

(2002) 12 AP CK 0107
In the Andhra Pradesh High Court
Case No : Appeal No. 1079 of 1987

Makam Pedda Gangaiah and Others	Vs	APPELLANT
Potta Venkata Subba Reddy and Others		RESPONDENT

Date of Decision : 23-12-2002

Acts Referred:

Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 — Section 16, 17, 26, 7, 7(1)
Registration Act, 1908 — Section 47
Transfer of Property Act, 1882 — Section 53A

Citation : (2003) 6 ALT 577

Hon'ble Judges : Gopala Krishna Tamada, J; B.S.A. Swamy, J

Bench : Division Bench

Advocate : E. Ayyapu Reddy, for the Appellant; Hemendranath Reddy, for C. Pattabhi Rama Rao, for Respondent Nos. 2, 3, 6 to 8 and 10 to 16, for the Respondent

Final Decision : Dismissed

Judgement

B.S.A. Swamy, J.—Aggrieved by the Judgment and Decree in O.S.No. 14 of 1984 on the file of the then Subordinate Judge, now Senior Civil Judge, Kadiri, dated 12th February, 1987 in dismissing the suit for specific performance on the ground that unless the proceedings under A.P. Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 hereinafter called as "Land Ceiling Act" are not finalised and unless it is established that the agreement of sale entered into on 28-11-1971 conveying the suit schedule property is not intended to defeat the provisions of the Land Ceiling Act, granting the equitable relief of specific performance does not arise, the present Appeal is filed.

2. The facts of the case are that in the State of Andhra Pradesh, A.P. Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 came into force with effect from 01-01-1975. u/s 7 of the Act, if any person has transferred his immovable property by way of sale, gift, usufructuary mortgage, exchange, settlement, surrender or in any other manner what-so-ever on or after 24th January, 1971,

but before the notified date (i.e.) 2nd May, 1972, such transfer was declared as voidable transactions and the transferor should prove that he has not transferred the property with a view to avoid or defeat the objects of any law relating to a reduction in the ceiling on agricultural holdings and if he fails to prove that the transfer was effected not in anticipation of the Ceilings Act, such transfer or creation of trust, shall be disregarded for the purpose of the computation of the ceiling area of such person. u/s 7(2) of the Act all transactions that have taken place on or after 2nd May, 1972 and before the notified date, in contravention of the provisions of the Andhra Pradesh Agricultural Lands (Prohibition of Alienation) Act, 1972 shall be null and void. u/s 7(7) of the Act, if any question arises whether any transfer or creation of a trust effected on or after the 24th January, 1971 had been effected in anticipation of and with a view to avoiding or defeating the objects of any law relating to a reduction in the ceiling on agricultural holdings among other things shall be determined by the Tribunal, after giving an opportunity of being heard to the effected parties, and its decision thereon shall, subject to an appeal and a revision under this Act, be final. u/s 17 of the Act. no person whose holding, and no member of family unit, the holding of all the members of which in the aggregate, is in excess of the ceiling area as on the 24th January, 1971 or at any time thereafter, shall on or after the notified date, alienate his holding or any part thereof by way of sale, lease gift, exchange, settlement, surrender, usufructuary mortgager or otherwise, or effect a partition thereof. It may be useful to extract Section 17 of the Act for better understanding of the matter:

"17. Prohibition of alienation of holding:-

(1) No person whose holding, and no member of family unit, the holding of all the members of which in the aggregate, is in excess of the ceiling area as on the 24th January, 1971 or at any time thereafter, shall on or after the notified date, alienate his holding or any part thereof by way of sale, lease, gift, exchange, settlement, surrender, usufructuary mortgage or otherwise, or effect a partition thereof, or create a trust or convert on agricultural land into non-agricultural land, until he or the family unit, as the case may be, has furnished a declaration u/s 8, and the extent of land, if any, to be surrendered in respect of his holding or that of his family unit has been determined by the Tribunal and an order has been passed by the Revenue Divisional Officer under this Act taking possession of the land in excess of the ceiling area and a notification is published under Section-16; and any alienation made or partition effected or trust created in contravention of this section shall be null and void and any conversion so made shall be disregarded.

(2) For the purpose of determining whether any transaction of the nature referred to in Sub-section (1) in relation to a land situated in this State, took place on or after the notified date the date on which the document relating to such transaction was registered shall, notwithstanding anything in Section 47 of the Registration Act, 1908, be deemed to be the date on which the transaction

took place whether such document was registered within or outside the State.

(3) The provisions of Sub-section (1) shall apply to any transaction of the nature referred to therein execution of a decree or order of a Civil Court or of any award or order of any other authority."

