
(2009) 07 AP CK 0009

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 373 of 2005

Kora Krishna Kumari

APPELLANT

Vs

Chaluvadi Venkateswarlu and Others

RESPONDENT

Date of Decision : 07-07-2009

Acts Referred:

Andhra Pradesh (Andhra Area) Tenancy Act, 1956 — Section 15, 15(6), 16, 18(1), 18(2)
Constitution of India, 1950 — Article 227

Citation : (2009) 5 ALD 391 : (2009) 5 ALT 248 : (2009) 3 APLJ 170

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : K. Sarva Bhouma Rao, for the Appellant; P. Sreerama Murthy, for the Respondent

Final Decision : Allowed

Judgement

L. Narasimha Reddy, J.—The 1st respondent (for short "the respondent") filed A.T.C. No. 59 of 1992 before the Special Officer, Tenancy Tribunal (under the Andhra Pradesh (Andhra Area) Tenancy Act, 1956 (for short "the Act")) - cum - II Additional Junior Civil Judge, Ongole, for the relief of declaration that the sale deed, dated 02.12.1992, marked as Ex.B.1, executed by respondents 2 to 11 herein, in favour of the petitioner, alienating the property mentioned therein, is contrary to the provisions of the Act, and is liable to be set aside. He also claimed the relief of perpetual injunction. He pleaded that the land was leased to him by respondents 2 to 11 and that he has been the tenant of the land, for the past ten years prior to filing of A.T.C. It was also mentioned that the rent is to be enhanced to Rs. 600/-, after completion of the initial period of three years, and to Rs. 1,000/-, three years thereafter. He is said to have spent about Rs. 15,000/- for developing the land, and for raising the casuarina plantation. The transaction is said to have been covered by a document, dated 25.10.1992, and that on 30.10.1992, casuarina plants, worth Rs. 6,000/-, were planted. It was also alleged that black gram crop was raised within the plantation.

2. The respondent contended that, on the basis of purchase of land through Ex.B.1, the petitioner herein spoiled the crop and has taken possession. According to him, Ex.B.1 is hit by Section 16 of the Act and that he is vested with a preemptive right to purchase the land, in the event of the owners willing to sell it. Respondents 2 to 11 remained ex parte and the petitioner alone contested the matter. In his counter, the petitioner denied the allegations of the respondent. It is also stated that a lease agreement said to have been executed in favour of the petitioner, is not binding on other owners. Through its order, dated 14.09.1998, the trial Court dismissed the A.T.C. Aggrieved thereby, the respondent filed A.T.A. No. 28 of 1998 in the Court of District Judge, Ongole. The appeal was allowed by judgment, dated 13.12.2004. The same is challenged in this C.R.P.

3. Sri K. Sarva Bhouma Rao, learned Counsel for the petitioner, submits that the very basis for the plea of tenancy raised by the respondent was the lease agreement, dated 25.10.1992, marked as Ex.A.5, and even after eschewing it from consideration, the lower appellate Court held that there existed tenancy in favour of the respondent. He contends that even if that Ex.A.5 is true and binding, it was only for raising casuarina plantation and Section 18(9) of the Act exempts such leases from its purview. He submits that the lower appellate Court has taken into account, the additional evidence in the form of Exs.A.6 to A.9, without there being any oral evidence. He further submits that the said evidence referable only to Ex.A.5 there exists a clear contradiction in the findings.

4. Sri P. Sreerama Murthy, learned Counsel for the respondent, on the other hand, submits that though the lease for raising casuarina plantation was granted in favour of his client under Ex.A.5, there existed a lease for raising agricultural crops, earlier to that. He contends that there is sufficient material to establish that the respondent was a tenant in respect of the land, much prior to execution of Ex.A.5. The respondent challenged Ex.B.1, on the ground that it was executed by the owners of the land, though a statutory tenancy in his favour was subsisting. The petitioner disputed the very existence of tenancy in favour of the respondent.

5. The trial Court framed three points for its consideration, viz.,

- a) "Whether there existed relationship of landlord and tenant between the petitioner and respondents 2 to 9 therein?
- b) Whether he is entitled for the relief of declaration that Ex.B.1 is null and void? and
- c) Whether he is entitled for the relief of perpetual injunction?

6. To prove his case, the respondent examined PWs.1 to 6 and filed Exs.A.1 to A.5. On behalf of the petitioner herein, RWs.1 & 2 were examined and Exs.B.1 & B.2 were filed.

