
(1999) 07 AP CK 0016
In the Andhra Pradesh High Court
Case No : AAO No. 340 of 1999

Kathala Yellaiah and others	Vs	APPELLANT
Kathala Chandraiah		RESPONDENT

Date of Decision : 01-07-1999

Acts Referred:

Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands Act, 1950 — Section 32(1), 34, 35, 36, 37A
Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2
Hyderabad Tenancy Records (Correction) Rules, 1956 — Rule 3
Land Acquisition Act, 1894 — Section 30
Limitation Act, 1963 — Section 12, 13, 14, 15, 16

Citation : (1999) 4 ALD 233 : (1999) 4 ALT 363 : (1999) 2 APLJ 89

Hon'ble Judges : B. Sudershan Reddy, J

Bench : Single Bench

Advocate : Mr. Bhagwan Rao Potdar, for the Appellant; M/s. C.V. Ramulu, (Amicus Curiae) and B. Narasimha Sarma, for the Respondent

Judgement

1. The petitioner-plaintiffs are the appellants in this CMA. This appeal itself is directed against an order passed by the learned Senior Civil Judge, Mahaboobnagar dismissing the application for injunction filed by the appellants herein against the respondents. The trial Court after an elaborate consideration of the matter and upon appreciation of the documentary evidence and material available on record came to the conclusion that the appellants herein are not entitled for any relief of temporary injunction in their favour. In the trial Court, Exs.A1 to A27 were marked on behalf of the appellants herein and Exs.B1 to B8 were marked on behalf of the respondents.

2. The appellants herein claimed to be in possession of an extent of Ac.15.09 gts. in Sy. No.144 situated at Chokkalonigudem, Kondurg of Mahaboobnagar District. It is their case that the petition schedule land originally belonged to one Nalamoni Ramaiah and on his death his wife Nalamoni Venkatamma succeeded to the same and continued in possession till the year 1974-75. It is their case

that during the year 1975-76 appellants 1 and 2 have occupied an extent of Ac.7.00 and Ac.3.00 respectively and remained in possession thereof continuously without any interruption whatsoever from any one. They have set up the plea of acquisition of title by prescription. Appellants 3 and 4 claimed to be in possession of the remaining extent of Ac.5.09 gts. being the daughters of late Nalamoni Venkatamma. According to the appellants, the respondent herein got his name entered in the revenue records, namely, pahani patriks from the year 1989-90 to 1995-96 and also got his name entered in the column relating to possession of the said lands in the pahani patrik for the years 1975-76, 1978-79 and 1980-81 and on the basis of the said entries, an attempt was made by the respondent to dispossess them from the said lands. The respondent is alleged to have interfered with their possession on 15-7-1997. But the appellants have successfully resisted the illegal attempt of the respondent. It is under those circumstances, the appellants herein have filed the application for grant of temporary injunction.

3. It is the case of the respondent that he is the protected tenant of the entire extent of land and was in possession of the same. It is his case that appellants 1 and 2 herein tried to interfere with his possession and he made a representation before the Tahsildar, Shadnagar and on such representation, necessary directions were issued by the Tahsildar to the Revenue Inspector to protect his possession. However, appellants 1 and 2 continued their attempts to dispossess him and he was constrained to file OS No,25 of 1982 on the file of the learned District Munsif, Shadnagar for perpetual injunction. Further it is his case that during the pendency of the suit, he was dispossessed forcibly. Thereafter the suit was withdrawn by the respondent herein with a view to avail the remedy available to him under the Andhra Pradesh (Telangana Area) Tenancy and Agricultural Land Act, 1950 (for short "the Act"). The proceedings were accordingly initiated for restoration of possession before the Tahsildar, Mahaboobnagar. While the matter stood thus, the appellants 1 and 2 herein have filed petition before the Revenue Divisional Officer, Mahaboobnagar purporting it to be under Rule 3 of the Hyderabad Tenancy Records (correction) Rules, 1956 for inclusion of their names in the tenancy records along with the name of the respondent. The same has been dismissed by the competent authority holding that the respondent alone is the protected tenant. Appellants 1 and 2 preferred an appeal before the Joint Collector, Mahaboobnagar and the same was also dismissed on 28-10-1991.

4. In the meanwhile the Tahsildar, Shadnagar passed an order directing restoration of possession to the respondent herein in the proceedings initiated by the respondent herein u/s 32(1) of the Act. The appellants herein preferred an appeal before the Joint Collector and the same was dismissed on 16-5-1995. The said order has become final. It is the case of the respondent that ownership rights were granted to him u/s 38-E of the said Act. The possession of the said land as such was delivered to him on 22-1-1997. It is asserted that he is in possession of the said land. It is at that stage, according to him, the appellants herein have filed the present false and vexatious suit against him with a view to

dispossess him once again.

