
(2003) 03 AP CK 0112
In the Andhra Pradesh High Court
Case No : SA No. 7 of 1991

Guduru Malla Reddy and Others	Vs	APPELLANT
More Balaiah and Another		RESPONDENT

Date of Decision : 28-03-2003

Acts Referred:

Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands Act, 1950 — Section 50B

Citation : (2003) 3 ALD 579 : (2003) 5 ALT 101

Hon'ble Judges : G. Yethirajulu, J

Bench : Single Bench

Advocate : A. Anantha Reddy, for the Appellant; K. Pratap Reddy, for the Respondent

Final Decision : Dismissed

Judgement

G. Yethirajulu, J.—This appeal is directed against the judgment and decree of the Subordinate Judge, Bhongir in A.S. No. 2 of 1988 dated 8-10-1990 preferred against the judgment and decree in O.S. No. 68 of 1982 of the District Munsif Court. Ramannapet dated 30-9-1986.

2. The appellants are the defendants and the respondents are the plaintiffs in the suit. The plaintiffs filed the suit for declaration of title over the suit property of Ac. 18-00 comprising Ac.11-00 in S.No. 251 and Ac.7-00 in S.No. 252 of the suit village and for recovery of possession of the same from the defendants with future profits. The averments of the plaint are briefly as follows:

3. The 2nd plaintiff is the mother of the 1st plaintiff. The father of the 1st plaintiff Mora Narsaiah died about 10 years prior to the suit leaving the plaintiffs as his legal heirs. Late Narsaiah was the owner and pattedar of the suit lands. Late Guduru Mutyam Reddy, who was the father of defendants 1 and 2 and brother of defendants 3 to 5, used to live in an undivided Hindu mitakshara joint family. The father of defendants 1 and 2 and defendants 3 to 5 forcibly occupied the suit lands by taking advantage of the weak position of the plaintiffs and they could

not resist the illegal occupation of the suit lands by the defendants. The defendants are having lands adjacent to the suit lands. They occupied the suit lands under the pretext that the suit land is part and parcel of their patta lands. Hence the suit.

4. The defendants resisted the suit through the written statement of defendants 1 and 2 contending that late Mora Narsaiah ceased to own the suit lands more than 21 years prior to the suit and as a consequence the plaintiffs have no right or interest over the suit lands. The father of defendants 1 and 2 died about 30 years prior to the suit. The defendants 1 and 2 and defendants 3 to 5 do not constitute joint family. They are in lawful possession and enjoyment of the suit lands to an extent of Ac.11-00 in S.No. 251 and Ac.6-35 guntas in S.No. 252 comprising the total extent of Ac.17-35 guntas. They purchased the said land in the name of the 5th defendant in 1959 and the proceedings u/s 50-B of the A.P. (Telangana Area) Tenancy and Agricultural Lands Act, 1950 ("the Tenancy Act" for brevity) were initiated in 1969 and the sale of 1959 was validated in the year 1978. During the pendency of the proceedings before the concerned authorities, the 1st plaintiff managed to get a succession granted in his favour in respect of the entire land after the death of his father and mutation was carried out in the pahanis and the said mutation was effected deliberately at the instance and in collusion with the Village Patwari. The defendants are in lawful possession of the suit property from the year 1959 when they purchased the same from the father of the 1st plaintiff under a private sale deed, which was also signed by the 1st plaintiff. The 5th defendant filed an application u/s 50-B of the Tenancy Act in the year 1969 for validation of the sale only mentioning S.No. 251 and validation certificate was finally issued in the year 1978 in respect of Survey No. 251. All the years the defendants were under the bona fide impression that the sale was validated in respect of the land under their possession and enjoyment. Though only S.No. 251 was mentioned in the sale deed as well as in the validation proceedings, the 1st plaintiff while giving the statement before the Tahsildar admitted that he has no objection for validation of the sale. Since the defendants are in possession of the land in S.Nos. 251 and 252 they have perfected their title to the suit land by adverse possession. The rights, if any, existed in favour of the plaintiffs got extinguished. The plaintiffs are not entitled for the reliefs as prayed for. The suit is therefore liable to be dismissed with costs.

5. The plaintiffs filed a rejoinder contending that the defendants have sufficient knowledge about the possession and enjoyment of the suit land by the plaintiffs, that the land was never sold by their father at any time to the defendants, that the 1st plaintiff never expressed no objection for such sale, that the plaintiffs were in possession and enjoyment of the same till 1969-70, that the defendants forged the sale deed and other documents to get 50-B certificate, that as the illegal possession of the defendants was only in the year 1969 they cannot perfect their title by adverse possession. Hence the suit has to be decreed as prayed for.

