
(2012) 01 AP CK 0091

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 1621 of 2002

Linga Reddi Lakshmana Reddy

APPELLANT

Vs

The State

RESPONDENT

Date of Decision : 23-01-2012

Acts Referred:

Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 — Section 3

Citation : (2012) 01 AP CK 0091

Hon'ble Judges : C.V. Nagarjuna Reddy, J

Bench : Single Bench

Advocate : V. Sudhakar Reddy, for the Appellant;

Final Decision : Allowed

Judgement

C.V. Nagarjuna Reddy

1. The civil revision petition is filed against the common judgment dated 12-02-2002 in L.R.A.C. No. 7 of 1990 on the file of the learned Additional District Judge cum Chairman, L.R.A.C. Tribunal, Chittoor, whereby he has confirmed the order dated 24-4-1990 in C.C. No. 1277/SKHT/1975 on the file of the Land Reforms Tribunal, Chittoor.

2. I have heard Sri V. Sudhakar Reddy, learned counsel for the petitioner. There is no representation for the respondent at the hearing.

3. One Linga Reddy Anki Reddy is the common ancestor. He had two sons, by name Pola Reddy and Rami Reddy. Pola Reddy had three sons. The petitioner is the son of one of the three sons, namely, Chinna Chenga Reddy. The petitioner and his father filed separate declarations under the provisions of the Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 (for short "the Act") before the Land Reforms Tribunal, Chandragiri (hereinafter referred to as "primary tribunal"), wherein he has included Ac.72-80 cts. of land as belonging to the joint family of both the branches headed by Pola Reddy and Rami Reddy. The petitioner claimed that he is entitled to 1/12th share in the joint family

properties. The petitioner's father Chinna Chenga Reddy has filed his separate declaration. In addition to that, Anki Reddy, who represents the branch of Rami Reddy, filed a separate declaration, wherein also he has shown Ac.72-80 cts. as belonging to the joint family, and has claimed 1/8th share. The primary tribunal by its order dated 22-11-1976 has declared that the petitioner was holding Ac.14-12 cts. of I Class dry lands in excess of his ceiling limit and accordingly directed the said lands to be surrendered. The primary tribunal also included an extent of Ac.25-07 cts., which was the total extent of land held by the father-in-law of the petitioner herein, who executed a Will in favour of the petitioner's wife. The total extent directed to be surrendered by the petitioner was equivalent to 0.3138 S.H. (standard holding).

4. Feeling aggrieved by the said order, the petitioner filed L.R.A.C. No. 1/79 before the appellate tribunal. The said appeal was allowed by the appellate tribunal by common order dated 27-01-1987 on two grounds, namely, that even though the petitioner has filed declaration showing an extent of Ac.73-00, the primary tribunal has included Ac.73-00 more, which were not ancestral properties but held by the individual members of the joint family and that no specific finding thereon was rendered by the primary tribunal and that the primary tribunal also failed to properly deal with the plea raised by the petitioner regarding the inclusion of the entire extent of land under the Will executed by his father-in-law in favour of his daughter i.e. the wife of the petitioner. Purporting to reconsider the issue afresh, the primary tribunal reconfirmed its earlier order by order dated 24-4-1990. Challenging the said order, the petitioner filed L.R.A.C. No. 7 of 1990 before the appellate tribunal. The appellate tribunal by its order dated 12-02-2002 dismissed the appeal. Feeling aggrieved by both these orders, the petitioner filed the present civil revision petition.

5. At the outset, it needs to be held that both the primary as well as the lower appellate tribunals have not properly appreciated the two issues raised by the petitioner. As regards the Will, it is the specific plea of the petitioner that his father-in-law has executed Ex.A-2 Will bequeathing half the properties out of Ac.25-00 in favour of the petitioner's wife and the balance half in favour of her mother. While dealing with the said plea, the primary tribunal rendered rather a strange finding. It has held that both the legatees under the Will are limited owners and also they were given vested remainders and hence the entire extent of the lands have to be computed against the holding of the petitioner as per Section 3(i) of the Act. The primary tribunal further went on to hold that there is no substantial evidence to show that whether the Will came into force after the death of the testator. It has further held that the petitioner failed to prove the Will by examining the scribe and relevant witnesses and that therefore, no orders are found necessary on this issue. The appellate tribunal has not considered this aspect in any specific manner.

6. In my opinion, the primary tribunal committed a serious error in including the lands covered by the Will in the face of its own finding that there is nothing on

record to show that the Will was acted upon. Leaving aside the question whether the legatee under the Will, who is the wife of the petitioner, had derived half share from out of the Will, on the strength of its own finding that nothing is placed before it to show that the Will was acted upon and to prove the Will no evidence was placed before it, the entire lands covered by Ex.A-2 should have been excluded from the holding of the petitioner. It is nobody's case that but for the Will, the petitioner's wife would have been holding the entire property of her father as exclusive owner as on the date of the petitioner filing his declaration. Therefore, when once the Will is eschewed from consideration, the property held by the father-in-law of the petitioner could not have been included in the petitioner's holding. In this view of the matter, I do not find any justification in including the extent of Ac.25-00, which is equivalent to 0.8059 standard holding from the petitioner's holding. If Will is accepted, as the petitioner's wife was bequeathed half share, Ac.12-50 cts. alone will be liable for inclusion and in such case the petitioner will be holding the lands within the permissible limit (1/12th share in the joint family properties and Ac.12-50 cts. under Ex.A-2 Will).