5. It is evident from the record and the same is not disputed that the respondent's name is entered in pattedar column of pahani patriks for the years 1989-90 to 1995-96. His name is also shown in the column relating to possession in respect of the said land for the years 1975-76, 1978-79 and 1980-81. However, it is the case of the appellants that the entries are manipulated in collusion with the revenue officials. But the fact remains that the appellants herein have not taken any steps for correction of those entries and got the records rectified. It is under those circumstances, the trial Court thought it fit to make a cumulative assessment of the entries made in Exs.A1 to A27 and in Exs.B1 to B8 filed by respective parties. The documents filed by the appellants herein would not prima facie reveal the exclusive possession and enjoyment of the said land as contended by them.

6. It is required to notice the peculiar plea put-forth by the appellants herein. Appellants 1 and 2 herein having failed in their attempt to declare themselves as protected tenants have chosen to turn round by asserting their title by prescription. They claim to be in uninterrupted possession of the said land for a period of more than 12 years by occupying an extent of Ac.7.00 and Ac.3.00 respectively. Whereas appellants 3 and 4 claiming title through their mother who got the entire land from her husband late Nalamoni Ramaiah. On an analysis of the pleadings and stand taken by the appellants herein it would show (a) appellants 1 and 2 herein are claiming title by adverse possession, not only against the respondent herein but against appellants 3 and 4; (b) appellants 3 and 4 claim to be in possession of the remaining land having inherited the same through their mother. It is difficult to appreciate as to how appellants 1, 2, 3 and 4 could have joined together and filed the present suit. Undoubtedly, it is a case of mis-joinder of the parties. Each one of them have a separate distinct cause of action, if any, for filing this petition. The suit itself appears to be totally misconceived.

7. The trial Court rightly relied upon Ex.B3 certified copy of the order of the Tahsildar, Shadnagar directing restoration of the said land to the respondent herein in purported exercise of power u/s 32(1) of the said Act. The Tahsildar in turn appears to have relied upon the order passed by the Revenue Divisional Officer declaring the respondent herein to be the protected tenant. Ex.B4 is the certified copy of the order dated 30-5-1984 dismissing the application filed by the appellants 1 and 2 herein for recording their names in the tenancy records. Ex.B5 is the order passed by the Joint Collector, Mahaboobnagar confirming the said order passed by the Tahsildar. Ex.B6 is the certified copy of the order passed by the Joint Collector, Mahaboobnagar on 16-9-1985 confirming the order passed by the Tahsildar under Ex.B3 directing restoration of possession to the respondent. Ex.B7 is the certified copy of the Khasra pahani for the year 1954-55 showing the name of the respondent as protected tenant. Ex.B8 is the certified copy of the panchanama dated 22-1-1997 delivering the possession of the said

land herein after granting ownership u/s 38-E of the said Act. These documents coupled with the entries made in the certified copies of pahanies filed by the appellants herein for the years 1953-54 to 1995-96 would in unmistakable terms establish the possession of the respondents and his dispossession on and off by appellants 1 and 2. Interference, if any, with the possession and enjoyment of the said land is not by the respondent but by the appellants themselves. The respondent herein was being dispossessed obviously without any support of any legal process. The respondent successfully obtained orders from the competent Tribunal in his favour under the provisions of the said Act.

8. The trial Court, in my considered opinion, rightly took into consideration the conduct of the appellants. The appellants herein suppressed the fact relating to earlier proceedings between the parties, It is one of the relevant circumstances taken into consideration by the trial Court.

9. Grant of refusal of any temporary injunction under Order 39 Rules 1 and 2 of the CPC is not a matter of course. The Civil Courts are bound to decide as to whether the party invoking the jurisdiction of the Court established any prima facie case. Variety of factors have to be taken into consideration for deciding as to whether any prima facie case is made out by the parties invoking the jurisdiction or not. The trial Court is required to make pragmatic assessment of the documentary evidence made available on record by the parties. It is settled law that injunction is an equitable relief and that a person invoking the jurisdiction of the Civil Court has to approach the Court with clean hands and without suppressing any material fact. The Civil Courts are entitled to refuse to grant the relief on the ground of suppression of material facts by the party invoking the jurisdiction of the Court. That ground itself be sufficient to dismiss the application for grant of temporary injunction.

