

(1990) 07 AP CK 0012

In the Andhra Pradesh High Court

Case No : Writ Petition No. 1429 of 1984

Kondamuri Anasuyamma

APPELLANT

Vs

Dist. Judge, W.G. Dist at Eluru and others

RESPONDENT

Date of Decision : 27-07-1990

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 96

Evidence Act, 1872 — Section 114, 3

Transfer of Property Act, 1882 — Section 8

Citation : AIR 1991 AP 47

Hon'ble Judges : Radhakrishna Rao, J

Bench : Single Bench

Advocate : C.V.N. Sastry, Adv, Government Pleader, for the Appellant; T. Veerabadrayya, for the Respondent

Judgement

Radhakrishna Rao, J 1. The third respondent herein, claiming to be a cultivating tenant of ac. 4-45 cents of land belonging to the petitioner herein the land-lady, in S. No. 19/1 of Venkampalam village, Chintalapudi taluk filed an application before the Tenancy Tahsildar, Chintalapudi which was tried as I.A. 1 of 1976. To substantiate his claim, the third respondent herein examined 9 witnesses and marked Exs. P-I to P-10 on his behalf. The land-lady examined five witnesses and marked Ex. B.1 on her side. The Tenancy Tahsildar allowed that application by order dated 2-9-1977. Against that the petitioner herein the land-lady preferred an appeal T.A. No. 1 of 1976 before the Revenue Divisional Officer, who remanded the matter to the Tenancy Tahsildar for fresh disposal. After remand the third respondent herein examined P.Ws. 1 to 3 and R.Ws. 1 and 2 were examined on behalf of the land-lady C. Ws. 1 and 2 were also examined. At that stage the matter was transferred to the Special Officer the District Munsiffs Chintahatapudi and renumbered as A.T.C. No. 2 of 1980. The learned Special Officer (the District Munsif) dismissed the said petition with costs, by his order dated 13-3-1981. Against that the third respondent herein the tenant preferred an appeal A.T.A. No. 12 of 1981 before the District Judge, West Godavari at

Eluru. The case ultimately set up by the third respondent herein is that originally the rent for the whole extent of land is Rs. 300/- and subsequently it was enhanced to Rs. 500/- in 1975-76 and the rent is being paid regularly. The third respondent-tenant examined himself as P.W.1 (before remand) and his neighbours as P.Ws. 2 and 5. P.Ws. 3,4,6 and 7 are the relatives of the third respondent. The learned Judge rejected the oral evidence adduced by the tenant on the ground that the witnesses are interested and unreliable witnesses and none of them were actually present at the time of settlement of the alleged oral agreement and they have no personal knowledge about the oral leave. With regard to P.W. 8 he stated that he does not know anything whether the third respondent is a cultivating tenant or a cooly of the land-lady. On behalf of the landlady, her brother was examined as R.W.2 R.W. 3 is the Village Munsif of Anantapalli where the petitioner herein owns land. R. Ws. 1 and 4 are the former lessees of the landlady. Taking into account the oral evidence, the Special Officer (District Munsif) dismissed the petition. Against that an appeal was preferred before the District Judge wherein the learned District Judge felt that the evidence let in does not fit in with the plea set up by the land-lady and accepted the testimony of the cultivating tenant holding that he has made out his case. Against that the present writ petition is filed by the land-lady.

2. It is well-settled that where the original court, which has got the opportunity of observing the demeanour of the witnesses, where particularly oral evidence is crucial, came to a finding, the appellate court in appeal should not brush aside that finding merely because there are some discrepancies. If the evidence is considered on appreciation and when it is accepted by the original court, the appellate court must be very slow in interfering with a particular finding when it is supported by documentary evidence. Admittedly there is no documentary evidence in this case to show that there is a lease deed executed in favour of the third respondent-tenant.

3. The first contention raised by Sri C.V.N. Sastry, learned counsel for the petitioner is that when none of the documents show that there is an agreement entered into between the parties regarding the lease, the appellate court was not justified in disturbing the said finding. According to the tenant Ex. P. 8 was executed after negotiations between the land-lady and the tenant on 9-5-1976. In that document the land in question is shown in possession of the landlady. Sri T. Veerabhadriah, learned counsel for the third respondent-cultivating tenant tried to justify the stand taken by the lower appellate court that it was written by the scribe in the usual fashion and it was an agreed-transaction. If that is only the document, we can understand that in the usual fashion it was written. But according to the evidence of the Village Karanam the land-lady alone is cultivating the land and this version is supported by the entries in the Revenue Records. The entries in the Revenue Records support the recitals in Ex. P-8 and it can be said from this circumstance that the lease cannot be culled out.

