

(2014) 11 SC CK 0038
In the Supreme Court Of India
Case No : Civil Appeal No. 3673 of 2009

Government of Andhra Pradesh

APPELLANT

Vs

K. Varalakshmi

RESPONDENT

Date of Decision : 27-11-2014

Acts Referred:

Andhra Pradesh Assigned Lands (Prohibition of Transfer) Act, 1977 — Section 3, 3(1), 3(2), 3(3), 3(4)
Civil Procedure Code, 1908 (CPC) — Section 80

Citation : AIR 2015 SC 559 : (2015) 1 ALD 147 : (2015) 2 ALT 14 : (2015) 2 CHN 68 : (2015) 127 RD 594 : (2015) 1 SCJ 87

Hon'ble Judges : Shiva Kirti Singh, J;M. Yusuf Eqbal, J;Abhay Manohar Sapre, J

Bench : Full Bench

Advocate : G. Prabhakar, Prerna Singh and C.K. Sucharita, Advocates for the Appellant; V.V.S. Rao, Sr. Adv., John Mathew, Sridhar Potaraju, Vijayshree Patnaik and A. Mukunda Rao, Advocates for the Respondent

Final Decision : Allowed

Judgement

M. Yusuf Eqbal, J.—This appeal by special leave is directed against the judgment and order dated 16.3.2004 passed by the High Court of Andhra Pradesh whereby appeal preferred by the Plaintiffs was allowed and the judgment and decree passed by the trial court in the suit instituted by the Plaintiffs has been set aside.

2. The factual matrix of the case is that the suit schedule property admeasuring about five acre in Survey No. 71/3 of Paradesipalem was Poramboke land. One Sagiraju Bangaramma was in possession and enjoyment of the said land by raising agricultural crops since 1950. By virtue of her possession, the suit property was assigned to her by the first Defendant/Appellant through a rough patta in R.C. No. 4118 of 1961. She continued to be in possession and enjoyment of the suit property as absolute owner, and by way of a registered sale deed dated 12.1.1970 (Ex. A-2), she sold the suit property for a valuable consideration to one Durga Ramalingeswara Rao. Subsequently, said Ramalingeswara Rao died and after his death his wife Durga Venkata Ratnam and

his sons succeeded to the suit schedule property, who by sale deed dated 27.1.1982 (Ex. A-1) sold the suit land to the Plaintiffs for valuable consideration and passed on the possession thereof.

3. In March, 1988, the second Defendant/Appellant being Visakhapatnam Urban Development Authority (in short, "VUDA") fixed boundary demarcations to a part of the Plaintiffs land, purporting to act under the directions of the District Collector of Visakhapatnam. The Plaintiffs being absolute owners and possessors of the land got issued notice Under Section 80 of the Code of Civil Procedure requesting Defendants to desist from interfering with the Plaintiffs' possession. Thereafter, Plaintiffs instituted a suit for declaration of title and permanent injunction.

4. It was averred in the plaint that the original assignee i.e. S. Bangaramma was a landless poor, who sold the suit land in the year 1970 to another landless poor Durga Ramalingeswara Rao, who purchased it in good faith for valuable consideration much earlier to the enactment of A.P. Assigned Lands (Prohibition of Transfers) Act, 1977 (in short, "Act of 1977"). The heirs of the said Ramalingeswara Rao in turn sold the suit land to landless poor, who are the Plaintiffs-Respondents herein. Hence, both the sale transactions are protected Under Section 3(5) of the aforesaid Act. If the Government wants to exercise its right of resumption it is bound by law to issue a show cause notice to the persons who obtained right and interest in the said land and to the said persons in actual possession of the land.

5. The first Appellant-Defendant in its written statement opposing the suit denied assignment of land to Sagiraju Bangaramma. Defendant contended that the land assigned to the Plaintiff's predecessors in title Bangaramma is not the suit land. It is only the land covered by Survey No. 71/10 which is only Ac. 4-94 cents. As the land was assigned subject to certain conditions and violation of such conditions by the assignee would entitle to resume the land assigned even suo motu without any notice or payment of any compensation. Even the land in Survey No. 71/10 which was assigned to Bangaramma was cancelled vide Rc. No. 904/87/Dt. 30-4-87 for violation of the conditions as she failed to bring the lands under cultivation. The VUDA-Defendant No. 2 pleaded for dismissal of the suit on the ground that the assigned land is not alienable but is only heritable. Any alienations made are illegal, void and unenforceable.

6. The trial court dismissed the suit holding that the suit land is an assigned land and Sagiraju Bangaramma- the assignee had no right to alienate the property. With regard to relief of injunction, the trial court observed that as there is no resumption of the assigned land by Defendant No. 1 and, moreover, when the Plaintiff is not entitled for the declaration he cannot be granted any injunction which is an equitable relief. Moreover, the Plaintiff has not established his possession over the suit schedule property on the date of filing of the suit as no documentary evidence or oral evidence was adduced on his behalf in that regard.

7. Aggrieved by the decision of the trial court, the Plaintiffs preferred appeal before the High Court, which decreed the suit filed by the Plaintiffs holding that the Plaintiffs led in oral and documentary evidence and proved Ex. A1 and Ex. A2, and the Government did not examine any responsible officer nor marked relevant documents to demonstrate the assignment in favour of Bangaramma. Learned Single Judge of the High Court observed as under:

20. Unfortunately the court below found that the Plaintiffs could establish the transaction between the legal representatives of Ramalingeswara Rao and the Plaintiffs, but the transaction between Bangaramma and Ramalingeswara Rao could not be established. This view of the court below cannot be accepted for two reasons; firstly the Plaintiffs successfully proved the transaction between Bangaramma and Ramalingeswara Rao through Ex. A2 and also proved the transaction between the legal representatives of Ramalingeswara Rao and the Plaintiffs through Ex. A-1. Therefore, the plaint averments, evidence of Plaintiffs and the documents are quite consistent.

