
(2006) 07 AP CK 0070

In the Andhra Pradesh High Court

Case No : C.R.P. No's. 3269 and 3270 of 2001

Kothapalle Hazarathaiah and Others

APPELLANT

Vs

Nalisetty Venkata Narasiah

RESPONDENT

Date of Decision : 05-07-2006

Acts Referred:

Andhra Pradesh (Andhra Area) Tenancy (Amendment) Act, 1974 — Section 15(1), 15(6)

Andhra Pradesh (Andhra Area) Tenancy Act, 1956 — Section 15, 6(1)

Citation : (2006) 4 ALT 721 : (2006) 2 APLJ 392

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : M.V.S. Suresh Kumar, for the Appellant; C. Balajee, for the Respondent

Final Decision : Allowed

Judgement

L. Narasimha Reddy, J.—These two revisions are filed against a common judgment dated 26-9-2000, rendered by the learned District Judge, Nellore, in C.M.A. Nos. 26 and 37 of 1995. The appeals in turn were directed, against two separate orders, dated 24-4-1995, passed by the District Munsif, Atmakur, in A.T.C. Nos. 1 and 2 of 1989. The proceedings arose under the Andhra Pradesh (Andhra Area) Tenancy Act, 1956, for short "the Act". The petitioners are the landlords and the respondent is the tenant, in respect of Ac. 13-00 of dry land in Sy. No. 802 of Atmakur village and Mandal, Nellore District.

2. One Mr. Sreekanthaiah was the owner of the land, referred to above. The petitioners herein purchased the same, through sale deed dated 7-7-1977. The respondent filed O.S. No. 197 of 1977, in the Court of District Munsif, Atmakur, against the petitioners herein, for the relief of perpetual injunction, in respect of the suit property. On realizing that the suit was not maintainable in respect of lands covered by the Act, the respondent got it dismissed as not pressed, and filed ATC No. 10 of 1980, in the same court. An order, dated 11-10-1988 was

passed in A.T.C. No. 10 of 1980, granting perpetual injunction against the petitioners, and they were directed not to dispossess the respondent, except by following the procedure prescribed by law.

3. Respondent filed A.T.C. No. 1 of 1989, with a prayer to declare the sale deed dated 7-7-1977, executed in favour of the petitioners herein, as null and void, and contrary to Section 15 of the Act. According to him, the land was under cultivation by their family from the year 1936, and that the tenancy is governed by the provisions of the Act. It was pleaded Section 15 of the Act confers a preemptive right to purchase, in favour of the tenant, and in that view of the matter, the sale of the land in favour of the petitioners, was hit by Section 15 of the Act.

4. The petitioners, in turn, filed A.T.C. No. 2 of 1989, stating that though they became absolute owners in the year 1977, the respondent did not pay the rent for the land, till the date of filing of the ATC, and that he is liable to be evicted, on account of the default committed by him.

5. Through separate orders, dated 24-4-1995, the trial court allowed A.T.C. No. 1 of 1989 and dismissed ATC No. 2 of 1989. It was held that the sale in favour of the petitioners is void, since it contravenes Section 15 of the Act. A further finding was recorded to the effect that the respondent was under confusion, as to the person whom he should tender the rents, and in that view of the matter, it cannot be said that there was any wilful default on his part.

6. Petitioners filed C.M.A. Nos. 26 and 37 of 1995, in the Court of District Judge, Nellore, against the orders in A.T.C. Nos. 1 and 2 of 1989. Through a common judgment dated 26-9-2000, the learned District Judge dismissed the appeals.

7. Sri M.R.S. Srinivas, learned Counsel for the petitioners, submits that amendment to Section 15 of the Act, conferring rights of preemptive purchase on a tenant, came into operation, only with effect from 1-7-1980, and since the sale deed was much prior to that date, Section 15 had no application to the facts of the case. He contends that though a specific ground was raised before the appellate court, on this aspect, it was not adverted to. He further contends that the findings of the courts below, as regards the default in payment of rent, are contrary to the pleadings, as well as evidence, in various proceedings. He contends that in the year 1977 itself, the respondent became aware of the sale of the land in favour of the petitioners, and there was no basis for him to plead that he entertained doubt as to the actual persons entitled to be paid the rent.

