated at Tulekalatn village, Ibrahimpatnam, were joint family properties of the parties notwithstanding the fact that a certificate u/s 38-E of the Tenancy Act was issued in respect of those survey numbers in the name of the first defendant. As far as the other suit land in Sy. No.374 is concerned, though the certificate u/s 38-E of the Tenancy Act stands in the name of the 3rd defendant he has admitted in his written statement that it is the joint family property. According to the learned Counsel, on this basis, the judgment of the trial Court was in accordance with the evidence on record, inasmuch as the first defendant had admitted in the proceedings under A.P. Land Reforms (Ceiling on Agricultural Holdings) Act, 1973, hereinafter to be referred to as the A.P. Land Reforms Act, that the lands in question belong to all the brothers and they have been shown as such in the declaration under the said Act. Thus it is contended that the first appellate Court committed a grave error in allowing the appeal partly and holding that the lands in Sy.Nos.377 to 382 are the joint family properties.

8. This argument is countered by the learned Counsel for the respondents and it is argued that the so called admissions made by the first defendant in the ceiling proceedings were designed to save the lands from the purview of the A.P. Land Reforms Act and as such those statements were self-serving statements and the first appellate Court rightly refused to act upon such statements. It is further stated that at any rate, the question whether a person other than the one recorded as owner in the certificate u/s 38-E of the Tenancy Act has any interest or title in the said lands falls exclusively within the jurisdiction of the Tribunals constituted under the Tenancy Act and Section 99 of the Tenancy Act specifically bars the jurisdiction of the civil Court in adjudicating on this issue.

9. The question that arises for consideration in this appeal is, whether is it permissible to go beyond the certificate issued u/s 38-E of the Tenancy Act and to enquire whether the certificate was issued for the benefit of the first defendant as well as the other members of the family. This question has to be resolved in

the light of the admissions said to have been made by the first defendant in the land ceiling proceedings that the properties covered by Section 38-E certificate are the joint family properties.

10. The learned Counsel for the appellant relies on a judgment of the Supreme Court in the case of Thiru John Vs. The Returning Officer and Others, in support of his contention that a party's admission as defined in Sections 17 - 21 of the Evidence Act, 1872 is substantive evidence and if such an admission is unequivocally made, is the best evidence against the party making it though not conclusive. A similar view has been taken by the Supreme Court in the case of Smt. Kavita v. State of Maharashtra, reported in AIR 1981 SC 2084 that an admission in view of Section 17 of the Evidence Act furnishes best evidence unless explained. It cannot be disputed that admissions voluntarily made constitute best evidence against the maker thereof and the burden shifts on the maker of such admission to explain those admissions and to show that they were not binding on him and to prove the existence of state of affairs contrary to such admissions.

11. It is pertinent to mention here that Ex.A4, which is the declaration said to have been filed by the first defendant in the suit u/s 8 of Act 18 of A.P. Land Reforms Act, in Col. No.1 at page No.1 contains the names of defendant No. 1 and other members of the family. The particulars of land in respect of which declaration has been filed are found at page No.3 of the declaration. In respect of the suit lands in question, which are relevant for the purpose of this appeal, Col. No.7 mentions that the total land to an extent of Ac.43.01 gt. is in equal enjoyment of the four brothers. In respect of two other Sy. Nos., Sy. No.356 is described as ancestral and against Sy.No.365 there is a mention of "assignment". In the statement recorded in those proceedings, a certified copy of which is marked as Ex.A5, the first defendant has stated that the lands in Sy. Nos.377 to 382 are held by him as a protected tenant and that patta certificate u/s 38-A has also been issued accordingly. He however, states that on the spot his cousin, himself and his brothers Yadagiri Reddy and Venkat Raj Reddy are in possession with equal shares.

12. The admissions made by a party to a proceeding no doubt constitute a strong piece of evidence, but in this case it is pertinent to note that the above said admissions have been made not in the normal course, but under special circumstances in connection with filing a declaration under the A.P. Land Reforms Act. The contention of the learned Counsel for the respondents that in such circumstances admissions are made by parties with view to save the land from being declared excess and being taken over cannot be brushed aside. However, the learned Counsel for the appellant points out that ultimately the family of the first defendant, who filed his declaration was found not to possess any excess land and such declaration cannot be said to have been filed with a motive to save the land being taken over under the land ceiling proceedings. There is no specific evidence as to under what circumstances the first defendant filed the declaration.

It is not the ultimate result of the proceedings under the A.P. Land Reforms Act which appears relevant. That in itself does not assure that the declarant knew that there was no risk of the lands being taken over under the A.P. Land Reforms Act. It is pertinent to note that in such cases, the illiterate parties act on the basis of advice given by an advocate or some others. Considering these aspects, the evidentiary value of the admissions made in such a declaration which was made to protect one's interest is considerably diluted. It may be further noted that the fact that title to these lands has been shown to be conferred on the first defendant u/s 38-E of the Tenancy Act as evidenced by the certificate Ex.B2, itself raises a presumption that it was the first defendant who was the protected tenant in respect of those lands who has been conferred exclusive title in respect of those lands. This presumption ensuing from the certificate u/s 38-E of the Tenancy Act overrides the presumption that can be raised from the admissions of the first defendant made during the land ceiling proceedings. Further, mere admissions made by parties cannot confer title to the property.