6. On the basis of the above pleadings, the Trial Court framed appropriate issues. The plaintiffs in order to prove the suit claim examined P.Ws.1 to 3 and marked Exs.A.1 to A.8. The defendants examined D.Ws.1 to 3 and marked Exs.B.1 to B.17. The Trial, Court after considering the oral and documentary evidence adduced by both parties held that the plaintiffs are entitled for the decree as prayed for. The Trial Court accordingly decreed the suit in favour of the plaintiffs through its judgment dated 30-9-1986.

7. The defendants being aggrieved by the judgment of the Trial Court preferred A.S.No. 2 of 1988 before the Sub-Court, Bhongir and the same was also dismissed as devoid of merits.

8. The defendants being aggrieved by the concurrent judgments of the Courts below preferred this appeal challenging their validity and legality.

9. The following are the substantial questions of law raised by the appellants-defendants in the grounds of appeal?

(1) Whether the Civil Court has jurisdiction to deal with the validity of the certificate issued u/s 50-B of the Tenancy Act issued by the Tahsildar?

(2) What is the legal effect regarding Survey No. 252 when it was not included in the validation certificate, though its area was included in the extent mentioned in the certificate?

(3) Whether there is any perversity in the judgment of the 1st appellate Court and whether it needs interference by this Court?

Point No. 1:

10. The suit land is situated in S.Nos. 251 and 252. The defendants are claiming their title through an unregistered sale deed, which is the original of Ex.B.2, of the year 1959. The defendants alleged that on the basis of the said unregistered sale deed they approached the Tahsildar for issuance of a validation certificate u/s 50-B of the Tenancy Act. Ex.B.5 is the validation certificate said to be issued by the Tahsildar. It does not reflect that the validation was done on the basis of a particular unregistered sale deed. Neither the original sale deed was produced nor the dates of preparing and making signatures on the sale deed were mentioned in Ex.B.5. The original statement said to be recorded from P.W.1 and others was not produced. Nobody was examined to prove the contents of Exs.B.2 and B.5. The Courts below therefore held that the defendants failed to prove the contents of Exs.B.2 and B.5. In the absence of proof of the genuineness of such documents, Ex.B.5 cannot be relied on. When Ex.B.5 cannot be relied on and when Ex.B.2 is an unregistered document, the title of the land cannot be transferred through those documents. When once there was no valid transfer of the property, the question of the defendants acquiring title through transfer does not arise.

11. The learned Counsel for the appellants-defendants, Sri A. Anantha Reddy,

relied on the decisions of this Court in Mohd. Burhan v. Saivling Rao 1987 (2) APLJ 59 : 1988 (2) ALT 117, and Rama Rao v. Rachappa 1998 (2) APLJ 71, but the principles laid down in those cases are different and they are not applicable to the facts of the case on hand.

12. Ex.B-5 is only in respect of the land covered by S.No. 251, but S.Nos. 254 and 252 cover the suit land. The defendants did not place any material in respect of S.No. 252. They took a plea that they perfected the title to the suit property by adverse possession. The defendants cannot blow hot and cold at the same time. While asserting their right over the suit property through an unregistered sale deed (Ex.B.2) and a validation certificate (Ex.B.5), the defendants cannot take the plea of adverse possession. The plea of adverse possession is available only to such persons who have entered the land and continued to remain in the said land for a period of more than 12 years uninterruptedly without any title and if the owner of the land keeps quiet without disturbing the possession of such person and when he maintained his possession against the real owner, then he can be declared to be a person who acquired title to the property by adverse possession, but in the present suit such plea is not available and no such relief can be granted in favour of the defendants. When the plaintiffs asserted that they are the owners of the land and the defendants trespassed into the land from the year 1976-77 without any lawful right, the burden is on the defendants to prove that they have a right over the property. When they admit that the plaintiffs' father was the owner of the property, the burden is on them to establish that there was valid transfer of title in their favour either through a valid deed of transfer or through valid proceedings from the competent authority. In the absence of such proof it can be safely concluded that the defendants failed to discharge their burden and the plaintiffs who succeeded to the ownership of the land through their father are entitled to get the relief of declaration of title. In the absence of proof of the validation of the certificate covered by Ex.B.5, the Civil Court has power to interfere in the matter and its jurisdiction is not barred.

