
(2011) 12 AP CK 0119

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 1213 of 2011

Kantehti Naga Ramalingeswara Padmanabham

APPELLANT

Vs

Vasamsetti Raja Gopal and others

RESPONDENT

Date of Decision : 16-12-2011

Acts Referred:

Andhra Pradesh (Andhra Area) Tenancy Act, 1956 — Section 10, 10(1), 13, 15, 16(1)
Andhra Pradesh Civil Courts Act, 1972 — Section 10, 11, 11(2)
Andhra Pradesh General Clauses Act, 1891 — Section 2(17), 3(17)
Civil Procedure Code, 1908 (CPC) — Section 2(4), 2(8)
Constitution of India, 1950 — Article 227

Citation : (2012) 2 ALD 61 : (2012) 3 ALT 618

Hon'ble Judges : V.V.S. Rao, J

Bench : Single Bench

Advocate : B. Sriram Kartik, for the Appellant; G. Narasimha Rao, for the Respondent

Final Decision : Allowed

Judgement

V.V.S. Rao

1. This revision under Article 227 of the Constitution of India is filed against the order dated 31.01.2011 in A.T.A. No. 10 of 2008 on the file of the Court of the III Additional District Judge, Kakinada.

2. The petitioner filed a petition under Sections 10(1), 15 and 16(1) of the Andhra Pradesh (Andhra Area) Tenancy Act, 1956 (the Tenancy Act, for brevity) for declaration that he is a statutory protected tenant and for permanent injunction restraining the respondents herein from interfering with his possession. He also sought permission to deposit the value of four kata bags of Paddy per year. He alleged that the first respondent is the owner of land comprised in S. No. 121 admeasuring Ac.0.71 cents (out of Ac.1.71 cents); he is a tenant since 14.07.2003; and that he became owner after death of Vasamsetti Sathiraju from whom he took the property on lease. He alleged that when he

offered maktha to the first respondent he refused to accept the same and that the first respondent and others are trying to sell away the property. The petitioner also claimed preemptive right u/s 15 of the Tenancy Act.

3. The petitioner filed I.A. No. 211 of 2007 for ad interim injunction with similar allegation. In the said application, respondents 1 and 4 remained ex parte. Second respondent filed counter. He stated that he purchased the property from third respondent under registered sale deed dated 13.08.2004 where he is raising sugar cane crop. He denied that the first respondent is the owner of the petition schedule property. He also alleged that the petitioner and first respondent in collusion filed A.T.C. setting up a false lease.

4. The Special Officer-cum-Principal Junior Civil Judge, Kakinada, dismissed I.A. No. 211 of 2007 on 13.02.2008 observing that petitioner failed to produce any evidence that he took the petition schedule property on lease from the father of the first respondent and, therefore, he is not entitled for injunction. Being aggrieved, the petitioner preferred A.T.A. No. 10 of 2008 u/s 16(2) of the Tenancy Act. The same was dismissed on 31.01.2011 by the learned III Additional District Judge, Kakinada.

5. this Court ordered notice on 27.09.2011. After receiving notice, the second respondent alone entered appearance and other respondents remained ex parte.

6. When the matter was heard subsequently this Court entertained a doubt as to the jurisdiction of the Additional District Judge to entertain an appeal u/s 16(2) of the Tenancy Act. The counsel were asked to address the Court on this aspect. Today, both the counsel made their submissions.

7. The Tenancy Act is a special enactment inter alia to provide for the payment of fair rent by cultivating tenants and remission of rent in case whether there is total or partial failure of crops due to calamities and to protect the cultivating tenants. It is a special enactment, which provides for the rights and duties of the landlords and tenants and also remedies for redressal of grievances. Section 2(j) of the Tenancy Act defines "Special Officer" as to mean any judicial officer not below the rank of a District Munsif appointed by the Government in consultation with the High Court, to perform the functions of a Special Officer. Sections 10 and 13 provide remedies to the tenant and landlord. u/s 16(1) of the Tenancy Act, any dispute arising under this Act, between a landlord and a cultivating tenant shall be decided by the Special Officer only. u/s 16(2), an appeal is provided by the Special Officer to the District Judge having jurisdiction, within 30 days from the date of passing of the order and the order in appeal shall be final.