13. The learned District Judge, who heard the appeal has rightly observed that the respondents have not raised any objection in regard to issuing of the certificate u/s 38-E of the Tenancy act in favour of the first defendant alone. There is nothing to show that the plaintiff and others took any steps for inclusion of their names also in the certificate.

14. Further, as found by the learned District Judge, the question as to who is the protected tenant in respect of the lands within the meaning of A.P. (Telangana Area) Tenancy and Agricultural Lands Act, 1950 and who is entitled to ownership rights u/s 38-E of the Tenancy Act fall within the exclusive jurisdiction of the Tribunals or Authorities established under the Act. In fact, there is no material placed on record to show that the plaintiff and other defendants were in fact in possession of the lands as tenants during the requisite period which alone would entitle a tenant to be declared as a protected tenant under Sections 34, 37 or 37-A of the Tenancy Act. There is nothing to show that any one other than the first defendant was recorded as a protected tenant. Under these circumstances, a Civil Court cannot go beyond the certificate issued u/s 38-E of the Tenancy Act.

15. The learned Counsel for the appellant however, contends that a certificate of protected tenancy under Sections 34, 37 or 37-A of the Tenancy Act or a certificate of ownership issued u/s 38-E of the Tenancy Act need not necessarily be issued exclusively to the person named in the said certificate and that such certificate may ensure for the benefit of the other co-tenants. The learned Counsel cites a judgment of this High Court in the case of *M. Mallaiah v. C. Balaiah*, reported as Short Notes on recent cases in 1976 (2) APLJ 70 (Short notes on recent cases). The brief facts mentioned in the report would show that the petitioners therein were joint tenants and the Revenue Divisional Officer (Tribunal) granted certificate u/s 38-E, to one of the tenants. The question that arose for consideration was, whether joint tenants could appeal to the competent authority (District Revenue Officer) against issue of certificate in the name of

only one of the tenants. It was held that the joint tenants along with a petition for grant of leave to prefer an appeal are competent to file an appeal before the District Revenue Officer and that a protected tenancy certificate in respect of lands of which there are several co-tenants, but issued in the name of one tenant will enure for the benefit of other co-tenants.

16. Obviously the question of other co-tenants having the right of protected tenancy was sought to be raised and agitated before the competent Authorities (Tribunals) prescribed under the Tenancy Act. Issuing of protected tenancy certificate in the name of one of the co-tenants could be challenged by other co-tenants before the competent authorities under the Act who have exclusive jurisdiction to adjudicate as to who is entitled for a protected tenancy certificate. This case does not help the case of the appellant at all.

17. In this case, as observed above there is no material to show that the plaintiff and other defendants were in fact co-tenants along with the first defendant during the relevant period to entitle them to the rights of protected tenancy. Subsequently ownership rights u/s 38-E of the Tenancy Act having been issued exclusively in the name of the first defendant it was not challenged by the other parties claiming as co-tenants entitled to such rights. Once the competent Authority has adjudicated in the matter and a certificate u/s 38-E of the Tenancy Act was issued in favour of the tenant, the claim that such certificate enures to the benefit of persons other than the one named in the certificate could have been agitated before the competent Authorities under the Tenancy Act. But this question cannot be raised for decision before a civil Court. As far as the Civil Court is concerned, a certificate issued u/s 38-E of the Tenancy Act in the name of a person will be treated as evidence that the person so named in the certificate alone has been conferred the ownership rights under the Tenancy Act. The question as to who is entitled to protected tenancy rights and to a right to ownership u/s 38-E of the Tenancy Act is a matter which exclusively fall within the jurisdiction of the Tribunals and Authorities prescribed under the Tenancy Act and the civil Court's jurisdiction is ousted. This is obvious from Section 99 of the A.P. (Telangana Area) Tenancy and Agricultural Lands Act, which reads as follows:

"S.99. Bar of jurisdiction :--(1) Save as provided in this Act no civil Court shall have jurisdiction to settle, decide or deal with any question which is by or Wider this Act required to be settled, decided or dealt with by the Tahsildar, Tribunal or Collector or by the Board of Revenue or Government.

(2) No order of the Tahsildar, Tribunal or Collector or of the Board of Revenue or Government made under this Act shall be questioned in any civil or criminal Court."

