

(2011) 08 AP CK 0044
In the Andhra Pradesh High Court
Case No : C.R.P. No. 5051 of 2010

Kopparapu Seetharamanjaneyulu (died) per LRs	APPELLANT
Vs	
Male Krishna Reddy (died) per LRs	RESPONDENT

Date of Decision : 18-08-2011

Acts Referred:

Andhra Pradesh (Andhra Area) Tenancy Act, 1956 — Section 10, 15, 16
Andhra Pradesh (Andhra Area) Tenancy Rules, 1980 — Rule 19
Constitution of India, 1950 — Article 227

Citation : (2011) 6 ALD 1

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : M.V.S. Suresh Kumar, for the Appellant; K.A. Narasimham, for the Respondent

Final Decision : Allowed

Judgement

L. Narasimha Reddy, J.—This revision arises under Article 227 of the Constitution of India against the order passed by the learned District Judge, Ongole, in A.T.A. No. 30 of 2002. The appeal in turn arose from the order passed by the Principal Junior Civil Judge, Ongole, in A.T.C. No. 30 of 1994.

2. The facts, that gave rise to the filing of the revision, in brief, are as under:

The ATC was filed by Male Krishna Reddy, the deceased 1st Respondent herein, against Kopparapu Seetharamanjaneyulu, the deceased 1st Petitioner herein. Both of them died, and their legal representatives were brought on record. For the sake of convenience, the parties are referred to as Petitioner and Respondent.

3. The case of the Respondent was that the Petitioner owned Ac.1.35 cents of land in Sy. No. 245/1 and 75 cents in Sy. No. 214/2 of Vallur Village, Prakasam District, and that the said land was given on lease to him in the year 1991-92 on an annual rent of Rs. 800/-, and that the lease amount was paid for the years 1991-92 and 1992-93 under receipts. The rent for the year 1993-94 was said to

have been enhanced to Rs. 1,000/-, and that the Petitioner orally agreed to continue the tenancy after 1997-98. The rent for the year 1993-94 was said to have been paid.

4. It was alleged that one Sri Konanki Venkata Rao visited the land stating that the Petitioner offered to sell the same, and an altercation has taken place. Claiming right of preemptive purchase under Sections 10 , 15 and 16 of the A.P. (Andhra Area) Tenancy Act (for short "the Tenancy Act"), and Rule 19 of the Rules (for short "the Rules") made thereunder, the Respondent prayed for the relief of declaration to the effect that he is the cultivating tenant of the petition schedule property; for perpetual injunction, to restrain the Petitioner from interfering with the peaceful possession and enjoyment of the property, and to declare that he has the right of first purchase, vis-a-vis the property.

5. The Petitioner opposed the ATC. He flatly denied the existence of any tenancy between himself and the Respondent. He stated that one Mr. Varikuti Singa Rao was the tenant up to the year 1991 and that the said tenant had surrendered his rights by executing a document. He further stated that, immediately thereafter, he leased the land to Konanki Venkata Rao on sharing system, delivered the possession, and over the time, he entered into agreement with the said tenant for sale of the land for consideration of Rs. 37,000/-. A sum of Rs. 10,000/- is said to have taken as advance. He stated that the Respondent has nothing to do with the land.

6. The trial Court dismissed the ATC, through order dated 13-03-2002, holding that the Respondent failed to prove that he was the tenant of the Petitioner. Thereupon, the legal representatives of the Respondent filed ATA No. 30 of 2002 in the Court of District Judge, Ongole. The appeal was allowed on 18-05-2006. Hence this revision.

7. Sri M.V.S. Suresh Kumar, learned Counsel for the Petitioners submits that the lower Appellate Court proceeded to decide the matter on surmises and assumptions without there being any legal or factual support for the same. He contends that the finding recorded by the lower Appellate Court that there existed oral tenancy in favour of the Respondent, is totally without any basis. Learned Counsel submits that the way in which the lower Appellate Court differed with the findings of the trial Court, on Exs.A-1 to A-3 cannot be sustained in law, and it is contrary to the basic tenets of appreciation of evidence. He further submits that the proceedings were untenable, since the person, who was said to be in possession and in whose favour the Respondent transferred the rights was not made a party.

8. Sri K.A. Narasimham, learned Counsel for the Respondents, on the other hand, submits that the lower Appellate Court has analyzed the oral and documentary evidence thoroughly and found that the tenancy in favour of the Respondent is proved. He submits that there was a clear admission on behalf of the Petitioners that the Respondent is in possession of the property.

9. Before the trial Court, PWs1 to 4 were examined and Exs.A-1 to A-8 were filed, on behalf of the Respondents herein. On behalf of the Petitioners herein, RWs 1 and 2 were examined, and Ex. B-1, the deed of surrender was filed. Ex. X-1 was also taken on record.

10. The Respondent filed the ATC claiming the reliefs of declaration, injunction and right of preemptive purchase. He admitted the ownership of the Petitioner over the land. The lease was said to be oral. The Tenancy Act contains detailed provisions, which are meant to protect the rights of the tenants, on the one hand, and the landlords, on the other hand. Once a person is recognized as a tenant of an agricultural land, serious consequences would flow and the rights of a landlord are subjected to severe restrictions. Therefore, Courts are always cautious in dealing with the matters of this nature.

