

(1997) 10 AP CK 0048

In the Andhra Pradesh High Court

Case No : A.S.No. 2769 of 1992 and C.R.P. No. 2744 of 1992

Kalegara Naga Subba Lakshmi

APPELLANT

Vs

Meduri Subbanna and Another

RESPONDENT

Date of Decision : 01-10-1997

Acts Referred:

Andhra Pradesh (Andhra Area) Tenancy Act, 1956 — Section 11, 15
Civil Procedure Code, 1908 (CPC) — Order 21 Rule 58

Citation : (1998) 2 ALD 93 : (1998) 1 ALT 825 : (1998) 1 APLJ 326

Hon'ble Judges : C.V.N. Sastri, J

Bench : Single Bench

Advocate : Mr. Gudepati Venkateswara Rao, for the Appellant;

Judgement

1. This appeal and the CRP are being disposed of by this common judgment as they arise out of the self-same execution proceeding between the same parties.

2. A.S.No.2769 of 1992 is directed against the order dated 22-6-1992 passed in E.A.No.117 of 1991 in E.P.N'o.16 of 1991 in O.S.No.149 of 1990 on the file of the Subordinate Judge, Kovvur whereby the claim-petition filed by the first respondent under Order 21 Rule 58 C.P.C. was allowed and the attachment over the schedule property was raised. C.R.P.No.2744 of 1992 is directed against the consequential order passed in E.P.No.16 of 1991 in O.S.No.149/90 dismissing the E.P. The facts leading to the appeal and revision may be stated briefly.

3. The parties will be referred to as they are arrayed in A.S.No.2769 of 1992. The second respondent was the owner of an extent of Acs.2.38 cents of agricultural land which was leased out by him to the first respondent. The second respondent filed a petition against the first respondent for eviction from the said land under the provisions of the Andhra Tenancy Act. But the said petition was dismissed by the tenancy tribunal. Subsequently the second respondent purported to sell the said property to the appellant by a registered sale deed dated 11-6-1984. The first respondent, who was the cultivating tenant in possession of the land, thereupon filed A.T.C. No.57 of 1984 on the file of the Special Officer -cum-

Principal District Munsif, Kovvur, for cancellation of the said sale deed claiming that he (first respondent) has got a preferential right u/s 15 of the Andhra Tenancy Act to purchase the land whenever the land-lord proposed to alienate it. The said application filed by the first respondent was allowed by the Special Officer by an order dated 24-1-1990 declaring that the sale deed dated 11-6-1984 is not valid or binding on the first respondent and that the first respondent has got a preferential right u/s 15 to purchase the land. Pursuant to the said orders passed by the Tenancy Tribunal the first respondent filed A.T.C.No.54 of 1991 on the file of the Special Officer-cum-Principal District Munsif, Kovvur for fixation of the price at which the land has to be sold in favour of the first respondent. The appellant in turn filed O.S.No.149 of 1990 on the file of the Court of the Subordinate Judge, Kovvur, against the second respondent for recovery of the sale consideration of Rs.1,50,000/- allegedly paid by him to the second respondent under the sale deed dated 11-6-1984 which was declared invalid by the tenancy court. An ex parte decree was passed in the suit in favour of the appellant on 19-10-1990. In execution of the said decree obtained by him against the second respondent the appellant filed E.P.No.16 of 1991 for attachment and sale of the self-same land for realisation of the decretal amount. On attachment being ordered in the said E.P., the first respondent filed E.A.No.117 of 1991 in E.P.No.16 of 1991 under Order 21 Rule 58 C.P.C. to raise the attachment over the property contending, inter alia, that the decree obtained by the appellant against the second respondent in O.S.No.149/90 is collusive and fraudulent and that the land in his possession is not liable for attachment and sale in view of the order passed in A.T.C.No.57 of 1984. The said claim petition was resisted by the appellant/decreet-holder contending that Section 15 of the Andhra Tenancy Act is not a bar for attachment and sale of the property in execution of the decree lawfully obtained by him and that the property can be sold in the execution proceedings subject to the rights of the first respondent as the cultivating tenant.

