

(2006) 07 AP CK 0019

In the Andhra Pradesh High Court

Case No : S.A. No's. 96 and 119 of 1994 & SA No's. 96 and 119 of 1994

Madipeddi Rajalingam

APPELLANT

Vs

Rudroju Chinna Somaiah

RESPONDENT

Date of Decision : 28-07-2006

Acts Referred:

Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands Act, 1950 — Section 38E

Civil Procedure Code, 1908 (CPC) — Section 144

Transfer of Property Act, 1882 — Section 53A, 99

Citation : (2008) 2 ALT 403

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : Ashok Reddy, for P. Pratap Reddy, for the Appellant; Ghanshyamdas Mandhani, for the Respondent

Final Decision : Dismissed

Judgement

L. Narasimha Reddy, J.—These two second appeals are filed by the defendant in O.S. No. 66 of 1977 on the file of the Principal Subordinate Judge, at Warangal.

2. The respondent filed the suit for the relief of eviction of the appellant and any person claiming through him, from the suit schedule property and for recovery of mesne profits, for a period of three years, immediately preceding the date of filing the suit. He pleaded that the appellant is in possession of the suit schedule property with his permission, and when he was asked to vacate it, the respondent claimed that he purchased the land from one Sarvi Rajaiah, through unregistered sale deed, dated 19-4-1964 and the said Rajaiah in turn, had purchased it from the respondent, through a similar deed dated 15-5-1960. It was also pleaded that the appellant did not produce any documents, even when required to do so. The respondent claimed that the suit schedule land is his ancestral property and it was mortgaged in favour of G. Venkataiah, somewhere in the year 1954, but was redeemed on 5-5-1953. He contended that the appellant has no right or title over the suit schedule property and that he is liable

to be evicted.

3. The appellant filed a written-statement stating that he purchased the land from Sarvi Rajaiah in the year 1964 and that his vendor purchased the land from the respondent in the year 1960. He has also taken the plea of adverse possession. Subsequently, the appellant got the written-statement amended. In addition to the pleas taken by him earlier, he stated that he is entitled for the protection u/s 53-A of the Transfer of Property Act (for short "the T.P. Act"). He further pleaded that he is a protected tenant as defined under A.P. (Telangana Area) Tenancy and Agricultural Lands Act (for short the "Tenancy Act"), and in that view of the matter, the suit is not maintainable in law.

4. The trial Court held that the appellant is not entitled for the benefit of Section 53-A of the T.P. Act, and that he did not perfect his title, by adverse possession. However, it dismissed the suit on the ground that the appellant is the protected tenant, in respect of the suit land and that the suit barred under the Tenancy Act. The respondent filed A.S. No. 140 of 1987 in the Court of Additional District Judge, Warangal, aggrieved by the dismissal of the suit. The appellant filed A.S. No. 154 of 1987 in the same Court assailing the findings recorded by the trial Court, against him. Through a common judgment dated 29-8-1992, the lower Appellate Court allowed A.S. No. 140 of 1987 and dismissed A.S. No. 154 of 1987. S.A. No. 96 of 1994 is filed against the judgment and decree in A.S. No. 140 of 1987, and S.A. No. 119 of 1994 is filed against the judgment and decree in A.S. No. 154 of 1987.

5. Sri K. Ashok Reddy, learned Counsel for the appellant submits that the respondent admitted that the appellant is the protected tenant in respect of the suit land, even before the suit came to be filed. He contends that the respondent has got issued a notice dated 22-2-1977, marked as Ex. A-5, wherein it was clearly stated that the appellant is the protected tenant, and in that view of the matter, there was no basis for the lower Appellate Court in reversing the important finding recorded by the trial Court. Learned Counsel points out that once the record disclosed that the land is the subject-matter of a protected tenancy, the only option for the respondent was, to have recourse to the steps under the Tenancy Act and that the suit is barred. He further contends that even assuming that there is any doubt, as to the protected tenancy of the appellant, as evidenced by Ex. B-1, his plea of adverse possession, or the one, u/s 53-A of the T.P. Act ought to have been upheld.

6. Sri Ghanshyam Das Mandhani, learned Counsel for the respondent, on the other hand, submits that the appellant did not take the plea that he is the protected tenant, in respect of the suit land, nor Ex. A-1 contains his name. He urges that when the appellant himself was not sure, as to whether he was protected tenant, there was no basis for the trial Court in dismissing the suit, and that the Lower Appellate Court had corrected the error. Learned Counsel further points out that the plea of part performance on the one hand, and adverse possession on the other hand, cannot go together, and that in fact, they are

mutually exclusive. He contends that the appellant failed on both the counts.

7. Sri Mandhani, had also pointed out that even by the time the second appeal came to be filed, the decree passed by the lower Appellate Court was executed, the possession of the land was secured through Court, and that the respondent had transferred substantial portion of the suit land to third parties.