8. The Tenancy Act does not define "District Judge". u/s 2(4) of the Code of Civil Procedure, 1908 (CPC), "District" means the local limits of the jurisdiction of a principal Civil Court of original jurisdiction called a "District Court" and includes the local limits of the ordinary original civil jurisdiction of a High Court. u/s 2(8) of CPC "Judge" means the presiding officer of a civil Court. The CPC does not define "District Judge". Section 3(17) of the Andhra Pradesh General Clauses Act,

1897 defines "District Judge" as to mean the Judge of a Principal Civil Court of original jurisdiction. Therefore, reading Section 16(2) of the Tenancy Act, Section 2(4) of CPC and Section 2(17) of the General Clauses Act, it is clear that for the purpose of Section 16(2) of the Tenancy Act, "District Judge" means only "the Principal District Judge" and an Additional District Judge, therefore, cannot exercise the appellate jurisdiction under the Act.

9. A reference may also be made to Sections 10 and 11 of the Andhra Pradesh Civil Courts Act, 1972 (the Civil Courts Act, for brevity), which read as under.

10. Establishment of District Courts:

(1) The Government may, after consultation with the High Court, by notification, establish such number of District Courts as they may deem necessary and appoint a District Judge for each District Court.

(2) The Government may, from time to time, likewise abolish any District Court established under this section.

11. Appointment of Additional District Judges:

(1) Where in the opinion of the High Court, the state of business pending in a District Court, so requires, the Government may, after consultation with the High Court, appoint one or more Additional District Judges to the District Court for such period as they may deem necessary.

(2) An Additional District Judge so appointed shall perform all or any of the functions of the District Judge under this Act or any other law for the time being in force which the District Judge may assign to him, and in the performance of those functions, he shall exercise the same powers as the District Judge.

10. A plain reading of the above two would show that wherever statute uses the term "District Judge" means, it is a Principal District Court. All the Additional District Judges are appointed to the District Court only when there is such requirement due to pendency of cases in the District Court. u/s 11(2) of the Civil Courts Act, all the Additional District Judges shall perform all or any of the functions of the District Judge under the Act. When Section 16(2) of the Tenancy Act confers the appellate jurisdiction on the District Judge having jurisdiction over the matter, the power cannot be delegated by the District Judge to the Additional District Judge.

11. The counsel for the appellant brought to the notice of this Court the decision of the Supreme Court in *Mukri Gopalan Vs. Cheppilat Puthanpurayil Aboobacker*, and the decision of the Division Bench judgment of this Court *Boya Palappa Vs. District Judge and Others*, . In the latter case, it was held that the Tribunals under the Tenancy Act are not "persona designata". This, however, is of no assistance to the petitioner. Being a Court and not a tribunal is altogether different from validly exercising jurisdiction u/s 16(2) of the Tenancy Act. Even if the District Judge is considered as a Court for the purpose of Limitation Act, as

Section 16(2) of the Tenancy Act refers to only Principal District Court, as the appellate authority/Tribunal the exercise of jurisdiction by any Additional District Judge or the Court of Additional District Judge is impermissible in law.

12. In the result, for the above reasons, the Civil Revision Petition is accordingly allowed and the impugned order dated 31.01.2011 in A.T.A. No. 10 of 2008 on the file of the Court of the III Additional District Judge, Kakinada, is set aside. The learned Judge is directed to return the appeal papers to the petitioner for presentation to the proper Court i.e., the Court of the Principal District Judge, Rajahmundry, whereupon the case shall be heard afresh without in any manner being influenced by the observations made hereinabove. There shall be no order as to costs.