From the above, it is seen that after 24th January, 1971 the persons or members of any family unit who are holding the lands in excess of the ceiling limit are prohibited from alienating the properties till the declarations filed by them attained finality.

3. Under Section-26 of the Act, the proceedings under the said Act, shall not be called in question in any suit or application and no injunction shall be granted by any Court in respect of any action taken or to be taken by such officer or authority in pursuance of any power conferred by or under this Act.

4. Keeping the above legal principle, we examine the merits of the case.

5. The case of the appellants herein is that Defendants 1 to 3 executed an agreement of sale on 29-11-1971 in favour of appellants 1 to 7 to sell Ac.43-00 of land for a consideration of Rs. 45,000/- and on the same day the respondents have put them in possession by taking Rs. 30,000/- as advance and the appellants 1 to 7 agreed to pay the balance amount as and when respondents 1 to 3 demand or as and when they secure the monies to complete the transaction and thereafter, they started cultivating the land. It is also their case that on 1-1-1974 the land was given in lease for a period of five years under a registered lease deed in favour of appellants 8 to 14, since then the lessees are cultivating the lands. Subsequently, after notified date defendants 1 to 3 filed declarations and they were also declared as surplus landholders. In fact, the Revenue Divisional Officer has taken possession of the suit schedule lands and distributed to the landless poor persons. But on a revision petition filed by the appellants herein the proceedings of the Revenue Divisional Officer taking possession and distributing pattas were set aside on the sole ground that no notice was given to the appellants. It is also the case of the appellants that they paid another sum of Rs. 5,000/- on 11-3-1978 agreeing to pay the remaining balance on demand by defendants. What transpired between the appellants and the defendants is not known. But as per the plaint averments, the respondents refused to execute registered sale deed. This suit was laid in the year 1984 seeking the relief of specific performance of the agreement and to direct the respondents to execute the sale deed in their favour.

6. The respondents in their written statement categorically stated that the agreement of sale in a sham and nominal transaction and no consideration has ever passed under the suit agreement of sale and the defendants 1 to 3 have not received any consideration. There was an understanding at the time of agreement that if the properties are exempted under the provisions of Land Reforms Act then only a regular sale deed would be executed after receiving consideration and in pursuance of such an understanding efforts were made

before the Land Reforms Tribunal, Penukonda for upholding the suit agreement and claiming exemption, but the Tribunal rejected it. The second defendant went ahead and stated that the suit agreement was never intended to be operative and only with a view to claim exemption of the lands before the Land Reforms authorities it was brought into existence and they never lost their possession over the property. It is also not true to say that they have received any amount from the appellants and the lease deed executed between the plaintiff Nos. 1 to 7 and plaintiff Nos. 8 to 14 are collusive documents.

7. The Senior Civil Judges who were in office went on framing issues, reframing of issues, again additional issues so on and so forth for a long time.

8. Appellant No. 4, who is plaintiff No. 5 in the court below has been examined as P.W.1 and three more witnesses have been examined on their said and as many as 46 documents were marked on their behalf. While D-3 and after his death D-27 were examined as D.W.1 and D.W.2, no documents were marked.

9. This Court need not refer to the findings recorded by the trial court on several issues framed by it from time to time. We are only concerned with the issue No. 5, which was originally framed (i.e.) whether the plaintiffs are entitled to specific performance, if so, against which of the defendants? and the additional issues framed on 4-4-1986 (i.e.) whether by virtue of Section-7 of the Land Ceiling Act the agreement of sale set up by the plaintiffs is void and unenforceable?

10. The learned trial Judge having considered the issue elaborately held against the plaintiffs and left the question open to be agitated by the plaintiffs before the Land Reforms Tribunal, since the matter is pending before that Tribunal. As far as the relief is concerned, the learned Judge held that since the relief of specific performance being an equitable relief, it cannot be granted without there being a decision u/s 7(7) of the Land Reforms Act (i.e.) whether the transaction is effected to defeat the provisions of Land Ceilings Act or not, and ultimately the suit was dismissed. Aggrieved by the said judgment and decree, the present appeal is filed.

11. We understand that during the pendency of the appeal, the Land Reforms Tribunal seemed to have disposed of the declaration and held that the transaction is a bona fide one and not hit by Section 17 of the Land Reforms Act.

12. Now the Appellants filed C.M.P.No. 18356 of 2002 seeking permission of the court to receive the said order as additional evidence in the appeal.