13. This point is accordingly answered in favour of the plaintiffs and against the defendants.

Point No. 2:

14. The suit land is situated in two survey numbers, an extent of Ac.11-00 in S.No. 251 and Ac.7-00 in S.No. 252 admeasuring the total extent of Ac. 18-00. The defendants contend that they purchased the land under Ex.B.2 under an unregistered sale-deed dated 27-11-1959. Ex.B.2 refers to an extent of Ac. 17-35 guntas in S.No. 251. The defendants did not take steps to produce the original sale deed. They filed only a certified copy of the original of Ex.B.2 said to be issued by the Tahsildar. The sale consideration was said to be Rs. 4,085/-. Under the provisions of the Transfer of Property Act Ex.B.2 is a compulsorily registrable document. Therefore, even if the original of Ex.B.2 is produced, it cannot be treated as a valid document. No transfer of title can take place under the original of Ex.B.2. The defendants did not assign the reasons as to why they

failed to produce the original of Ex.B.2. They alleged to have made an application to the Tahsildar to validate the sale deed u/s 50-B of the Tenancy Act. The 5th defendant alleged to have approached the Tahsildar in the year 1969 i.e., 10 years after the date of the alleged sale. The Tahsildar alleged to have conducted an enquiry and the statements of P.W.1 and two others were said to be recorded during the said enquiry. The defendants sought to rely on the certified copy of a statement covered by Ex.B.1 said to be given by P.W.1 to the Tahsildar at the enquiry to prove that P.W.1 reported no objection to validate the sale of an extent of Ac. 17-35 guntas situated in S.No. 251 under the original of Ex.B.2. P.W.1 denied the suggestion given on behalf of the defendants that he referred to the sale deed in his statement before the Tahsildar and agreed for validation of the sale deed. The defendants did not take steps to get the original statements said to be recorded by the Tahsildar and confront P.W.1 with the signature, if any, on such statements. The defendants could not get the original statements of those witnesses who were said to be examined before the Tahsildar and the contents of those statements cannot be relied on¹ unless the authors of those statements reiterate what they have stated in the alleged statements.

15. The learned Counsel for the appellants-defendants relied on a judgment of the Supreme Court in *Ambika Prasad v. Ram Ekbal Rai*, AIR 1966 SC 605, wherein the Supreme Court held that admission made by a witness in other litigation is admissible against him u/s 33 of the Evidence Act.

16. In *Bishwanath Prasad and Others Vs. Dwarka Prasad and Others*, , the Supreme Court while considering Sections 21 and 145 of the Evidence Act held that there is a cardinal distinction between a party who is the author of a prior statement and the witness who is examined and who is sought to be discredited by use of his prior statement. In the former case, an admission by a party is substantive evidence if it fulfils the requirements of Section 21; in the latter case, a prior statement is used to discredit the credibility of the witness and does not become substantive evidence. In the former, there is no necessary requirement of the statement containing the admission having to be put to the party because it is evidence *proprio vigor*, in the latter case, the Court cannot be invited to disbelieve a witness on the strength of a prior contradictory statement unless it has been put to him, as required by Section 145.

17. Though there is no dispute with regard to the principles laid down in the above decisions, in the light of the discussion in the foregoing para, the principles cannot be made applicable to the facts of the case.

18. The learned Counsel for the appellants-defendants further submitted that in view of the decrees of injunction obtained by the plaintiff against the Urban Development Authority, Visakhapatnam, Kannada Sangham and Roads and Buildings Department in O.S. No. 969 of 1985 and also against the Government in O.S. No. 360 of 1984, they are binding on the defendants though they are not parties to those suits. In support of his contention the learned Counsel relied on a judgment of the Supreme Court in *Shrinivas Krishnarao Kango Vs. Narayan*

Devji Kango and Others, , wherein the Supreme Court while considering Section 13 of the Evidence Act held that the judgment in a suit for maintenance is admissible as an instance in which there was assertion that certain properties belonged to joint family, in subsequent suit for partition in which those properties are claimed to be self-acquired properties.

19. In Kadiyala Bala Gangadhar Joshi Vs. State of Andhra Pradesh and Others, , the Supreme Court while considering Section 13 of the Evidence Act held that a judgment not inter parties is admissible in evidence as evidence of assertion of a right to property in dispute.

20. In the suit on hand, the plaintiff filed the earlier suits for injunction simplicitor without asking for any relief of declaration of title. The defendants were not parties to the earlier suits. Any person who has some semblance of right over the property against third parties can obtain the injunction, but, when it is a question of declaring the title of a party, those judgments and decrees will not bind the party against whom he is seeking the relief of declaration of title.