8. The strange feature of this case is, that neither the appellant nor the respondent were certain, as to their respective rights vis-a-vis the land. Both of them competed with each other, in being inconsistent with the pleas from time to time. Naturally, the effect thereof had percolated into the proceedings before the Courts.

9. In his plaint, the respondent herein did not delve much into his relationship with the appellant. It was vaguely stated that the appellant was cultivating the land, with his permission, and prayed for recovery of possession. The appellant, on the other hand, pleaded that he purchased the land from Sarvi Rajaiah, who in turn, is said to have purchased from the respondent. Both the transactions were not registered. On the basis of these pleadings, the trial Court framed the following issues.

- (1) Whether the defendant perfected his title by adverse possession?
- (2) Whether the plaintiff is entitled to mesne profits?
- (3) Whether the suit is bad for nonjoinder of Sarvi Rajaiah?
- (4) Whether the suit is not properly valued and Court Fee paid not correct?

10. Subsequently, the appellant got his written-statement amended. The pleas u/s 53-A of the T.P. Act and his being protected tenant were raised. The respondent filed a rejoinder. This resulted in framing of the following additional issues:

- (1) Whether the defendant is entitled to protection u/s 53-A of the Transfer of Property Act?
- (2) Whether the defendant is protected tenant of suit land and this Court has no jurisdiction?
- (3) Whether the defendant is estopped from claiming as protected tenant?

11. The respondent alone deposed as P.W. 1, and no other witness was examined on his behalf. He filed Exs. A-1 to A-5. Exs. A-3 and A-5 are notices got issued by the respondent to the appellant. Ex. A-1 is the reply to Ex. A-5. Ex. A-2 is an endorsement dated 5-5-1953, on the mortgage deed. Ex. A-4 is an affidavit, which is not of much importance.

12. On behalf of the appellant, D.Ws.1 to 11 were examined and Exs. B-1 to 28 were marked. Important among them is Ex. B-1, certified copy of the final tenancy register, maintained under the T.P. Act. Ex. B-4 is the unregistered sale deed, through which, Rajaiah is said to have purchased the suit land from the

respondent. Ex. B-2 is the agreement of sale between Rajaiah and the appellant. Ex. B-5 is the certified copy of the Khasra Pahani, and Exs. B-6 to B-12 are copies of pahanies from the year 1955 to 77. Ex. B-14 is the pattadar passbook issued to the appellant. Exs. B-16 to 20 are land revenue receipts. Exs. B-21 to 27 are the certified copies of pahanies for the years 1969-76.

13. The trial Court answered almost all the issues, in favour of the respondent, but dismissed the suit by answering additional issues 2 and 3, in favour of (sic. against) the respondent. The appellate Court reversed the findings on additional issues 3 and 4 and sustained the findings on other issues.

14. The principal question around which, the entire controversy revolves in these matters is, as to whether the appellant is the protected tenant, in-respect of the suit land. Under the Tenancy Act, a tenant, with a particular standing and subject to certain limitations, is recognized as protected tenant. Detailed procedure is prescribed for recognizing an individual, as a protected tenant. Once such a status is conferred, it entails in several consequences including the one, of conferring of ownership rights, u/s 38-E thereof. The Act was one of the steps in the agrarian reforms and its provisions were upheld, in several proceedings before this Court and the Supreme Court. Any person, who is conferred with the status of protected tenancy, is accorded protection, beyond the scope of ordinary law. For example, if a protected tenant or his legal representative is dispossessed from the land, he is entitled to be restored possession, irrespective of the lapse of the time without the necessity of filing a suit for this purpose. The law of limitation is almost inapplicable, in such matters. Similarly, the status of protected tenancy, once conferred, cannot be meddled with, at a later point of time.

15. In the instant case, the respondent got issued a notice, marked as Ex. A-5, before filing the suit. It was stated that the appellant herein is their protected tenant and he was required to vacate the land. In the reply notice (Ex. A-1), the appellant asserted his own rights of ownership and disputed the existence of such tenancy. When it came to the pleadings before the Court, both of them changed their stands. While the respondent stated in his plaint that the appellant is in permissive possession of the land, the latter pleaded in his amended written-statement that he is the protected tenant. The uncertainty of this nature, appears to be the result of the fact that, neither the respondent nor the appellant had any direct dealing with each other, vis-a-vis the land.

16. The ancestor of the respondent mortgaged the property, some time during the year 1944, under the registered mortgage deed. The possession of the land appears to have been delivered to the mortgagee. The mortgagee in turn, leased, it, in favour of one Madipeddi Rajaiah, s/o. Veeraiah, who is said to be the paternal grandfather of the appellant. Since tenancy was in vogue, during the notified period under the Act, the name of Rajaiah was entered as a protected tenant, and such an entry became final. The fact that the mortgage was redeemed on 5-5-1953, did not have any bearing on the protected tenancy,

conferred upon Rajaiah.