8. Sri C. Balaji, learned Counsel for the respondent, on the other hand, submits that both the courts below recorded a concurrent finding, on the basis of the material before them, and thereby, no interference is called for. He contends that the stand of the petitioners was inconsistent in various proceedings, and that the respondent started depositing the rents after more than a decade, to the credit of the A.T.C. No. 1 of 1989, and in that view of the matter, it cannot be said that there was any wilful default in payment of the rent.

9. From the pleadings of the parties, as well as the submissions made by their learned Counsel, two questions arise for consideration in these C.R.Ps. viz;

(a) Whether the sale deed dated 7-7-1977, through which the petitioners purchased the land, is hit by Section 15 of the Act?

(b) Whether the respondent committed wilful default in payment of rent?

10. The respondent filed A.T.C. No. 1 of 1989 for a declaration that the sale deed dated 7-7-1977, in favour of the petitioners, is inoperative in law, being contrary to Section 15 of the Act. The respondent was examined as P.W. 1 and he filed Exs.A-1 to A-11, which are cist receipts, adangals and pleadings of the parties in O.S. No. 197 of 1977. On behalf of the petitioners, R.W. 1 was examined and no documentary evidence was adduced. Both the courts found that the sale deed was hit by Section 15 of the Act.

11. The existence of tenancy in favour of the respondent, as regards the land in question, is not in dispute. The tenancy is covered by the provisions of the Act. Section 15 thereof was amended through Act 39 of 1974, creating pre-emptive right of purchase, in atenant. The relevant portion of Section 15 reads as under:

Section 15. Cultivating tenant's right to first purchase the land leased to him:

(1) Any landlord intending to sell the land leased to a cultivating tenant shall first give notice to such cultivating tenant, of his intention to sell such land, and requiring him to exercise his option to purchase the land. The particulars to be specified in the notice and the time within which the option shall be exercised by cultivating tenant shall be such as may be prescribed.

(2) If the cultivating tenant exercises his option to purchase the land there is an agreement between the landlord and his cultivating tenant in regard to the price payable, the landlord shall sell the land to such cultivating tenant in accordance with such agreement.

(3) Where the cultivating tenant exercises his option to purchase the land; but there is no agreement in regard to the price payable, the landlord or the cultivating tenant may apply to the Special Officer for the determination of reasonable price of such land; and the Special Officer shall, after giving notice to the landlord, and the cultivating tenant and after making such inquiry as he thinks fit, determine the reasonable price;

Provided that the reasonable price so determined shall not exceed five times the fair rent, if any fixed after the commencement of the Andhra Pradesh (Andhra Area) Tenancy (Amendment) Act, 1974 and in force in respect of that land; or where no such fair rent has been fixed or is in force, five times the fair rent that would have been so fixed, has an application been made for determination of such rent on the date of giving of notice under Sub-section (1).

(4)...

(5)...

(6) Any sale of the land by the landlord in contravention of this Section shall be voidable to the option of the cultivating tenant.

(such portion of the Section, which is not relevant for the purpose of this case, has been omitted.)

12. In view of this amendment, whenever a landlord intends to sell the land, which is subject matter of the lease, he shall put the tenant on notice. In case the tenant exercises option to purchase, the landlord is under obligation to sell it to him, A reading of Sub-section (6) clearly discloses that any sale of the land by the landlord, in contravention of other provisions of the Section, is voidable at the option of the cultivating tenant. In this case, the record does not disclose that the respondent herein was issued any notice by his original landlord, of his intention to sell the land. Therefore, the sale in favour of the petitioners would become voidable, at the instance of the respondent, if the provision was in operation as on the date of sale, i.e., 7-7-1977.

13. Though Section 15 of the Act was amended in the year 1974, it was brought into operation, only with effect from 1-7-1980. Obviously, any sales, which have taken place before that date, do not become voidable at the instance of the tenant. Though no support of any precedent is required to support such a simple and clear proposition, it is beneficial to refer to the observation made by a Division Bench of this Court in *Mettapalli Venkata Rao and Others Vs. Kotla Alivelu Mangatayamma and Another*, . It reads as under:

It should be remembered that the amendment to Section 15 by substitution was effected by Andhra Pradesh Amendment Act 39 of 1974 and the said Section itself was brought into operation from 1-7-1980. This particular right of the tenant to purchase the land leased to him was not in existence when the suit agreement Ex.A-1 was executed on 1-5-1974. Even Section 15 does not declare the agreements in contravention of the said provision to be void. The said Section is neither retrospective nor does it stipulate that the existing agreements are covered thereby.

