

(1957) 04 AP CK 0012

In the Andhra Pradesh High Court

Case No : Letters Patent Appeal No. 65 of 1956

G. Balaramireddi and others

APPELLANT

Vs

Patun Vishwanadham and others

RESPONDENT

Date of Decision : 19-04-1957

Acts Referred:

Andhra Inam Tenants Protection Act, 1954 — Section 4(1)

Citation : AIR 1958 AP 85

Hon'ble Judges : Quammar Hassan, J;Kumarayya, J

Bench : Division Bench

Advocate : M.S. Ramachandra Rao and M. Krishna Rao, for the Appellant; A. Kuppuswamy, for the Respondent

Judgement

Kumarayya, J.—This is a Letters Patent Appeal against the Judgment of Viswanatha Sastry, J. whereby C. M. P. No. 679/55 and S. A. No. 933 of 52 have been decided against the defendant-appellants. C. M. P. No. 679 of 55 was an application under S.4 (i) and (ii) of the Andhra Inam Tenants Protection Act, 1954 for the stay of hearing of S. A. No. 933 of 52. S. A. No. 933 of 52 arose out of a suit for partition and delivery of possession of 13/48th share brought by some of the co-sharers in the Paturivari Khandriga against 15 defendants of which defendants 1 to 3 and 5 to 7 are the appellants before us.

2. The brief facts of the case are: that the Suit lands, about Ac. 25-00 in area, forming part of Paturivari Khandriga were admittedly owned in common by several co-sharers. The plaintiffs and defendants 8 to 15 are the present sharers. It is beyond controversy that defendants 1 to 7 of whose family the 1st defendant is the Manager have been in possession of the suit lands for some decades. In 1931 one of the sharers of the Khandriga brought a suit O. S. No. 22 of 1931 on the file of the Sub-Court Nellore for partition and separate possession of his share.

The other co-sharers including the present plaintiffs were party-defendants to the said suit. The plaintiffs as defendants 11 and 12 therein set up their claim for

13/48th share in the Khandriga and a compromise was arrived at between the major khandrigadars as regards their shares. The defendant No. 1, as 6th defendant in that suit, claimed that he and his predecessors were in possession from time immemorial and had a permanent right of occupancy in the said lands and hence he could not be evicted.

Thus, notwithstanding the compromise, there was still controversy in the suit in relation to the question whether the present 1st defendant had [permanent occupancy rights. There was further dispute as to the exact rate of annual rent payable to the khandrigadar. The trial court found that the 1st defendant and his predecessors were in possession by virtue of a definite, lease from the khandrigadar and that he had no right of permanent occupancy, and thus decreed the claim of the plaintiff to the extent of his share.

The present 1st defendant went in appeal; but the High Court in A. S. No. 225/1942 by its Judgment dated 23-11-1948 negated his claim of permanent occupancy rights in the Khandriga land and confirmed the Judgment of the trial court. The present plaintiffs thereafter brought the Suit O. S. No. 157 of 1946 claiming partition and delivery of possession of their 13/48th share in the khandriga. Defendants 1 to 7 set up the same claim of permanent rights of occupancy in the lands on the ground that khandriga was an estate within the meaning of the Madras Estates Land Act.

They further contended that though they got into possession originally as tenants, their possession, after the expiry of the lease term, had become adverse and a period of more than 12 years having elapsed the plaintiffs cannot in law resume the lands. The trial court decreed the suit. This decree was confirmed by the Court of first appeal on the ground that the claim of defendants was barred by res judicata. The defendants then filed S. A. No. 933 of 1952.

3. During the pendency of this appeal, the Andhra Inam Tenants Protection Act (President's Act No. XIV of 1954) came into force in December 1954. Section 4 (1) of the said Act provided for stay of suits, proceedings in execution of decrees or orders or other proceedings for the eviction of tenants from the inam lands. The appellants made an application C. M. C. P. No. 679 of 1955 for stay of this Second Appeal claiming that their case falls within the ambit of section 1 (2) of the said Act.

4. This application was resisted on two grounds, viz., (i) that the Act had no application because the khandriga was in ryotwari village at distinct from an inam village, and (ii) that there was no subsisting tenancy as it was terminated by notice to quit before Suit. The learned Judge having considered the historic background of this legislation, the purport and language of section (2) of the Act came to the conclusion that the word "hamlet" or "khandriga" used in that Section must be read with the words "of an inam village and not disassociated therefrom. He held that the khandriga in question not being in inam village but in a ryotwari village, the Act did not apply to the case.

Thus he rejected the stay petition. He they took up the Second Appeal and decided the same against the defendant-appellants on the ground that the plea of the defendants was barred by re judicata. He further held that when the appellants possession is traced to a lawful source, it cannot become unlawful by their mere withholding the payment of rent and the question of adverse possession to defeat the right of the plaintiffs there fore would not arise.

5. Sri M. S. Ramachendrarao conceded that the propriety and correctness of the order passed in the Second Appeal cannot be challenged with an justification on the grounds on which it was based. He however urged that the stay petition (sic) to have been granted in view of the provisions of the Act. The argument is that for the application of section 1 (2) it is not at all necessary that the (sic)ndriga which is itself an inam should be in an inam village. After careful consideration, we feel we cannot give effect to this argument. Section 1 (2) provides that the Act applies to tenants in any "hamlet khandriga or substantial portion of an inam village of which the grant as inam has been made, confirmed or recognised by the Government."