13. Mr. Hemandranath Reddy, counsel appearing for the respondents brought to our notice that they have already filed an appeal against the said order i.e., L.R.A.5 of 1996 and they have also filed I.A.No. 83 of 1996 seeking suspension of the said order. The Land Reforms Appellate Tribunal granted stay of operation of the order on 15-9-1996 and the said order was made absolute on 28-11-2002. Hence, the appellants cannot contend that the order of the land Reforms Tribunal became final, since it is subject matter of an appeal and they cannot take any

advantage of the order passed by the Tribunal.

14. The only issue that has to be decided in this case is:

"Whether the agreement of sale said to have been executed by Defendant Nos. 1 to 3 in favour of appellants 1 to 7 is hit by Section 17 of the Act or not? And whether the transaction is a genuine and bona fide one?

15. We have gone through the evidence as well as the exhibits, we would like to point out that the agreement was brought into existence only to defeat the provisions of the Land Reforms Tribunal for the following reasons.

(1) According to the appellants the agreement is dated 29-11-1971. As per Section 7(1) of the Act any transfer of immovable agricultural land, unless it is proved that such a transfer was effected bona fide, but not to defeat the provisions of the Act, has to be disregarded and such land has to be included in the holding of the transferor.

(2) If any dispute arises whether it is a bona fide transfer or not, u/s 7(7) of the Act, the Land Reforms Tribunal has to decide the issue after giving notice to all the parties concerned.

In this Case, we have seen the order passed by the Land Reforms Tribunal. The Tribunal neither considered the issue nor recorded a finding that the transaction was effected not to defeat the provisions of the Land Ceilings Act. The Tribunal proceeded solely on the ground that an agreement of sale entered into between the parties coupled with the part performance u/s 53-A of the Transfer of Property Act, need not be registered as per the provisions of Registration Act. Except this the Tribunal did not go into the aspect whether the transaction was entered into affecting the provisions of the Act or not;

(3) As per the version of the appellants, the property was sold to all the seven people under the same agreement Ex.A-1 on 29-1-1971 and it is their case that they paid Rs. 30,000/- on that day and they were put in possession of the property. The agreement do not say the extents of land purchased by each of them since they do not form part of a single family. But the cat is out of the bag, from the endorsement Exs.A-2 on the reverse of the agreement wherein they have stated that they have paid Rs. 30,000/- on 10-1-1973 and they have paid Rs. 5,000/- under the endorsement dated 11-3-1978. Further they agreed to pay the remaining amount as and when the defendants demand the same. They also filed alleged cist receipts in this case, they are Exs.A-5 to Exs.A-10. It is interesting to see that the appellants paid taxes and also land revenue as per the endorsement made by Village Officer in separate books for 1974 and 1975 in the name of each of the appellant and only for the year 1978 the receipts were issued in an appropriate forum. All these appellants paid land revenue on 7-2-1978 as per the land revenue receipts issued by the Village Administrative Officer in the name of each of the appellant. If the Village Administrative Officer is acknowledging the land revenue paid by them by making endorsement in a

note book, we do not find any reason to deviate from the procedure in giving a receipt for the year 1978. Further, when the land was transferred in the name of the appellants in the year 1971, the most authentic documentary evidence would be the adangals where the possession and the ownership is reflected, but they have not produced any evidence whatsoever to that effect. Further, from the evidence of Plaintiff No. 5 as P.W.1 it is seen that they are carrying earth to the lands of D-2 on their cots for wages. It is also their case that one Sadashiva Reddy, son-in-law of respondent No. 2, was the scribe of the agreement. In his evidence nowhere he stated how they could secure Rs. 30,000/- and whether they are having any means to purchase these lands from the avocation they are doing. It is highly improbable to believe that they got the means to purchase the lands.

16. For all these reasons, we hold that we are of the prima facie opinion that this agreement of sale-Ex. A-1 was brought into existence to defeat the provisions of the Land Ceilings Act. Anyhow, since a regular appeal filed by the respondents is pending before the Land Reforms Appellate Tribunal, the Appellate Tribunal shall go into the matter independently without being obsessed by the observations made by this Court, in accordance with law. In the event of the appellants succeeding in the appeal, it is open to them to take steps that are open to them in law for getting the properties transferred in their names.

17. In the light of the foregoing discussion, we are of the opinion that the finding recorded by the trial court with regard to the relief portion is just and proper and it does not call for any interference from this Court.

18. Accordingly, the appeal is dismissed. But in the circumstances, there shall be no order as to costs. Till the appeals are disposed of by the Land Reforms Appellate Tribunal, status quo as on to-day with regard to possession of lands shall be maintained.