Inasmuch as conferring of ownership rights u/s 38-E of the Tenancy Act is a question required to be decided by the authorities under the Act Civil Court's jurisdiction to adjudicate as to who is entitled to such ownership rights must be deemed to have been ousted. This view finds support in the judgment of this

High Court in the case of Islamia Arabic College, Kurnool represented by Principal and Correspondent v. Shanta Bai and others, reported in 1988 (1) ALT 74. It has been held in this case, as follows :

"The reference Court u/s 30 of the Land Acquisition Act cannot go into and decide whether the plaintiffs are protected tenants. Section 99 of the A.P. (T.A.) Tenancy and Agricultural Lands Act, 1950 expressly excludes the jurisdiction of the civil Court."

In the case of Mohd Burhan (died) and others v. Shivling Rao and others, reported in 1988 (1) ALT 117 it has been explicitly held that in case where a certificate u/s 38-E of the Tenancy Act granting ownership rights to protected tenant was issued without notice to the pattadar, the civil Court has no jurisdiction to grant a declaration of title and possession seeking to ignore the said certificate u/s 38-E and that Section 99 excludes the jurisdiction of the Civil Court to deal with any question required to be dealt with by the Authorities under the Act. Thus there can be no doubt that in this case it is not open to the Court logo beyond the certificate issued u/s 38-E of the Tenancy Act in favour of the first defendant. This being the law, even the so called admissions of the first defendant in the land ceiling proceedings do not alter the position that the first defendant in whose name the certificate u/s 38-E of the Tenancy Act has been issued must be deemed to have been conferred exclusively the ownership rights in respect of the lands in question.

18. Even on facts, as observed by the learned District Judge it is not the case of the plaintiff that the name of the appellant was entered in the tenancy register as seen from Ex.B1 in his capacity as the head of the family. No such specific plea was taken in the plaint. There is no pleading that the father of the plaintiff and defendants 1 and 2 took the suit lands on lease from the owners. On the other hand the plea in the plaint is that the all the parties jointly purchased the suit lands. The plaintiff who examined himself as PW1, during cross-examination stated that the first defendant was the head of the family at the time of purchase. It is also stated that at the time of purchase of land his father was alive and that the purchase document was in the name of the first defendant and his father died two years after the purchase. Normally, the father in the family would act as Karta of the joint family. There is no plea in this case in the plaint that though their father was alive, the first defendant was acting as Karta of the family. In fact, the plea of the plaintiff is that the entire family consisting of the plaintiff, defendants 1 and 2 and their father and defendants 3 and 4 and their father constituted the joint family. If that were so, the father of defendants 3 and 4 should have been the manager of the family and subsequent to his death, the father of the plaintiff should have been the manager of the joint family. It would appear that the 3rd defendant is elder to the first defendant in age. Considering these circumstances, there does not appear to be any reason for the first defendant to be projected as Karta of the joint family of the parties and there is no reason why the protected tenancy certificate under Sections 34, 37 or 37-A of

the Tenancy Act or the certificate of ownership u/s 38 of the Tenancy Act should have been issued in the name of the first defendant on behalf of the family.

19. As stated above, the declaration filed by the first defendant includes the lands in Sy.Nos.356 and 365. The declaration Ex.A4 mentions in Annexure-I that these survey numbers are among the lands belonging to the joint family, but significantly the lands in these two survey numbers are not included in the suit for partition and no explanation is offered in the plaint for omission of those lands.

20. In fact, the plaintiff as PW1 during cross-examination has admitted that there was a partition earlier. The land in Sy.No.356 was admittedly ancestral property, but this has not been included in this suit for partition. Ex.A4 declaration was filed on 1-4-1975. Ex.B2 certificate issued u/s 38-E of the Tenancy Act in favour of the first defendant is dated 2-9-1975. Ex.A4 mentions that the land in Sy.No.356 measuring Ac.7.15 gts. was ancestral land. As stated above, this is not included in the suit. From these circumstances it would appear that there was a partition of joint family properties earlier, otherwise there is no reason why an admittedly joint family property item was not included in the properties sought to be partitioned in this suit. This may lead to an inference that the certificate u/s 38-E of the Tenancy Act in favour of the first defendant might have been issued after the family partition.

21. The learned District Judge, who rendered the judgment in AS No.25 of 1989 has thoroughly examined all these aspects and came to the conclusion that the suit properties except one item, which was admitted to be joint family property, did not belong to the joint family and that they were exclusive properties of the first defendant. It is on this basis the learned District Judge partially allowed the appeal and decreed the suit for partition in respect of one item of property viz., Sy. No.374.

22. The learned Counsel for the appellant has contended that even here the learned District Judge has found that the parties are entitled to certain shares, which is against the claims of the respective parties. When the relationship between the parties is not disputed and when the status of the properties in question is admitted, it is a question of law as to which particular member of the family is entitled to what share in the suit properties. No fault can be found with the learned District Judge on this score. Thus taking any view of the matter there is no legal error in the finding of fact arrived at by the learned District Judge. At any rate there is no error raising substantial question of law in the manner and the grounds on which the learned District Judge based his conclusions.

23. In the result, the appeal is dismissed, but under the circumstances without costs.