17. Obviously, not being aware of these developments, the respondent appears to have sold the land through an unregistered sale deed, dated 15-5-1960, marked as Ex. B-4, in favour of Sarvi Rajaiah, and Rajaiah in turn, entered into an agreement of sale with the appellant on 19-4-1964, under Ex. B-2. It is doubtful, as to whether the appellant herein was described as protected tenant in Ex. A-5, by the respondent, being conscious of the entries in the revenue records, or just to explain away the fact that the appellant is in possession of the land, as a prelude, to file -a suit to recover the possession. The deposition of P.W.1 that he gave the land to the appellant for lease has, confounded the confusion that prevailed up to that date.

18. It is true that the name of the appellant does not find place in Ex. B-1, the certified copy of the extract of the final register of protected tenancies. A perusal of Ex. B-1, discloses that the mortgagee of the land was shown as the owner, and the grandfather of the appellant by name Madipeddi Rajaiah was shown as the protected tenant. The question as to whether the appellant can be treated as the lineal descendant of the protected tenant, of Sri Rajaiah and if so, to what extent is beside the issue in the present proceedings. However, once the record discloses that the suit land is the subject-matter of protected tenancy and the defendant claims the rights of the protected tenant, the suit gets barred u/s 99 of the T.P. (sic. Tenancy) Act. Even the enquiry as to whether the appellant herein is the lineal descendant or legal heir of the recorded protected tenant, is a matter which is required to be dealt with under the Tenancy Act and not in the proceedings in the Civil Courts. Therefore, the finding recorded by the trial Court that the suit is barred under the Act deserves to be sustained.

19. Though it is not that essential to deal with the other contentions, reference needs to be made to the pleas taken by the appellant, about the adverse possession and doctrine of part performance. On both counts, the appellant must fail.

20. The plea of adverse possession is available only to such person, who does not acquiesce in the title of the person pleading ownership. The very concept of adverse possession connotes that it commenced in wrong and is maintained against the right. Acquiescence in the title of the owner would not go along with the plea of adverse possession. In categorical terms, the appellant pleaded that the land was purchased by Sarvi Rajaiah from the respondent and thereafter he purchased it. This implies that the appellant admitted that the respondent had title to the land and it is yet to pass on, to himself through his vendor. Therefore, the appellant cannot take the plea of adverse possession.

21. Coming to the plea of part performance, a perusal of Section 53-A of the T.P. Act discloses that it is available only to the person, who entered into transaction with the previous owner. That means, there must exist a contract of sale between the person in possession and the one, who seeks to recover possession

from him. The only latitude that Section 53-A had provided is, that the plea can be raised against the owner, or anybody claiming through him. It is not available to the person claiming through the holder of agreement of sale from the original owner. The vendor of the appellant i.e. Sarvi Rajaiah is yet to acquire title. Rajaiah may be entitled to the benefit of Section 53-A of T.P. Act, provided Ex. B-4 was true. The appellant, being a person claiming through Rajaiah, is not entitled to the benefit of part performance. It must be said to the credit of the Courts below, that they have undertaken thorough discussion on proper lines on these aspects. In that view of the matter, the Second Appeal No. 119 of 1994 deserves to be dismissed.

22. It is true that the decree of eviction passed against the appellant must be set aside, since it has emerged that the land is the subject-matter of protected tenancy. Though the declaration of Law and its application to the facts of the present case does not present any difficulty, formulation of the relief is fraught with its own difficulties. The possession of the land was recovered from the appellant through execution. The land is not in the same form, as it existed, when it was recovered. Several third party rights have accrued. The appellant is also much to blame, for such state of affairs. Restitution of the land to the appellant under these circumstances would result in several complications. Faced with this problem, this Court posted the matter for being mentioned, to ascertain the views of the parties, through their Counsel, as to whether the alternative relief of providing compensation to the appellant can be examined. The re-action of both the parties was in the affirmative and both of them left the determination and procedure for recovery of the compensation, to the Court.

23. For the foregoing reasons, the Second Appeal No. 96 of 1994 is allowed, directing that

(a) the respondent herein shall pay a sum of Rs. 50,000/- (fifty thousand) per acre, for the suit schedule land to the appellant, in lieu of restitution and restoration of possession of the said land. The amount shall be deposited into the trial Court within two months from today.

(b) On such deposit, it shall be open to the appellant to withdraw the same.

(c) In case, the respondent fails to pay the amount, as indicated above, the decree passed against the appellant in O.S. No.66 of 1977 shall stand set aside, and he shall be entitled to institute the proceedings u/s 144 of C.P.C., for restitution of the possession of the land, in accordance with law.

Second Appeal No. 119 of 1994 is dismissed. There shall be no order as to costs.