10. In an application for grant of temporary injunction under Order 39, Rules 1 and 2 of the Code of Civil Procedure, the petitioners have to make out a clear case for grant of such injunction. The petitioners-plaintiffs may be entitled to the relief only on the basis of the strength of the evidence and material made available by them to the Court and not on the basis of any weak point in the case put-forth by the respondent/defendant. No petitioner-plaintiff can insist the civil Court to make any roving and fishing enquiry to dismantle the case of the respondent for deciding as to any prima facie case is made out by petitioner. Civil Courts cannot undertake such a roving enquiry in an application for grant of temporary injunction. An application for temporary injunction may have to be dismissed by the civil Courts if the person invoking the jurisdiction of the Court fails to make out a prima facie case. The trial Court scrupulously followed this principle and made an assessment of the documentary evidence i.e., Exs.A1 to A27 and held that those documents do not reveal the exclusive possession of appellants. The learned Counsel for the appellants does not make any attempt before this Court to establish the possession of appellants though Exs.A1 to A27 but attacks the validity of orders and entries in Exs.B1 to B8. None of the

documents filed by the appellants establish their possession.

11. However, in this appeal, learned Counsel for the appellants strenuously contend that the Tahsildar and the Joint Collector committed serious irregularity in granting relief to the respondent herein. It is submitted that the Civil Court is entitled to go into this question and decide the correctness of the decision rendered by the Tribunal under the A.P. (Telangana Area) Tenancy and Agricultural Lands Act, 1950. It is also urged that the appellants herein are entitled to take the plea of adverse possession against the respondent even on assumption that he is a protected tenant in respect of the said land. The submission is totally misconceived.

12. Learned Counsel would place reliance upon the decision in Jupudi Bhushanam Vs. Joint Collector and Others, and the decision in N. Sudershan Reddy v. Suit. Kannamma (died) per LR., 1994 (1) An.WR 189 (DB). Learned Counsel for the appellate also relied upon the decision of this Court in Prabhulingam Vs. Y. Ramiah and Others, . None of the decisions rendered would support and advance the plea put-forth by the learned Counsel for the appellants. In Jupudi Bhushanam case, (supra) this Court observed that once an occupancy certificate is granted u/s 38-E of the Act, the certificate holder becomes the true and absolute owner in respect of the said land for which such certificate is granted. For any subsequent dispossession, such certificate holder has to necessarily approach the civil Court for relief. It is observed that :

" Once Section 38-E Certificate is issued, the protected tenant becomes the owner. For any subsequent dispossession he has to resort to the Civil Court. He cannot rely upon the provisions of (he Tenancy Act.)"

There cannot be any dispute whatsoever that once a ownership certificate is granted u/s 38-E of the Act and once possession is delivered to such certificate holder under the said certificate, the certificate holder becomes the owner like any other owner and the Tribunal becomes functus officio. Resolution of any subsequent dispute that may arise would be beyond the purview of the Tribunal.

13. In Prabhulingam's case (supra), this Court on the facts came to the conclusion that the plea of adverse possession was put-forth by a third person who is not a party to the tenancy proceedings and the Civil Court can go into such question. The party was neither tenant nor the original land owner.

It is also observed that the said party was not claiming the right of ownership as original land holder, nor he is claiming any protected tenancy rights in the disputed land. Under those circumstances, the Court observed that "the dispute in the present case, as already stated above, the dispute is only between the respondents who are claiming rights in the disputed land in their capacity as protected tenants, and also under a registered sale-deed said to have been executed in their favour by the original land holder on the one hand, and the petitioner who is a third party claiming title to the disputed land by way of adverse possession on the other hand. The petitioner is specifically disputing the

title of the respondents for the eastern half of the Sy. No.1 and claiming title of the said land on the basis of acquisition of such title by adverse possession. Inasmuch as such dispute between them cannot be settled, decided or dealt with by any of the Tribunals under the Act, the jurisdiction of the Civil Courts to decide such disputes is not taken away by Section 99 of the Tenancy Act and such disputes, which are of civil nature, can be decided only by the regular civil Courts." Here is the case where the appellants herein are clearly asserting their possession by way of adverse possession against a protected tenant. Appellants 1 and 2 themselves claim to be protected tenants, but failed in their attempt to get any such relief from the Tribunal. Appellants 3 and 4 claims to be the owners asserting their right against the respondent, protected tenant. None of them are third parties as such. Under those circumstances, the order passed by the Tribunal cannot be evaluated by the civil Courts nor the civil Court can express any opinion whatsoever on any of the issues which exclusively fall within the jurisdiction of the Tribunal under the Act which is the true spirit and purport of Section 99 of the Act.