6. Section 4 (1) is concerned with stay of proceedings for eviction of tenants from inam lands. Inam land according to S. 2 (3) is a land of the description mentioned in S. 1 (2) of the Act. While S. 3 (2) (d) of the Madras Estates Land Act deals with any inam village of which the grant has been made confirmed or recognised by the Government, the present Act applies not to the inam whole village but to a hamlet, khandriga or substantial portion of inam village.

The provisions of this Act as it appears from the wording of S. 1 (2) are intended for cases which do not fall within the ambit of S. 3 (2) (d) of the Madras Estates Land Act. It is an Act giving protection to tenants of inam lands in any hamlet, khandriga or any substantial portion of an inam village. There is no doubt that the hamlet or khandriga must be of an inam village for the words "of an inam village of which the grant as inam has been made, confirmed or recognised by the Government" qualify the words "hamlet and khandriga" used in the section.

Having regard to the tenor and purport of the Act that is the only interpretation that can be placed on the wording of section 1 (2) of the Act Paturivari Khandriga in question admittedly is in a Government or ryotwari village and not in an inam village. In these circumstances, the provisions of the President's Act XIV of 1954 have no application to the case under consideration, and the stay petition has rightly been rejected by the learned Judge.

7. It is next argued that the appellants are entitled to the benefit of section 7 (2) of the Madras Estates Land (Andhra Amendment) Act (XXXV of 1956) as passed by the legislature on 10-12-1956 giving retrospective effect to some of its provisions. Section 7 (2) of the said Act reads thus:

All suits and proceedings pending at the commencement of this Act in which the question at issue is whether an area is an esate as defined in sub-clause (d) of Clause (2) of section 3 of the principal Act as amended by this Act, shall be

disposed of as if this Act had been in force at the time when such suits or proceedings were instituted." Amendment of Section 3 of Madras Act 1 of 1908 as affected by S. 2 of this Act is as below:

2. "Amendment of S. 3, Madras Act I of 1908 - In the Madras Estates Land Act, 1908 (Madras Act I of 1908) (Herein after referred to as the Principal Act) in sub-clause (d) of Clause (2) of section 3-

(i) for the portion before Explanation (1) the following shall be substituted, namely:- "(d) (i) any inam village, or

(ii) any hamlet or khandriga in an inam village of which the grant as "an inam has been made, confirmed or recognised by tile Government, notwithstanding that subsequent to the grant, such village, hamlet or khandriga has been partitioned among the grantees, or the suceessors-in-title of the grantee or grantees (ii) in explanation (i) after the word "village" in the two places where it occurs, the wards "hamlet or khandriga in an inam village" shall be inserted:

(iii) After explanation (i), the following Explanation shall be inserted namely:

Explanation 1-A. - An Inam village, hamlet or Khandriga in an Inam village granted in inam shall be deemed to be an estate, even though it was confirmed or recognised on different dates, or by different title deeds or in favour of different persons.

Explanation I-B.-If such hamlet or khandriga was at any time designated as an inam village or as a part thereof in the Revenue accounts", it shall for purposes of item (ii) or sub-clause (d) be treated as being a hamlet or khandriga of an inam village, notwithstanding that.subsequently it came to be designated in the revenue Accounts as a ryotwari or Zamindari village or part thereof (italics (here into " ") mine.)

It is plain that the term "estate" as stands defined after this amendment does not cover khandriga which is not in an inam village. But the learned Counsel relies on explanation I-B. Admittedly the khandriga in question is now in a ryotwari village. At no material stage in the course of litigation between the parties covering a period of more than, a quarter of a century has it been alleged or sought to be established that this Paturivari khandriga was at any time designated as an inam village or as part thereof in the revenue accounts as contemplated by explanation I-B. The learned Counsel does not categorically state that it was even an inam village.

However he wishes to make sure and requests for time so that in view of the amended section he may advise his client to investigate and find out whether he could avail of the provisions of Explanation I-B. The learned counsel on the other side objects to this. We are not inclined to grant such request made after a lapse of more than four months even after the advent of Act XXXV of 1956. No sincere attempt has been as yet made to explore the possibility of any basis for the claim that is sought to be set up now. Having regard to the material already on

records, it is plain that Act XXXV of 1956 does not come to the rescue of the appellants.

8. We are then referred to the provisions of section 10 (2) of the Andhra Tenancy Act, 1956, which reads as follows:

Notwithstanding anything contained in Sub-section all tenancies subsisting on the date of promulgation of the Andhra Cultivating Tenants Protection Ordinance, 1956 (Andhra Ordinance I of 1956), and protected by that Ordinance, and all subsequent tenancy agreements entered into upto the commencement of this. Act, shall continue for a period of three years from the 1st June 1956 or, until the expiry of the lease in the normal course, whichever ever is later, on the same terms and conditions as before but subject to the determination of fair rent in case of dispute.

Two conditions have to be fulfilled according to this section before a party can claim any benefit Firstly, it is essential that the tenancy should be subsisting as on the date of the promulgation of the Ordinance and secondly, it should be protected by the Ordinance. If one of these conditions is not fulfilled, there can be no occasion for the application of the said section. This matter has been fully considered by a Division Bench of this Court in C. Venkareddi and others Vs. C. Subbarami Reddi and others, As the tenancy was not subsisting on the date of the Act but had been terminated long ago by a notice to quit, we see no force in this plea.

9. In the result, this appeal fails and is dismissed with costs.