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26. The cumulative effect is that there is no evidence whatsoever, whether oral or documentary, on behalf of the Defendants and the Plaintiffs could successfully prove their case by examining PW's. 1 & 2 and by marking Ex. A-1 and A-2. When that is the evidence on record on behalf of the Plaintiffs and no evidence whatsoever on behalf of the Defendants and nothing contra could be elicited by the second Defendant from the cross-examination of PW. 1 and 2, I am of the view that the Court below was in error in holding that the Plaintiffs, though could prove the sale transaction between the legal representatives of said Ramalingeswara Rao and the Plaintiffs, could not prove the sale transaction and the consequent title of the vendors of the Plaintiffs.

8. We have heard learned Counsel for the parties and perused the record. It has been pleaded on behalf of the Plaintiffs-Respondents that the schedule property measuring 5 acres in S. No. 71/3 was in the possession and enjoyment of one Smt. Sagi Raju Bangaramma since 1960 and she had been cultivating the said land since then. She had also been assigned a rough patta for the said land in R.C. No. 4118/61. It has been contended on behalf of the Respondents-Plaintiffs that the said Survey No. 71/3 was subsequently sub-divided into Survey No. 71/10 and the Respondents are in possession of the said land. The Plaintiffs purchased the suit land from the successors of the deceased Durga Ramalingeshwar Rao for a valuable consideration of Rs. 20,000/- vide registered sale deed dated 27.1.1982 and since then they have been cultivating on it. It is pleaded by the Plaintiffs that they were landless poor persons as contemplated Under Section 3(5) of the Act of 1977. Respondents have denied that there was any show cause notice dated 24.3.1983 issued to the original possessor of the land in S. No. 71/3 and that subsequent to the said show cause notice the assignment of the said land was cancelled on 15.5.1983 for violation of any condition of the assignment.

9. Learned Counsel appearing for the Respondents submitted that the Respondents have established by oral as well as documentary evidence that the transfer of the land from Sagi Raju Bangaramma to Durga Ramalingeshwar Rao was prior to the commencement of the Act of 1977 and that he was a landless poor person as contemplated Under Section 3(5) of the said Act. Learned Counsel further submitted that even if the aforesaid Act is considered to be retrospective in effect, it would be irrelevant for the purposes of this case as the transfer is clearly protected by Section 3(5) of the Act.

10. Before appreciating the rival contentions made by the learned Counsel, we would like to refer Section 3 of Andhra Pradesh Assigned Lands (Prohibition of Transfers) Act, 1977, which is the sheet anchor of the Appellants' case. Section 3 reads as under:

Section 3: Prohibition of transfer of assigned lands (1) Where before or after the commencement of this Act, any land has been assigned by the Government to a landless poor person for purposes of cultivation or as a house site, then, notwithstanding anything to the contrary in any other law for the time being in force or in the deed of transfer or other document relating to such land, it shall not be transferred and shall be deemed never to have been transferred, and accordingly no right or title in such assigned land shall vest in any person acquiring the land by such transfer.

(2) No landless poor person shall transfer any assigned land, and no person shall acquire any assigned land, either by purchase, gift, lease, mortgage, exchange or otherwise.

(3) Any transfer or acquisition made in contravention of the provisions of Sub-section (1) or Sub-section (2) shall be deemed to be null and void.

(4) The provisions of this section shall apply to any transaction of the nature referred to in Sub-section (2) in execution of a decree or order of a civil court or of any award or order of any other authority.

(5) Nothing in this section shall apply to an assigned land which was purchased by a landless poor person in good faith and for valuable consideration from the original assignee or his transferee prior to the commencement of this Act and which is in the possession of such person for purposes of cultivation or as a house site on the date of such commencement.

11. A bare perusal of the aforesaid provision would show that Sub-section (1) to (4) applies to all cases where the assignment of lands was made either before or after the commencement of the Act by the Government to a land less poor person for the purpose of cultivation or a house site. However, Sub-section (5) of Section 3 makes an exception in cases where the land has been so assigned has been purchased by another landless poor person in good faith or for valuable consideration from the original assignee or the transferee prior to the commencement of the Act.

12. It is the clear case of the Plaintiff Respondent that in 1971 their original assignee Sagiraju Bangaramma sold the land for consideration to Durga Ramalingeswara Rao, who was a landless poor person. The said Ramalingeswara Rao, was in the cultivating possession of the land and growing crop. After his death, his wife Smt. Venkata Ratnam and sons succeeded the property and continuously remained in cultivating possession till 1982 when they sold the land to Plaintiff in consideration of Rs. 20,000/-. The Plaintiff-Respondents proved the assignment deed and also led the evidence and proved that they are the bona fide purchaser for valuable consideration. Curiously enough, no evidence whatsoever was adduced on behalf of the Defendants-Appellants in support of their defence, which has been rightly noticed by the High Court.

13. In the background of these facts, we are fully in agreement with the finding recorded by the High Court that the transactions made in favour of the Plaintiff and his predecessors are fully saved by Sub-section (5) of Section 3 of the Act.

14. Hence, we do not find any reason to differ with the findings recorded by the High Court.

15. This appeal has, therefore, no merit and is liable to be dismissed.