7. All the three points were answered against the respondent by the trial Court. In the appeal preferred by the petitioner, the lower appellate Court framed two

points for its consideration, viz.,

a) "Whether the respondent is a tenant of petition schedule property as on the date of Ex.B.1? and

b) Whether Ex.A.5 can be relied upon?

8. In fact, both these points are different facets of the same issue, which has a bearing upon the existence of tenancy of the respondent over the land. The second point was held against the respondent. However, by answering the first point in favour of the respondent, the lower appellate Court granted relief to him.

9. The Act protects the rights of tenants, in many respects. One such right is the one u/s 15 of the Act, according to which, a landholder cannot alienate the land, during the subsistence of a statutory tenancy. If, in fact, there existed the valid tenancy in favour of the respondent, the sale through Ex.B.1 becomes untenable. Therefore, it needs to be verified as to whether there existed valid tenancy, as provided for under the Act, in favour of the respondent, as on the date of Ex.B.1.

10. The respondent himself was not clear, as to the nature of his rights vis- -vis the land. On the one hand, he stated that he was a tenant of three bits of land, for the past ten years before the A.T.C., was filed. On the other hand, he stated that the land covered by Ex.B.1 was leased to him by respondents 2 to 11, through Ex.A.5, for raising casuarina plantation. Whatever may have been the nature of his relationship with the landholders, with the execution of Ex.A.5, a new relationship comes into existence, at least, as regards the land covered by it.

11. In the Courts below, various contentions were urged by the parties in support of and in opposition to, Ex.A.5. The trial Court ignored it, on the ground that it was not executed by all the co-owners. Without stopping at that, it proceeded to observe that Exs.A.1 to A.4 do not establish any tenancy prior to Ex.A.5. The lower appellate Court discarded Ex.A.5 from consideration, on the ground that it was not executed by all the owners. Thereafter, it undertook discussion to examine whether there existed any other kind of tenancy.

12. In the limited context of examining the relationship of landlord and tenant between the respondent on the one hand and respondents 2 to 11 on the other hand, Ex.A.5 cannot be ignored. The reason is that the only persons that could have objected to it were the other co-owners. At any rate, the petitioner cannot disown it. All of them remained ex parte. The lower appellate Court received additional evidence, in the form of Exs.A.6 to A.9, which are in relation to Ex.A.5 itself. The additional evidence would not help the respondent to prove his tenancy, earlier to Ex.A.5. Even assuming that there existed any such rights, they came to be scrapped, or redefined through Ex.A.5, being selfusary. The respondent cannot ignore this.

13. Now it needs to be seen, as to whether the relationship created through Ex.A.5 would help the respondent to assail Ex.B.1.

14. Admittedly, the lease under Ex.A.5, was for raising of casuarina plantation.

15. Section 18(1) of the Act, reads as under:

Savings: (1) Nothing contained in this Act shall apply-

(a) to lands in which plantation crops are raised;

(b) to orchards, where the tenancy is for the enjoyment of the usufruct of the trees;

16. In clear and categorical terms, the respondent pleaded that he took the land on lease in Ex.A.5 for raising casuarina plantation. He has also stated that he spent Rs. 6,000/- for planting the casuarina plants. The sole basis for the respondent to challenge the sale covered by Ex.B.1 is Sub-section (6) of Section 15 of the Act. When Section 18(2) of the Act makes the entire Act inapplicable, if the leases are for raising plantation crops, his claim becomes totally untenable.

17. Another important feint is that admittedly, the petitioner suffered eviction or dispossession in the hands of the first respondent who is not his landlord. He stood evicted by the time Ex.B.1 was executed.

18. Learned Counsel for the respondent relied upon certain judgments rendered by this Court to contend that this Court would be loath to interfere with the findings of the Courts below, in the matters arising under the Act. There is absolutely no quarrel with that proposition. Where, however, no relief can be granted to the tenant, even after the facts pleaded by him are taken on their face value, a patent and jurisdictional error committed by the Courts below, cannot be ignored. If that is done, the very purpose of providing the remedy under Article 227 of the Constitution of India would become mediatory.

19. Hence, the revision is allowed and the order passed by the lower appellate Court in A.T.A. No. 28 of 1998 is set aside. There shall be no order as to costs.