
(2008) 08 AP CK 0057
In the Andhra Pradesh High Court
Case No : CRP No. 4695 of 1999

Mavuri Satyavathi and Another	Vs	APPELLANT
Penkey Venkata Rao (died) and Others		RESPONDENT

Date of Decision : 28-08-2008

Acts Referred:

Andhra Pradesh (Andhra Area) Tenancy Act, 1956 — Section 13, 16, 6
Constitution of India, 1950 — Article 227

Citation : (2008) 6 ALD 305 : (2009) 1 ALT 47

Hon'ble Judges : P.S. Narayana, J

Bench : Single Bench

Advocate : S. Agastya Sharma, for the Appellant; V.V.S. Ravi Kumar, for the Respondent

Final Decision : Dismissed

Judgement

P.S. Narayana, J.—The civil revision petition is filed as against an order made in ATA No. 9 of 1996 on the file of III Additional District Judge, Kakinada, dated 13.4.1999.

2. Sri S. Agasthya Sarma, learned Counsel representing revision petitioners had taken this Court through the findings recorded by the Special Officer-cum-Principal District Munsif; Kakinada, in ATC No. 30 of 1988 and also the findings recorded by the learned III Additional District Judge, Kakinada, the appellate authority, in ATA No. 9 of 1996 and would maintain that having disbelieved the evidence of PW.2, recording such findings confirming tenancy rights on the respondents cannot be sustained. The learned Counsel also incidentally referred to the statutory presumption and relied on Section 6 of the A.P. (Andhra Area) Tenancy Act, and further would maintain that to reverse such presumption, no acceptable evidence as such had been placed before the Court and in the light of the same, the orders made by both the Primary Tribunal and the Appellate Authority are liable to be set aside. While further elaborating his submissions the learned Counsel placed before this Court additional grounds raised pointing out

certain subsequent events and also would maintain that since this memorandum of additional grounds had been duly served on Sri E.V.V.S. Ravi Kumar, the learned Counsel representing the respondents the specific grounds raised relating to the continuous default committed by the alleged tenants during the pendency of the litigation also can be taken note of and in view of the same instead of confirming the order which may amount to multiplying litigations, it would be just and proper to make an order of remand for further adjudication of the question in controversy to the effect that in the light of the continuous default committed by the alleged tenants in payment of rents whether such parties would be entitled to the reliefs which had been granted by both the Primary Tribunal and the Appellate Authority. The Counsel specifically pointed out to the relevant portions of the additional grounds, which had been submitted to this Court.

3. On the contrary, Sri E.V.V.S. Ravi Kumar, the learned Counsel representing respondents would maintain that concurrent findings had been recorded by both the Primary Authority and also the Appellate Authority as well under the provisions of the A.P. (Andhra Area) Tenancy Act, and such findings normally not to be disturbed in a civil revision petition. The learned Counsel also would maintain that the present revision petitioners also filed a suit O.S. No. 555 of 1988 on the file of the Principal District Munsif, Kakinada, on the ground that these tenants, in whose favour the tenancy rights had been declared, are only trespassers, but however, for the reasons best known the said suit was withdrawn. While further elaborating his submissions the learned Counsel would point out that it may be that the additional grounds had been served on him as Counsel representing respondents, but however, proper procedure praying leave of the Court before relying upon such additional grounds, in fact, had not been prayed for. Further, the learned Counsel would point out that even otherwise the remedy, if any, available to the petitioners under the provisions of the A.P. (Andhra Area) Tenancy Act, would be to maintain an independent application praying for eviction on the ground of default, if any, and when the tenants approached the Tenancy Tribunal for declaration of certain tenancy rights, in such a proceeding the said question cannot be gone into and no relief in favour of the landlords on the ground of default can be granted in such a proceeding initiated by the tenants. The learned Counsel also pointed out to Section 13 of the A.P. (Andhra Area) Tenancy Act, in this regard.

4. Heard the Counsel on record, perused the reasons recorded by the Primary Tribunal and also the reasons recorded by the Appellate Authority.

5. In the light of the submissions made by the Counsel on record the following points arise for consideration in this civil revision petition.

(1) Whether the concurrent findings recorded by the Special Officer-cum-Principal District Munsif, Kakinada, in ATC No. 30 of 1988 and the learned III Additional District Judge, Kakinada, the Appellate Authority in ATA No. 9 of 1996 to be disturbed or to be confirmed in the facts and circumstances of the case ?