4. Ex.P-7 is a post-card written by the husband of the land-lady to the third

respondent-tenant. Ex.P-9 is the insured cover written by the petitioner-land-lady to her husband. Ex. P-10 is the post-card addressed by the petitioner. Even after a close scrutiny of these documents, it cannot be said that there is a lease.

5. Some recitals in Ex. P-9 were sought to be interpreted by the lower appellate court that there may be a lease. But these recitals were interpreted by the original court in a different way. When a sentence can be interpreted in two ways and when the original court interpreted the same in one way, the appellate court is not justified in interpreting the same in a different way without any supporting evidence. Exs. P-7, P-9 and P-10, therefore, will not be of any help to the third respondent-tenant to arrive at a conclusion that there is a lease.

6. Sri T. Veerabhadraiah, learned counsel contends that because of non-production of M.O. coupon which must be available with the land-lady, an adverse inference can be drawn. We should not forget that we are dealing with rustic persons in this case. We cannot expect that a person like landlady in this case will keep the M.O. coupon with her anticipating its necessity in future. Generally nobody will keep the M.O. coupon with them unless they anticipate its necessity in future. Therefore the non-production of the M.O. coupon by the land-lady in this case cannot be taken to draw an adverse inference. On the other hand we are having the evidence of R.W.2 examined after remand. He stated that he instructed the tenant to remit the amount by money order. When the tenant has not stated in the Money Order coupon that the amount sent therein relates to the negotiations and the receipt is not produced and when R.W. 2, the brother of the land-lady advised him to send the money by money order and when there is no corroboration, we cannot draw an adverse inference about the existence of oral lease between the parties.

7. It has to be noted that under Ex. P-1 postal acknowledgement an amount of Rs. 50/- and under Ex. P-2 acknowledgment an amount of Rs. 50/- was sent. The explanation offered by the third respondent is that he gave Rs. 400/- in two instalments earlier. If we scrutinise the evidence of P.Ws. 4 and 5, it will be clear that they stated that Rs. 200/-was with regard to the first instalment while the tenant himself stated that he paid Rs.200/- with regard to the second instalment. There is a discrepancy with regard to the instalment that was paid. That discrepancy also gives strength to the evidence of the land-lady to say that the amount has not been received by her. When none of the documents has made out any case about the lease and when the trial court has clearly found that the evidence is interested and unreliable, the lower appellate court should not disturb that well-considered finding.

8. The lower appellate court also stated while commenting the evidence of R.W. 4 that it is very easy to procure witnesses to state that there is no lease. It is true that what has been stated by the learned Judge is correct. But the same yard-stick has to be used when the tenant, produced the neighbours to state that the tenant is cultivating the land of the landlady as lease. The lower appellate court did not appreciate the evidence in the manner in which it has to be appreciated

in a case where tenancy has been relied upon an oral lease alone.

9. The examination of R.W. 2 subsequent to remand shows that the man was not fair in the beginning and the learned Judge felt that Exs. P-9 and P-10 might have been given by R.W. 2. Because his own sister, the land-lady is making attempts to sell the lands, with a hostile attitude he might have set up the tenant. This circumstance cannot be ruled out. This is the second series where the girls in whose favour the land is given as Pasupu Kumkuma and when they want to sell away the same, the nearest relatives of those girls like brothers, set up oral leases and then file suits in order to deprive the ladies from selling away the lands. Taking advantage of the statutory rights given to the tenants, and the land-lady is not in a position to sell away the lands, the oral lease must have been engineering to deprive the ladies. In another case in W.P. No. 10037 of 1987 disposed of to-day (27-7-1990) the same matter was considered.

10. Generally if the land has been given to the ladies towards Pasupu Kumkuma, the ladies will depend generally upon their nearest relatives like brothers for assistance and in turn they may send some money. That arrangement cannot be automatically considered as lease. Certain times the ladies may give licence to their brothers to supervise the and and remit the income derived therefrom. In the ordinary circumstances it is the duty of the court to scrutinise whether the oral lease set up is correct or not, and the same has to be considered by the original court.

11. For the foregoing reasons the writ petition is allowed. The order of the lower appellate court in A.T.A. No. 12/81 dated 19-9-1983 is set aside and the order of the Special Officer (the District Munsif) in A.T.C. No.2, of 1980 dated 13-3-1981 is confirmed. No costs. Advocate's fee. 250/-.

12. Petition allowed.