14. The decision in N. Sudershan Reddy 's case (supra) and the observations of the Division Bench turns upon its own facts. It is evident from the fact that comprehensive questions came up for consideration before the civil Court as to whether the first petitioner's mother who was owner of a limited estate had no power or competence to create a permanent lease in favour of a person who claimed to be a permanent lessee through the said limited owner. Under those circumstances, the Division Bench observed that "such controversy involving a "pretender tenant" was not beyond the jurisdiction of the civil Court." The observation appears to have been made in view of clear finding by the Revenue Divisional Officer and the District Collector that the person claiming to be the protected tenant u/s 34 of the Act miserably failed to prove such assertion. The observation is required to be understood in its proper context. It is not an authority for the proposition that the civil Court can go into the validity of the orders passed by the Tribunals under the provisions of the Act.

15. The Law on the subject is not res integra. In Ram Reddy v. K. Ramajujaiah, 1972 APHN 8, a Division Bench of this Court in an authoritative pronouncement directly dealing with the issue observed :

".... that even if the tenancy certificate could be said to have been irregularly or illegally granted, it cannot be considered as void and no civil Court can have jurisdiction to question validity. The jurisdiction in that behalf is completely taken away and it was open to the Tenancy Commission to arrive at a conclusion and that conclusion became final. It is not open to the civil Court to consider the correctness on merits or even on the grounds of law, unless of course the grant of the certificate was void."

In Ramachandra Reddy v. Basappa, 1990 (1) An.WR 830, this Court observed :

"..... by necessary implication the jurisdiction of the civil Court is taken away to

consider any question involving whether a particular tenant is a protected tenant, as the exclusive jurisdiction to decide such question is conferred on the Tribunals constituted under the Act."

This Court relied upon the decision in Sharfuddin v. Sama Yelluga 1957 (2) An.WR 478, in which it is held that "if any question arises whether a particular tenant is a protected tenant, the exclusive jurisdiction to decide that question is also conferred on the Tahsildar. In such cases, the Civil Court has no jurisdiction." In Islamic Arabic College, Kurnool v. Shanta Bai m 1988 (1) ALT 74 , this Court held that "even u/s 30 of the Land Acquisition Act the reference Court cannot go into the merits to decide any question relating to as to whether a party before it is a protected tenant. It is held that the civil Court is not suited to go into those questions." It is observed that "there is an express legislative animation of specific exclusion of the jurisdiction of the civil Court to go into the question whether the person claiming to be a protected tenant is a protected tenant or not or whether the protected tenancy certificate has validly and legally been given to him/her. Therefore, when such is the exclusive jurisdiction under the special statute, then while adjudicating the interest of the persons or the appointment thereof, the question is whether as an incidental question the Court of reference u/s 30 of the Land Acquisition Act can embark upon those questions. Acquiescence or consent does not confer jurisdiction. Jurisdiction is sine quo nan for the validity and binding nature of the decision. As illegal order or decree may be valid and bind the parties so long as it is not set aside as per law. But validity or nullity impinges the jurisdiction of the authority and it is devoid of force of law and denudes its binding nature as it is no order in the eye of law. It is always open to set up in any proceedings even in collateral proceedings." Similar is the view taken by mis Court in Mohd. Burhan (died) v. Shivling Rao 1988 (2) ALT 117. This appears to be the consistent view ever since the decision in Sharfuddin "s case (supra). A Division Bench of this Court in P. Anil Kumar v. The Joint Collector, Rangareddy District at Hyderabad 1988 (2) ALT 583, while dealing with the question as to whether the Tahsildar under the provisions of the Andhra Pradesh (Telangana Area) Tenancy and Agricultural Land Act, 1950 can grant an injunction against the landlord restraining from interfering with the possession of the protected tenant observed that the "injunctive relief is comprehended within the larger relief of restoration of lost possession to tenant. Restoration is expressly spoken of by sub-section (1) of Section 32 of the Act" The Court further held that the civil Court has no jurisdiction to entertain any suit and deal with any dispute between the landlord and the tenant.

16. It would be appropriate to have a look at Section 99 of the Tenancy Act which reads as follows :

"99. Bar of jurisdiction :--(1) Save as provided in this Act no civil Court shall have jurisdiction to settle, decide or deal with any question which is by or under this Act required to be settled, decided or dealt with by the Tahsildar, Tribunal or Collector or by the Board of Revenue or Government.

(2) No order of the Tahsildar, Tribunal or Collector or of the Board of Revenue or Government made under this Act, shall be questioned in any Civil or Criminal Court."