(2) Whether the subsequent events on the continuous committing of default in payment of rents raised in the additional grounds to be considered in the present proceeding in the facts and circumstances of the case ?

(3) If so, to what relief the parties would be entitled to ?

6. For the purpose of convenience, the parties hereinafter would be referred to as petitioner and respondents as arrayed in ATC No. 30 of 1988 on the file of the Special Officer-cum-Principal District Munsif, Kakinada.

7. Point No. 1:

It appears from record that the petitioner in ATC Penkey Venkata Rao died during pendency of ATA No. 9 of 1996 and the legal representatives were brought on record by Order dated 30.11.1998 in I.A. No. 1293 of 1998. The said ATC No. 30 of 1988 was filed u/s 16 of A.P. (Andhra Area) Tenancy Act, 1956 (hereinafter in short referred to as "the Act" for the purpose of convenience) to declare the petitioner as statutory tenant and to grant an injunction against the respondents and their henchmen from interfering with the peaceful possession and enjoyment of the schedule property by the petitioner. Before the Primary Tribunal the Special Officer-cum-Principal District Munsif, Kakinada, the evidence of PWs.1 to 4 and also RWs.1 and 2 had been recorded, Exs.A.1 to A.3, Exs.B.1 to B.10 had been relied upon and the Primary Tribunal, on appreciation of the oral and documentary evidence, came to the conclusion that the petitioner is bound to succeed and accordingly allowed the same declaring the petitioner as cultivating tenant of the schedule property. Aggrieved of the same, respondents 2 and 3, who were added in ATC No. 30 of 1988 as per orders in IA No. 3118 of 1988 dated 19.1.1989, carried the matter by way of appeal ATA No. 9 of 1996 on the file of III Additional District Judge, Kakinada, the Appellate Authority, under the Act. The appellate authority having formulated the point for consideration at Para 5, recorded reasons at Paras 6, 7 and 8 and ultimately dismissed the appeal. Being aggrieved of the same, the present civil revision petition had been preferred by the said appellants in the ATA aforesaid.

8. As already specified supra the petitioner in the ATC shown as first respondent in ATA since died during the pendency of ATA, the legal representatives were brought on record and it is needless to say that the said legal representatives are the respondents in the present civil revision petition.

9. It is averred in the ATC that the father of the petitioner Appanna was cultivating tenant of the petition schedule property and after his death the petitioner had been continuing as tenant and they were the tenants for the last 40 years. The yearly maktha payable for the schedule property was 22 1/2 katta bags and the same was payable on or before 15th of January every year. The lease was oral one and there was an understanding between them to pay taxes to the schedule property by the tenant and he had been regularly paying taxes to the schedule property. There was no habit of passing receipt by the landlord. It is further averred that the landlord tried to sell away the schedule property in the

year 1982 for an amount of Rs. 21,000/- per acre and the petitioner paid an amount of Rs. 23,000/- on 19.5.1982 and obtained unstamped receipt with a belief that the landlord would not cheat him. Subsequently, the first respondent demanded the petitioner to vacate the schedule property with an intention to sell the schedule property to others and also engaged some workers to evict him high handedly . Respondents 2 and 3 were the daughters of first respondent and they never cultivated the petition schedule property. Hence, the petition.

10. Respondents 2 and 3 in the said ATC filed counter. Respondent No. 1 had not chosen to contest the matter.

11. The averments made in the ATC had been denied. Respondent No. 1 executed a gift deed on 5.9.1969 for an extent of Ac. 1-50 cents in favour of the second respondent and subsequently on 24.4.1978 the adopted son of the first respondent conveyed an extent of Ac.0-43 cents to the third respondent by way of gift deed. In the gift deed it is stated that in the partition between the first respondent and the adopted son the property was fell to his share. Respondents 2 and 3 had not leased out the schedule property to the petitioner. Under the guise of injunction, the petitioner was trying to trespass into the schedule property with the help of police. The Principal District Munsif, Kakinada granted interim injunction in I.A. No. 2083 of 1988 in O.S. No. 555 of 1988 dated 18.8.1988 restraining the petitioner and his brother and the first respondent from interfering with their possession and enjoyment. Since the petitioner had been giving troubles in spite of injunction, respondents 2 and 3 filed an application for appointment of Commissioner and receiver and also sought for police assistance and, hence, the Tribunal directed both the parties to maintain status quo when the crop was ripe for cutting. In spite of that, the petitioner cut and carried away the crop. They also filed an application to punish the petitioner for violating the orders of the Court.

