

(1996) 08 AP CK 0048

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 186 of 1995

Godamma

APPELLANT

Vs

Authorised Officer and Spl. Tahsildar, Land Reforms and
Others

RESPONDENT

Date of Decision : 13-08-1996

Acts Referred:

Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 — Section 3

Citation : (1997) 2 ALT 682 : (1997) 2 APLJ 244

Hon'ble Judges : Krishna Saran Shrivastav, J

Bench : Single Bench

Advocate : A. Pulla Reddy, for the Appellant; G.P., for the Respondent

Judgement

Krishna Saran Shrivastav, J.—Heard Sri A. Pullareddi, the learned Counsel for the petitioner and the learned Government Pleader for Land Reforms.

2. The facts of the case in short are:

All the 3 respondents have filed separate declarations before the Lower Tribunal and the Tribunal passed a common order on 18-2-1977 holding that all the three respondents belong to one family headed by the 2nd respondent who is their husband. It rejected the plea of divorce. The appeal was partly allowed. Thereafter, they preferred Civil Revision Petition No. 6773/78, 6834/78 and 27/79, This Court vide its order dated 11-7-1979 set aside the orders of the Courts below and accepted the plea of divorce and directed the lower Tribunal to compute the holding of the appellant i.e., petitioner and the respondents 2 and 3 as separate units.

3. The Lower Tribunal passed the impugned order to the effect that there is surplus land of 7.5175 S.H. in excess of the ceiling limit lying with the aforesaid three persons. They challenged the order in L.R.A.No.88/94 (old No. 2/93). The Lower Appellate Court vide its order dated 3-10-1994 remanded the case with certain directions but refused to consider the contention of the petitioners that

the land in S.No. 264, 265, 357 (in part) to an extent of Ac. 7.00 and in Survey Nos. 358 and 231 has been lost to the appellant due to adverse possession of Sri Saireddi, Rama Linga Reddi and Karunakar Reddi respectively. Similarly, the lower Appellate Court rejected the plea of adverse possession of Sri K.V. Kasireddi, in respect of land in S.Nos. 369 and 291, on the ground that no registered sale deeds have been filed by the Appellant and therefore, the land, though in alleged possession of the persons, shall be included in the holding of the appellant, as held in the case of *The State of Andhrn Pradesh v. Mohd. Ashrafuddin* (1 infra).

4. Feeling aggrieved by the impugned order passed by the Lower Appellate Court, the petitioner has preferred this Revision.

5. It is held in the case of the *State of Andhra Pradesh Vs. Mohd. Ashrafuddin*, that:

"The word "held" is not defined in the Act. We have, therefore, to go by the dictionary meaning of the term. According to Oxford Dictionary "held" means: to possess: to be the owner or holder or tenant of; keep possession of; occupy. Thus "held" connotes both ownership as well as possession. And in the context of the definition it is not possible to interpret the term "held" only in the sense of possession. For example, if a land is held by an owner and also by a tenant or by a person in possession pursuant to a contract for sale, the holding will be taken to be the holding of all such persons. It obviously means that an owner who is not in actual possession will also be taken to be a holder of the land. If there was any doubt in this behalf, the same has been dispelled by the explanation attached to the definition of the term "holding". The explanation dearly contemplates that the same land can be the holding of two different capacities. The respondent in view of the definition certainly is holding as an owner, although he is not in possession".

6. The position of law that emerges from the ratio laid down in the aforementioned case is that even if the owner is not in actual possession of the land such land will be taken to be in the holding of the owner and the same land can be the holding of two different persons holding land in two different capacities. Even the land transferred by the owner under a defective title deed will form part of his holding.

7. It is well settled that when the plea of adverse possession is set up and proved, it means that the owner's title has been extinguished and the person in adverse possession has acquired title contrary to the interest of the real owner. In other words, it means that the person in adverse possession claims title not through the actual owner by transfer but he acquired title because he held the land, adverse to the interest of the real owner. It is true that under Clause (i) of Section 3 of the Act "holding" means, the entire holding held by a person who is in possession by virtue of a mortgage by conditional sale or through part performance of a contract for the sale of land or otherwise; or in one or more of

such capacities. But it cannot be said that the word "otherwise" includes possession of such persons who acquire title by adverse possession, for the simple reason that it is not covered by inter vivos transfer and the land is not possessed physically or otherwise by the owner in any capacity. Thus the principles laid down in the case of the State of Andhra Pradesh {1 supra) is not attracted where an acquisition of title by adverse possession had been set up and proved.

8. The lower Appellate Court has wrongly held that the lands mentioned in item Nos. (ii) and (iii) of para 7 of its order cannot be deleted from the holding of the petitioner as the said lands have not been transferred through any registered sale deed. It is to be seen that it is not a case of inter vivos transfer but a case of losing title by adverse possession by third parties.

9. For the above reasons, It is ordered that the lower Tribunal shall investigate into the claim of appellant thoroughly as to whether the aforementioned land admeasuring Ac. 7.00 in S.Nos. 264, 265, 367 (in part) and in S.Nos. 358 and 231 as also the land in S.No. 369 and 291 have been lost and Sri Saireddi, Rama Linga Reddi, Karunakar Reddy and F.V. Kasi Reddy have acquired title by adverse possession respectively as on the crucial date, that is to say, 1-1-1975.

10. Except the modification in the impugned order as indicated above, there appears to be no illegality or error of jurisdiction in the impugned order of learned Lower Tribunal and therefore, the Revision is accordingly disposed of at the admission stage. No costs.