A plain reading of the provision would show that the civil Court's jurisdiction is completely ousted to settle, decide or deal with any question which is required to be settled, decided or dealt with by the Tahsildar, Tribunal, Collector or by the Board of Revenue. In the same breath it makes very clear that the order passed by the Tahsildar, Tribunal, Collector or the Board of Revenue or Government made under the Act cannot be questioned in any civil or criminal Court. The language employed in Section 99 of the Act is couched in a mandatory form prohibiting the civil Court from entertaining any suit or proceeding so as to decide the validity of an order passed by the Tahsildar, Tribunal, Collector or the Board of Revenue or even by the Government. Thus it is clear that the civil Court cannot undertake to resolve settle, decide any dispute which falls within the exclusive jurisdiction of the Tahsildar, Tribunal or Collector.

17. The Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands Act, 1950 is a comprehensive piece of legislation regulating the relation between the land holders and the tenants of the agricultural lands in Telangana Area of the State of Andhra Pradesh. It is a piece of legislation aimed and intended to protect the tillers of soil. It is intended to prevent the excessive sub-division of agricultural holdings by the land holders. It imposes restriction upon the right of the land holders to alienate the lands in possession of the protected tenant. It is one of the those early piece of legislation intended to bring agrarian reforms. It is self-contained code. It is a law containing provisions of both substantive and procedural in nature. It provides for passing of orders by the competent Tribunals which are final in nature and provides for right of an appeal and revision to this Court in such of the matters which are not final in their nature. The scope and script of Section 99 of the Act may have to be understood in the context of the scheme of the Act and the purposes and objects which it intends to achieve.

18. Section 34 of the Act declares the circumstances and conditions when a person shall be deemed to be a protected tenant in respect of the land. Section 35 of the Act confers exclusive jurisdiction upon the Tahsildar to decide the question whether any person and if so what person, is deemed u/s 34 to be protected tenant in respect of any land. It further declares that such an order to be passed by the Tahsildar and the declaration that person is deemed to be a protected tenant should be conclusive subject to an appeal to the Collector. Section 36 enables recovery of possession by protected tenant if he is not in possession at the commencement of the Act. Section 37-A of the Act declares persons holding land as tenants at the commencement of the Act. Section 38 of the Act confers right upon protected tenant to purchase the land and provides for the resolution of the dispute, if any, between the protected tenant and the land holder in that regard by the Tribunal. Section 38-E of the Act of course, declares as to under what circumstances, the lands in possession of a protected tenant

shall stand transferred and shall be deemed to be the full owner of such land. Section 40 of the Act declares rights of protected tenants heritable. Section 90 of the Act provides for an appeal against every order other than an interim order passed by the Tahsildar or the Deputy Collector or the Tribunal under the Act and such appeal lies to the Collector. Section 91 of the Act provides for a revision to this Court against an order passed by the Collector or the Board of Revenue on the grounds stated therein. Section 93 of the Act provides for period of limitation in respect of the appeals and revisions under the Act and make Sections 5 and 12 to 24 of the Limitation Act applicable to the proceedings under the Act.

19. Thus it is evidence that the Act is a comprehensive piece of legislation and complete Code by itself creating certain valuable rights in persons in possession of the land and provides protection to them. Authorities to resolve the dispute which may arise in working and implementing the Act are created by the Act. Their respective jurisdictions are delineated. Appeals are provided against certain orders and a further revision to this Court. The jurisdiction of the Civil Court to embark upon any enquiry whatsoever which is required to be exclusively decided by the Tahsildar, Tribunal or Collector are expressly taken away and in the same manner the orders passed by the authorities under the Act cannot be reviewed by any civil or criminal Courts. The correctness of the order may have to be decided only by the authorities under the Act. Of course, the Act provides a revision to this Court.

20. It is thus manifestly clear that the civil Court's jurisdiction is completely ousted to decide any question relating to the correctness and validity of the entries made in the final register showing a person as a protected tenant. Civil Court cannot go and decide any question as to whether a person is properly declared as protected tenant and such allied question which may have to be decided by the authorities and the Tribunals under the Act.

21. For the aforesaid reasons, I have no hesitation whatsoever to reject the contentions put forth by the learned Counsel for the appellants. The trial Court has not committed any factual or legal error in recording the finding. The appellants miserably failed to make out any *prima facie* case. The balance of convenience is not in favour of the appellants. The equitable relief by way of temporary injunction cannot be granted, as the appellants suppressed true and material facts.

22. The trial Court shall expeditiously dispose of the application uninfluenced by the observations if any made in this order with regard to factual aspects of the matter. The appeal fails and shall accordingly stand dismissed with costs.

24. The Court place its appreciation and acknowledge the valuable assistance rendered by Sri C. V. Ramulu as *amicus curiae*.