12. To substantiate his case, the petitioner examined himself as PW.1 and PW.2, PW.3 and PW.4 also were examined, Exs.A.1 to A.3 were marked. The second respondent examined herself as RW1 and the husband of the third respondent was examined as RW.2, Exs.B.1 to B.10 were marked.

13. Before the Special Officer-cum-Principal District Munsif, Kakinada, the following points were formulated for consideration.

- (1) Whether the petitioner is a cultivating tenant in the schedule property?
- (2) Whether there is any agreement between the petitioner and 1st respondent to sell the schedule property ?
- (3) Whether the payment of amount under a receipt dated 19.5.1982 is true, valid and binding on the respondents ?
- (4) To what relief ?

14. On appreciation of evidence available on record, the learned Special Officer

recorded reasons in detail and came to the conclusion that O.S. No. 555 of 1988 was filed only as a counterblast to the present case and in order to deny the legitimate rights and accordingly declared the petitioner as cultivating tenant of the petition schedule property. However, while answering points 2 and 3 the learned Special Officer, the Primary Tribunal, held that Ex.A.2 is not a valid agreement of sale between the parties and the petitioner failed to prove that he had paid an amount of Rs. 23,000/- under Ex.A.2 to the first respondent and, hence, held the said points in favour of the respondents in the ATC and against the petitioner, but however, in the light of the findings recorded in relation to point No. 1, allowed the petition without costs declaring the petitioner as cultivating tenant of petition schedule property.

15. As already aforesaid, the matter was carried by way of appeal to the learned III Additional District Judge, Kakinada, and the Appellate Authority at Para 5 formulated the point for consideration "whether the first respondent could establish tenancy rights in the land," and on appreciation of oral and documentary evidence came to the conclusion that in the light of the evidence available on record, the findings recorded by the learned Special Officer to be confirmed and accordingly dismissed the appeal. Aggrieved by the same, the present civil revision petition had been preferred.

16. It is needless to say that both the Special Officer and also the Appellate Authority on appreciation of oral and documentary evidence available on record had recorded concurrent findings. It is needless to say that in such cases normally this Court while exercising jurisdiction under Article 227 of the Constitution of India would not interfere, especially, when it is a matter concerned with just re-appreciation of evidence and particularly in a case where concurrent findings had been recorded by both the Primary Tribunal and Appellate Authority. Hence, this Court is of the considered opinion that there are no grounds to interfere with such concurrent findings recorded and accordingly the said findings are hereby confirmed and point No. 1 is answered accordingly.

17. Point No. 2:

It is no doubt true that while putting forth certain additional grounds by way of additional memorandum of grounds of revision, the learned Counsel representing the revision petitioners had not moved any application praying for permission or leave of this Court to raise such grounds. However, the said grounds had been duly served on Sri E.V.V.S. Ravi Kumar and the learned Counsel representing the respondents on 30.1.2007 had duly received a copy.

18. Be that as it may, the specific ground raised that during the pendency of proceedings the present tenants failed to pay rents or deposit rents continuously for sufficiently a long time, this question even if to be taken as true in the present proceeding, which had been set into motion by the original tenant who is no more, in such a proceeding this question cannot be effectively gone into for the reason that in such proceeding no positive relief in favour of the landlords

relating to eviction can be granted in the light of the clear language of Section 13 of the Act aforesaid. This Court is not inclined to express any opinion relating to this aspect, since this is a factual controversy whether the present tenants had made any payments to the landlords or whether a continuous default had been committed as stated by the landlords. This question may have to be decided in an appropriate proceeding.

19. Hence, in view of the facts and circumstances, liberty is given to the petitioners to agitate the said question in appropriate proceeding in accordance with law under the provisions of the Act. Except giving this liberty nothing further can be granted in the present civil revision petition.

20. Point No. 3:

In the light of the findings recorded above, the civil revision petition shall stand dismissed subject to the aforesaid observations and in the peculiar facts and circumstances of the case no costs.