4. The lower court, while holding that there is no bar for attachment and sale of the land-owner's interest in the land in the execution proceedings and that any sale held in the execution proceedings will be subject to the rights of the cultivating tenant, however, allowed the claim-petition filed by the first respondent on the ground that the present execution proceedings amount to a fraud upon the tenant played by the land-lord in collusion with the decree-holder and the same cannot be allowed to defeat the right of the tenant to purchase the land at the price as may be fixed by the tenancy court u/s 15 for which purpose the tenant had already filed A.T.C.No.54 of 1991. Accordingly the lower court allowed the claim-petition filed by the first respondent and raised the attachment over the schedule property and as a consequence dismissed the E.P. filed by the decree-holder. Hence the present appeal and revision filed by the decree-holder.

5. I find the reasoning of the lower Court inconsistent and self-contradictory. Sub-section (1) of Section 15 of the A.P. (Andhra Area) Tenancy Act, 1956, provides that any land-lord intending to sell the land leased to a cultivating tenant, shall

first give notice to such cultivating tenant of his intention to sell the said land and require him to exercise his option to purchase the land. Sub-section (2) provides that if the cultivating tenant exercises his option to purchase the land and there is an agreement between the land-lord and his cultivating tenant in regard to the price payable, the land-lord shall sell the land to such cultivating tenant in accordance with such agreement. Sub-section (3) provides that where there is no such agreement in regard to the price payable, the land-lord or the cultivating tenant may apply to the Special Officer for determination of the reasonable price of such land and the Special Officer shall, after giving notice to the land-lord and the cultivating tenant and after making such enquiry as he thinks fit, determine the reasonable price. Sub-section (6) provides that any sale of the land by the landlord in contravention of this section shall be voidable at the option of the cultivating tenant. Since the second respondent executed the sale deed dated 11-6-1984 in favour of the appellant in contravention of the provisions of Section 15; the same was held to be not valid and binding on the first respondent in A.T.C.No. 57 of 1984 vide order dated 24-1-1990 marked as Ex.A1. The tenancy court, however, did not grant any direction to the land-lord to sell the land to the tenant and it also did not fix the price of the land. The tenant is said to have subsequently filed A.T.C.No.54 of 1991 for fixing the price of the land. There is no other material on record to show the further developments in the said A.T.C.No.54 of 1991. So as things now stand, there is no order in favour of the first respondent for the sale of the land in his favour as per Section 15 of the Act and the first respondent has no tide to the land though he is in possession of the same as cultivating tenant. The lower court is right in holding that there is no bar for attachment and sale of the land-owner's interest in the land in the execution proceedings. Section 11 of the Act provides that in the event of a change in the ownership of any land, the cultivating tenant shall be entitled to continue the tenancy on the same terms and conditions as before. This Section also gives an indication that the Act does not prohibit the sale of land-owner's interest in execution proceedings though any such sale will be subject to the tenant's right to continue in occupation of the land till he is duly evicted in accordance with the provision of the Act. Though the first respondent pleaded in the claim petition filed by him that the decree obtained by the appellant in O.S.No.149 of 1990 is a collusive one, it is not specifically pleaded that the sale deed dated 11-6-1984 is not supported by any consideration. Further there is no finding to that effect in the order passed in A.T.C.No.57 of 1984 which is marked as Ex.A1. It was merely held that the sale deed dated 11-6-1984 was not valid as it was executed in contravention of Section 15 of the A.P. Tenancy Act. It was also directed therein that if the second respondent intends to sell the property, the second respondent should first give a notice to the cultivating tenant requiring him to exercise his option.

6. For all the aforesaid reasons, I am satisfied that the impugned order dated 22-6-1992 passed by the lower court allowing the claim-petition filed by the first defendant and dismissing the E.P. are erroneous and unsustainable. Accordingly

the said orders are set aside. The appeal and the C.R.P. are allowed and the lower court is directed to notify the tenancy right of the first respondent in the sale proclamations and then proceed to hold the sale subject to the tenancy rights of the first respondent as envisaged under the Andhra Tenancy Act. There will be no order as to costs.