

(1956) 02 AP CK 0012

In the Andhra Pradesh High Court

Case No : Civil Miscellaneous Petition No. 296 of 1956

Gara Venkateswarulu

APPELLANT

Vs

Lakshmamma

RESPONDENT

Date of Decision : 13-02-1956

Acts Referred:

Madhya Bharat Muafi and Inam Tenants and Sub-tenants Protection Act, 1954 —
Section 3(2), 4(9)

Citation : AIR 1957 AP 506 : (1956) ALT 379

Hon'ble Judges : Satyanarayana Raju, J; Bhimasankaram, J

Bench : Division Bench

Advocate : K. Srinivasamurthy, for the Appellant; B.V. Ramanarasu and M. Srinivasachari, for the Respondent

Judgement

Bhimasankaram, J.—This is an application for the stay of the hearing of Appeal No. 619 of 1951 under the Andhra Inam Tenants Protection Act (14 of 1954).

2. The Petitioner, who was the 1st Defendant in the suit out of which this appeal arises, claimed to be a tenant of land in dispute, which is stated to be about 4 acres in extent, while the Plaintiff sued, for the eviction of the Petitioner and other members of his family on the ground that he was a trespasser who had got into the lands when she was herself in personal, cultivation thereof. The suit was decreed and the 1st Defendant (Petitioner) has appealed to this Court.

3. The first issue in the suit was: "Whether the suit village is an estate within the meaning" of the Estate, Land Act?, and this was followed by an issue as to "whether the 1st Defendant has acquired occupancy right in the suit land?" Under the first issue the lower Court found that "the second requirement of Section 3(2)(d) not having satisfied in the case," the property was not part of an "estate" as defined, in that Section read with the Explanation and therefore the 1st Defendant, though, admitted as a tenant in the suit land, would not acquire occupancy rights.

The learned Subordinate Judge apparently meant that even assuming that the 1st Defendant had been let into the land as a tenant,, he would not have acquired statutory rights of occupancy, for the reason that the suit lands did not form part of an estate., He, however went into a consideration of the second issue, and in the result. he held that the 1st Defendant had not succeeded in showing, that he was let into occupation of the land as a tenant and that he had failed to discharge the burden of establishing the tenancy; which he had set up.

But it may be noted that there was an earlier suit between the parties, O. S. No. 34 of 1948 on the file of the District Munsiff's Court, Tenali which was a suit instituted by the present Plaintiff for a permanent injunction restraining the Defendants from interfering with her possession. The Court however, dismissed the suit holding that the 1st Defendant was a tenant hold-over and that the suit was therefore not maintainable. One of the points to be decided in the appeal is whether this finding is right.

4. It is argued by Mr. Ramanarasu that laving regard to the finding of the lower Court in the present suit that the Defendant has not established his tenancy, the Inam Tenants Protection Act cannot apply. This contention can not be accepted in view of the fact that a Bench of this High Court consisting of the learned Chief Justice and my learned brother held in C.M.P. No. 2014 of 1955 (Andhra) (A), that the Act applies even to a person merely claiming to be a tenant. In expressing this view the learned Judges adopted the ruling of my learned brother in Karri Venkatareddi v. Kilamfoi Ammanna, 1955 APLT NRC (Civil) 9

With great respect to the learned Judges, I think their view is right. It seems to me impossible to hold thait merely because a dispute is raised in a suit as to whether a party is or is not a tenant when he himself claims to be one, that person is not entitled to the benefits of the Inam Tenants Protection Act. Adopting the reasoning of the Privy Council in AIR 1928 227 (Privy Council) (though the case is not entirely on all fours with the present one), I would say that the whole purpose of the Act would be defeated if such a contention were to be accepted.

In my view, therefore, it must be held that the Act applies to the., present facts and that, the hearing of this appeal should be stayed under the Inam Tenants Protection Act.

5. There is in this case an earlier order of A. S. P. Aiyar J, (of the Madras High Court, where the appeal "was.(Originally filed), appointing the 1st Defendant a receiver of the properties and directing him to deposit 52 bags of paddy every year by way of: interim rent or menses profits. I do not propose to disturb that order and I think that it should be deemed to be the fair rent payable on the holding in dispute for purposes of Section 4 (9) of the Act. This will not preclude the determination of the fair rent payable by the 1st Defendant to the Plaintiff in any other proceeding or at any later stage of this proceeding.

I understand that the time for complying with the order of A.S.P. Aiyar J., for this

year expired on the 15th of January. I think it would be proper to extend the time till the end of paddy payable this year.

Satyanarayana Raju, J.

6. I agree.