21. The defendants produced Ex.B.5-certificate said to be issued by the Tahsildar in the month of October, 1977. In Ex.B.5 there is a mention of an extent of Ac.17-35 guntas situated in S.No. 251. Though the sale consideration was mentioned as Rs. 4,085/- the date of the sale deed is not mentioned in Ex.B.5. A bare perusal of Ex.B.5 would show that it was prepared in October, 1977, but it bears the date put by the Tahsildar as 1-8-1977 under his signature. The defendants did not explain the said discrepancy as to how the Tahsildar signed on 1-8-1977 when the certificate was prepared in October, 1977. The defendants did not summon the file relating to the validation proceedings. Nobody regarding the issuing of the validation certificate was examined to prove its contents.

22. The plaintiffs as well as the defendants are having lands in S.Nos. 251 and 252. The plaintiffs contend that the defendants occupied the suit lands on the pretext that their lands are also situated in the same survey numbers. The defendants produced Ex.B.5-certificate before the Court for the first time on 3-7-1985. There was no prior notice to the plaintiffs about the issuance of such certificate. P.W.1 categorically stated that the statement alleged to be recorded by the Tahsildar on 12-6-1971 is a forged one and the plaintiffs specifically denied their knowledge about such proceedings. The copies of the statements covered by Exs.B.1, B.3 and B.4 were also filed into Court on 25-7-1982. There was sufficient time for them to send for the original statements, but the defendants failed to do so.

23. The lower Court observed that the defendants have not placed on record any satisfactory material to show that they were having possession over the suit lands long prior to 1-10-1977. In Ex.B.5 the name of the plaintiffs' father was shown as landholder. Ex.A2- copy of the pahani for the year 1969-70 also indicates the plaintiffs' father as pattedar. The total extent of S.Nos. 251 and 252 is Ac.36-03 guntas. In Ex.A.3-pahani of the year 1975-76 also the plaintiffs'

father was shown as the pattedar. In 1976-77 also the name of the plaintiffs' father is shown as pattedar (Ex.A.4-pahani for 1976-77). In Ex.A5-certified copy of the pahani the name of the 1st plaintiff is shown as pattedar in respect of S.Nos. 251 and 252 for the year 1977-78 and the 5th defendant's name is also shown as one of the persons in occupation of the land along with the 1st plaintiff. In the pahani patrika covered by Ex.A.6 for the years 1978-79 also the names of the 1st plaintiff and the 5th defendant were shown as cultivators, but the name of the plaintiffs' father is shown as pattedar. The plaintiffs filed Ex.A.7-cist receipts book to prove that they were paying land revenue in respect of these two survey numbers. Ex.A.8 is also one of the land revenue receipts filed by the plaintiffs to prove that they paid land revenue for the above survey numbers. In Exs.B.6 to B.11-certified copies of the pahanis relating to the years 1967-68 to 1979-80 filed by the defendants also the plaintiffs' father was shown as the pattedar in S.No. 251. Had the defendants got the validation certificate by 1977, they would have got the mutation done in their names in the revenue records on the basis of Ex.B.5-certificate issued by the Tahsildar. It would generally be done simultaneously at the time of issuing the validation certificate, but unfortunately the name of the plaintiffs' father was not removed from the records as pattedar. When the consequential mutation was not done in pursuance of Ex.B.5- validation certificate and in the absence of proof of Ex.B.5, as pointed out by the Courts below, there is any amount of doubt whether Ex.B.5 was true and was acted upon and as the name of the plaintiffs' father and the 1st plaintiff continued as pattedars even after the alleged validation certificate covered by Ex.B.5, the Courts below rightly held that the plaintiffs are the owners of the land. There are no grounds to interfere with the said finding of the Courts below.

24. So far as the suit land covered by S.No. 252 is concerned, the defendants could not place any such validation proceedings. Therefore, the question of considering the plea of the defendants that they are the owners of the property does not arise. This point is accordingly held in favour of the plaintiffs and against the defendants.

Point No. 3:

25. I have carefully gone through the pleadings, evidence, both oral and documentary, and the judgments of the Courts below. There were concurrent findings of fact by the Courts below and they are on the basis of the material available on record. Therefore, the judgments of the Courts below need no interference.

26. In the light of the findings given under Point Nos. 1 to 3, I do not find any force in the grounds of appeal and the appeal must fail.

27. In the result, the appeal is dismissed by confirming the judgments of the Courts below, but under the circumstances without costs.