7. With respect to the extent of Ac.73-00, it is the specific case of the petitioner that he has filed a declaration that the entire joint family holds an extent of Ac.72-801/2 cts., which is rounded off to Ac.73-00. In the first order passed by the primary tribunal on 22-11-1976, it has observed that the petitioner has declared Ac.146-15 cts. as the holding of the joint family property. However, while giving the details of Survey numbers and the extents, the primary tribunal could only account for Ac.72-801/2 cts. even though the total extent was shown as Ac.146-15 cts. In the appeal filed by the petitioner against the said order, the appellate tribunal has given a categorical finding that the primary tribunal has not explained as to how it has arrived at Ac.146-15 cts. as against the extent of Ac.72-801/2 cts. declared by the petitioner. This was the precise reason why the appellate tribunal has remanded the case to the primary tribunal. After remand, the primary tribunal has considered the case of the petitioner that the extents of Ac.13-05 cts. covered by Ex.A-5, Ac.36-19 cts. covered by Ex.A-12, Ac.8-00 covered by Ex.A-8 and some extents covered by Ex.A-13, which in all come to Ac.73-00 do not belong to the joint family and that therefore, the said extents are liable to be excluded. As regards Ex.A-5, it is the case of the petitioner that one Duvvuru Raghava Reddy executed a registered Will dated 10-5-1923 in favour of the petitioner's father bequeathing Ac.13-05 cts. and that the petitioner's father has filed a separate declaration, wherein the said extent was included. It is, therefore, his case that the land covered by the said Will has to be excluded. Curiously the tribunal has observed that there is no documentary proof to show that these lands were given possession to the declarant as on the notified date as he has not produced 10(1) Account and that the scribe and witnesses of the Will were not examined to prove that those lands were in possession of the declarant and that therefore Ex.A-5 was not proved satisfactorily.

8. In my opinion, by the weight of those very reasons the primary tribunal should

have deleted the properties covered by Ex.A-5 from the petitioner's holding. But for Ex.A-5 Will, the lands of Ac.13-05 cts. could not have been considered as being owned by any member of the joint family of the petitioner. When the primary tribunal itself has held that Ex.A-5 Will is not proved, the lands covered by the said Will should not have been included in the joint family holding.

9. Coming to Ex.A-2, it is the petitioner's case that an extent of Ac.36-19 cts. was purchased by L. Ramagopal Reddy, a member of the joint family representing the branch of Rami Reddy through Court auction and that the said property being self-acquired property of L. Ramagopal Reddy should not be included in the joint holding. These facts were referred by the primary tribunal in its order but it has made a cryptic observation that these lands were not included in the holding of the declarant. With regard to the extent of Ac.8-00 covered by Ex.A-8, the petitioner's case is that the said lands were held by as many as 29 ryots belonging to the same village and in support of the said plea, the petitioner filed Ex.A-18 certified copy of the Settlement Register. These facts were also taken note by the primary tribunal and it has made a similar observation to the effect that these lands have not been computed against the petitioner's holding. The petitioner also pleaded that the lands covered by Ex.A-13 were also purchased by Ramagopal Reddy from one Sridevamma and that they should not have been included in the petitioner's holding. The primary tribunal as well as the appellate tribunal have not undertaken any discussion on Ex.A-13.

10. The whole grievance of the petitioner is that while the joint family held only Ac.72-801/2 cts., the primary tribunal has included Ac.73-00 which was held by individual members of the joint family under the abovementioned three documents and by 29 ryots as evident from Exs.A-8 and A-18. Indeed the petitioner has filed a memo before the appellate tribunal for a direction to the primary tribunal to submit to the Court a list of the lands included in the holdings of the petitioner and the Survey numbers in which they are situated. The appellate tribunal did not appear to have taken note of the said memo and no order was passed thereon.

11. From the discussion undertaken above, it is evident that while the petitioner filed a declaration showing the extent of Ac.72-801/2 cts. alone as belonging to the joint family, the primary tribunal has treated the joint family as holding Ac.146-14 cts. Even though the initial order was set aside by the appellate tribunal for dealing with this issue, the order passed by the primary tribunal after remand did not specify as to how it arrived at the total holding of the joint family property as Ac.146-14 cts. It is the plea of the petitioner that if the lands covered by Exs.A-5, A-8, A-12 and A-13 are excluded from the holding of the joint family, the total extent of the joint family will come to Ac.72-801/2 cts. (Ac.73-00 after rounding of). It is also the case of the petitioner that only 50% of the extent covered by Ex.A-2 Will needs to be taken into consideration. In the light of the finding of the primary tribunal that Ex.A-2 Will itself was not proved and there was nothing to show that the petitioner was in possession of the land

covered by Ex.A-2 Will, no part of the land thereunder should have been included in the joint family holding. As noted above, even if the Will is accepted, the petitioner's wife having got only Ac.12-50 cts., the total extent of the land held by the petitioner is within the ceiling limit.

12. For all the abovementioned reasons, both the orders of the primary as well as the appellate tribunals are set aside and it is declared that the petitioner does not hold any surplus land.

13. The civil revision petition is accordingly allowed. No costs.

14. As a sequel to the disposal of the civil revision petition, C.R.P.M.P. No. 7429 of 2002 is closed.