14. Whatever may have been the contentions of the respective parties before the trial Court, the petitioners herein have raised a specific ground before the appellate Court, to the effect that the amended provision came into force, only with effect from 1 -7-1980, and that the sale deed in their favour is not hit by the same. Ground No. 6 of their Memorandum of Appeal reads as under:

The lower court erred in declaring the sale deed dated 7-7-1977 as void in view of Section 15 of the Tenancy Act as amended. The lower court failed to note that the Amendment Act came into force on 1-7-1980 and the sale deed dated 7-7-1977 is not hit by the provisions of the Amendment Act. The lower Court failed to note that on the date of sale there was no obligation for the landlord to give any notice of the proposed sale to the tenant or give any opportunity to

tenant for purchase of such land. The Amendment Act was only prospective in operation and from the very nature of the provisions of the Amending Act it could not have been made retrospective in operation. The sale deed dated 7-7-1977 is perfectly valid and binding on the respondent.

Unfortunately, the lower appellate court did not at all advert to this aspect of the matter. Since the date of operation of the amendment to Section 15 of the Act is beyond any pale of controversy, and since it is a matter of record that the sale in favour of the petitioners took place only three years before the amendment, the view taken by the courts below cannot be sustained in law. Therefore, the sale deed, dated 7-7-1977, is not hit by Section 15 of the Act.

15. The second question is the subject matter of A.T.C. No. 2 of 1989, filed by the petitioners for eviction of the respondent, on the ground that the latter committed wilful default in payment of the rent. On behalf of the petitioners, P.Ws. 1 to 3 were examined and the respondent was examined as R.W. 1. No documentary evidence was adduced by them, but the Commissioner's report and plan dated 31-3-1985 were taken on record as Exs.C-1 and C-2.

16. The allegation of the petitioners that the respondent did not pay the rent, ever since they became the owners of the land, remained unrebutted. The plea taken by the respondent was that he was under confusion, as to the entitlement of the original landlord, on the one hand, and the petitioners, on the other hand, to receive the rent in respect of the land. Therefore, it needs to be seen that how far the plea of the respondent is acceptable and genuine.

17. It was not as if the respondent became aware of the claim of the petitioners as owners of the land in question, only after A.T.C. No. 2 of 1989 was filed. 12 years earlier there to, the respondent himself filed O.S. No. 197 of 1977, against the petitioners, for the relief of injunction. The fact that the petitioners purchased the land, through sale deed dated 7-7-1977, was specifically pleaded in the written statement filed in that suit. On realizing that the suit was not maintainable, the respondent did not press it, and he filed A.T.C. No. 10 of 1980. He continued in possession of the land, on the strength of the temporary injunction obtained therein, and ultimately in 1988, A.T.C. No. 10 of 1980 was allowed, granting perpetual injunction in favour of the respondent. The result was that the petitioners were enjoined from evicting the respondent, except through procedure prescribed by law. The decree passed in A.T.C. No. 10 of 1980 did not absolve the respondent, of his obligation, to , pay the rent.

18. There would have been some scope for existence of confusion for the respondent, if there was any dispute between the petitioners and their vendor, in the matter of payment of rent. No such dispute existed. Except the petitioners, nobody else claimed ownership rights in respect of the land, ever since 7-7-1977. Therefore, there was not only default in payment of the rent, but the lapse in this regard was wilful on the part of the respondent. The mere fact that the petitioners started depositing Rs. 65/- per year from 1989 onwards, does not

wipe away the wilful default committed by him, for a period of over 12 years, or the consequences thereof. The facts of the case, therefore, clearly attract the provisions of Section 13 of the Act, and thereby the respondent is liable to be evicted.

19. For the foregoing reasons, the C.R.Ps. are allowed. The orders dated 24-4-1995 passed by the Court of District Munsif, Atmakur, in A.T.C. Nos. 1 and 2 of 1989, as well as the common judgment dated 26-9-2000, passed by the District Court, Nellore, in C.M.A. Nos. 26 and 37 of 2000, are set aside. Consequently, A.T.C. Nos. 1 of 1989 shall stand dismissed and A.T.C. No. 2 of 1989 shall stand allowed. The respondent is granted three months time from to-day, to vacate the land in question and hand over the possession to the petitioners herein. There shall be no order as to costs.