
(2007) 08 AP CK 0051

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 5825 of 2004

K. Ravindranath Rao

APPELLANT

Vs

A.P. Land Reforms Appellate Tribunal, Authorised Officer,
Land Reforms Tribunal and Kadiyala Hymavathi Rao

RESPONDENT

Date of Decision : 21-08-2007

Acts Referred:

Citation : (2007) 6 ALD 286 : (2008) 1 ALT 667

Hon'ble Judges : G. Yethirajulu, J

Bench : Single Bench

Advocate : P. Suresh, for the Appellant; G.P. for Arbitration for Respondent Nos. 1 and 2, for the Respondent

Final Decision : Dismissed

Judgement

G. Yethirajulu, J.—This Civil Revision Petition has been preferred by the claimant in CC.No.1019/NZD/75 of the Land Reforms Tribunal Bandar, Krishna District.

2. The claimant claimed that he is. the adopted son and therefore, he is entitled to a share in the properties of the delcarant in addition to the share in the properties of his natural father. One Kadiyala Venkateshwara Rao (hereinafter called as declarant) filed a declaration under the Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings), Act, 1973 (for short "the Act"). The Primary Tribunal, through its order, dated 20.05.1977 held that the family unit possessed 2.7016 standard ? holdings in excess of the ceiling area. When the appeal was preferred, the appellate Tribunal remanded the matter to the Primary Tribunal for fresh disposal with regard to the agreement of sale pleaded by the daughter of the declarant by name Smt. Nimmagadda Swarooparni. The Primary Tribunal, after remand of the case, conducted the enquiry. In the meanwhile, the declarant died on 23.03.1982 and his wife Haimavathi came on record. At that juncture, the daughter of the declarant filed a petition on 10.07.1983 praying to permit her to participate in the proceedings on the ground that at the time of her marriage, her father gifted 20 acres of land situated in Medcherla village towards Pasupu

Kunkuma and also executed agreement of sale on 26.08.1970 promising to execute a sale deed in future. The Primary Tribunal accepted the plea of gift by way of Pasupu Kunkuma and deducted 20 acres of land from the holding of the declarant. When the State preferred L.R.A.No.72 of 1984 against the said order, the appellate Tribunal allowed the same by setting aside the order of the Primary Tribunal. When she preferred C.R.P.No.1409 of 1985 before this Court, the said gift was accepted by this Court in favour of Swarupa Rani towards Pasupu Kunkuma and the land was directed to be reduced from the holding of the declarant. The SLP preferred by the State before the Hon"ble Supreme Court of India was dismissed. Afterwards the claimant made an application claiming that the portion of the land is liable to be excluded on the basis of his adoption by the declarant. The wife of the declarant, the claimant and one Gadde Venkateshwar Rao were examined as PWs.1 to 3.

3. The claimant contended that the declarant adopted him when he was four years old. They brought the claimant to the house of the declarant, educated him and performed his marriage. After the marriage, disputes arose between the family members and therefore, he was residing separately. In view of the disputes, his adoptive father filed a declaration showing the entire land ignoring his adoption. He further contended that he performed the death ceremony of the declarant and also the annual ceremony. As he was major as on the date of filing of the declaration, he is entitled to get share in the properties of the declarant.

4. The respondent resisted the claim contending that for the first time the theory of adoption was set up with a view to escape from the purview of the Land Ceiling Act. He further contended that at the stage of surrender proceedings, nobody can raise fresh points. The declarant mentioned in the declaration that he gifted 20 acres of land towards Pasupu Kunkuma to his daughter Swaroopa Rani at the time of her marriage in the year 1967. Since the declarant mentioned in the declaration about the gift, it was accepted and deducted from the holding of the declarant. Thereafter, the revenue authorities took possession of the excess land and issued a certificate to that effect. The wife of the declarant also submitted an application expressing her intention to surrender her land.

5. The claim of the claimant/petitioner for the first time came with theory of adoption on 07.01.1988 during the surrender proceedings claiming half share from the family unit. The claimant relied on two documents viz., a positive photo taken at the time of cremation of the declarant and a school certificate showing that he is the adopted son of the declarant.

6. However, the principal of the private school, who issued the certificate, was not examined. The appellate Court observed that except self-serving testimony of the claimant, no proper evidence is produced to prove Exs.O.1 to 0.4 and the parents of the claimant were also not examined to prove the truthfulness of the adoption. Therefore, no credence can be given to those documents. The wife of the declarant did not state in the earlier proceedings that the claimant was adopted and due to differences, he was living separately. No voter list or ration

card is produced to show that the claimant resided with the wife of the declarant in their house. Under the above circumstances, the appellate Tribunal did not accept the adoption theory. The appellate Tribunal also mentioned that no revenue record has been produced by the claimant to show that he is managing the properties of the declarant. The lands were surrendered by the wife of the declarant without raising any objection.

7. After going through the entire material, I am of the view that the adoption said to be pleaded by the claimant is not proved by adducing the oral and documentary evidence to establish that he is the adopted son of the deceased. There is no explanation from the claimant as to why he kept quiet at the initial stage of the proceedings without raising any objection and ultimately the appellate Tribunal allowed the appeal by setting aside the order of the Primary Tribunal.

8. In support of his contention that being an adopted son, the petitioner/claimant is entitled to a share in the properties of the declarant and the said share is liable to be excluded from the holding of the declarant, Sri P. Suresh, learned Counsel for the revision petitioner cited some decisions. In *Yarlagadda Nayudamma v. Government of Andhra Pradesh* 1980 (2) An.W.R. 327 this Court held that the property vested in the adopted child before the adoption shall continue to vest in such person and further held that 1/3rd share of the declarant is liable to be excluded from the holding of the declarant. The facts of the case covered by the above decision are entirely different from the facts of the present case and therefore, it is not applicable to the present case.

9. In *G. Valli alias Rayaprolu Vs. State of Andhra Pradesh and Another*, this Court held that a minor daughter is not entitled to be a separate holding than that of the declarant. The principle laid down in the above case is also not applicable to the facts of the present case.

10. The circumstances under which the pasupu kunkuma gift accepted were different from the circumstances placed by the claimant that he is the adopted son of the deceased. After going through the entire material, I am convinced that the order passed by the appellate Tribunal is quite reasonable and it is supported by the sufficient reasons. In the light of the above circumstances, I do not find any ground to interfere with the order of the appellate Tribunal.

11. Accordingly, the Civil Revision Petition is dismissed by confirming the impugned order.