11. The tenancy existing a period of one year, is to be brought about in accordance with the provisions of Transfer of Property Act, covering leases. However, for the purpose of the Tenancy Act, it is not necessary that there must be a written or registered lease deed. It is permissible for a lease under the Act to exist, otherwise than through writing also. Where, however, in the land owner disputes, the existence of oral lease, heavy burden rests upon the tenant to prove it.

12. In the instant case, the Petitioner flatly denied the plea of the Respondent that there existed oral lease in his favour. In his written-statement, the Petitioner pleaded that till the year 1991, the land was under lease to one Mr. Varikuti Singarao. It is stated that the lease was surrendered through a document marked as Ex. B-1. That very tenant was examined as PW-2. He stated that he received a sum of Rs. 3,500/-for surrendering the lease, and that immediately after surrender, the land was leased to PW-1, the Respondent herein.

13. The tenancy of whatever form, involves payment of rent by the lessee to the lessor. Strangely enough, PW-2, the lessee of the land, has taken Rs. 3,500/- from the landlord, i.e. the Petitioner herein, for surrendering the land. The conduct of such a person is not difficult to imagine. Having troubled the Petitioner to such a level that amount had to be paid to get rid of him, the said witness has continued his vindictive attitude and deposed against his previous landlord. It is on account of such unscrupulous tenants, that the owners of the land prefer to keep the lands vacant, than to lease to someone, who is actually in need of it. The conduct of PW-2 is reprehensible and instead of discarding his evidence, as the trial Court did, the lower Appellate Court treated him as a paragon of virtue and ardent practitioner of truth. If the evidence of PW-2 is discarded, there is nothing, which supports the theory of oral lease in favour of the Respondent.

14. The Respondents tried to prove the oral lease by placing reliance upon Exs.A-1 to A-3, the alleged receipts of rent. The Petitioners flatly denied the genuinity of those receipts. In Ex. B-1, the signatures of the deceased, Petitioner

existed, and it was marked as Ex. B-1(a). In addition to that, a registered sale deed dated 13-10-1982 executed by him was taken on record as Ex. X-1. The disparity between the signatures on Exs.A-1 to A-3, on the one hand, and Exs.B-1(a) and X-1 was so clear that neither the parties, nor the Courts felt the necessity of sending the documents to an expert, for comparison. The trial Court found that Exs.A-1 to A-3 were not signed by the Petitioner at all.

15. It is some-what interesting to note that as to how the lower Appellate Court has dealt with that issue. After making reference to the fact that the lease was surrendered by PW-2, under Ex. B-1, the lower Appellate Court proceeded to discuss,

...So, in the circumstances, the landlord must have tried to avoid execution of any lease deed. Now it has to be seen that whether Exs.A-1 to A-3 are the receipts given by the landlord. When the landlord tried to see that there should not be any documentary evidence with regard to the lease given to 1st Petitioner he would have taken care to see that no document is available to the tenant to prove their tenancy when the signatures of the 1st Respondent landlord on Exs.B1A and X-1 are compared with Exs.A-1 to A-3, it is clear that the signatures in Exs.A-1 to A-3 are different with that of the signatures in Ex. B1A and Ex. X-1. The signature of the landlord is "C.S.R. Anjaneyulu", but the signatures in Exs.A-1 to A-3 are simply mentioned as "Anjaneyulu". The capital letters "C.S.R," are missing in the signatures in Exs.A-1 to A-3. Thus, it is clear that the signatures in the receipts under Exs.A-1 to A-3 are not the signatures of C.S.R. Anjaneyulu....

16. In the ordinary course, the discussion must end here, and the finding recorded by the trial Court must be upheld. However, the lower Appellate Court proceeded to observe,

...This shows that care was not taken while preparing Exs.A-1 to A-3 or while forging the signatures of C.S.R. Anjaneyulu. If at all the Petitioners had any mala fide intention they would have got the original signature in such a manner so as to resemble it as the original signature of the landlord. It appears that the Petitioners are not the authors of Exs.A-1 to A-3. To mislead the tenant the possibility of land lord or somebody signing Ex. A1 to A3 and handing over them to Petitioners cannot be ruled out...

17. On this basis, the findings recorded by the trial Court were reversed, and it was held that the Respondent proved the tenancy.

18. The findings of such a nature, and the conclusion arrived at by the lower Appellate Court are totally untenable and are opposed to the basic tenets of appreciation of evidence. The burden squarely rested upon the Respondents to prove Exs.A-1 to A-3. Not a single witness, connected with them, was examined. The signatures thereon were at variance, in all respects, with the admitted signatures of the Petitioner. The Respondents did not even make an effort to provide any link in the process of proof. Strangely enough, the lower Appellate

Court made an attempt to supply all possible links, little realizing that such links do not form a chain at all.

19. The so-called admission of possession appears to be in relation to the altercation between the Respondents and the tenants of the Petitioners.

20. There is a serious flaw in the ATC filed by the Respondent. He made copious reference to the interference, by Konanki Venkata Rao; so much so, that the FIR pertaining to the quarrel between the Respondent and that person was filed as documentary evidence. It was stated by the Petitioner that the land is in possession and enjoyment of the said person, in the capacity of a lessee, and thereafter, the holder of an agreement of sale. He was the immediately affected person. The Respondents did not take steps to implead that individual. The ATC was bad for non-joinder of parties.

21. The C.R.P is accordingly allowed, and the order passed in the ATC is upheld. There shall be no order as to costs.