(2007) 04 AP CK 0021

In the Andhra Pradesh High Court

Case No : AS No. 359 of 2002

Mettu Pentaiah (Died) by LR — APPELLANT

Vs

P. Veeraiah (Died) by LRs. and Others — RESPONDENT

Date of Decision : 05-04-2007

Acts Referred:

Andhra Pradesh Rights in Land and Pattadar Pass Books Act, 1971 — Section 51, 55, 5A, 5A(2), 5A(4)
Andhra Pradesh Rights in Land and Pattadar Pass Books Rules, 1989 — Rule 22(5)
Land Acquisition Act, 1894 — Section 12(2), 30, 31, 4(1), 54
Registration Act, 1908 — Section 47
Specific Relief Act, 1963 — Section 31, 34
Transfer of Property Act, 1882 — Section 3

Citation : AIR 2007 AP 284 : (2007) 4 ALD 443 : (2007) 4 ALT 722 : (2007) 2 APLJ 119

Hon'ble Judges : G. Yethirajulu, J;A. Gopal Reddy, J

Bench : Division Bench

Advocate : Pramada, for the Appellant; V. Tulasi Reddy, for Respondent Nos. 2, 4 and 5 and Government Pleader for Appeals, for the Respondent

Judgement

A. Gopal Reddy, J.—This appeal u/s 54 of the Land Acquisition Act, 1894 is directed against the award and decree passed by the Additional District Judge, Medak at Sangareddy dated 30-8-2001 in OP No. 682/1991.

2. The facts giving rise to filing of this appeal are briefly stated thus: An extent of Acs.8-26 guntas of land in S.No. 372/E situate at Tellapur Village was acquired by HUDA. The claimants participated in the award enquiry by putting up their claims. The Land Acquisition Officer after determining the compensation payable to the land owners referred the matter to the Civil Court under Sections 30 and 31 of the Land Acquisition Act, 1894 (for short "the Act"), since there was a dispute with regard to title of the property. On reference being made to the Civil Court, the claimants appeared and adduced evidence. Based upon the oral and documentary evidence, the reference Court by its impugned order held that the share of the claimant No. 5, which comes to Acs.3-331/2 guntas be apportioned

to the shares of the claimants 1 and 2 as against the claim of claimant No. 3 since claimants 1 and 2 purchased the property earlier to claimant No. 3 and rejected the sale transaction of claimant No. 3, which took place at later point of time. It further held that claimant No. 7 is entitled to an extent of Acs.3-331/2 guntas; claimant No. 8 is entitled to balance of compensation and claimant No. 6-President, Agricultural Cooperative Society, Tellapur, shall have the priority over compensation of claimants 1 and 2 since the loan transaction is not disputed. Being aggrieved by the apportionment as referred to above, claimant No. 3 filed an appeal before this Court. During the pendency of the appeal, he died and his LRs were brought on record in AS MP No. 1741/2005 dated 29-8-2005.

3. In spite of service of notice on respondents 6 and 7/claimants 1 and 2, they have not chosen to contest the matter. Primary Agricultural Co-operative Society (R-3), who is claimant No. 6, with whom charge has been created over the compensation amount has not evidenced any interest to contest the claim of the appellant, though received the notice.

4. Smt. Pramada, learned Counsel appearing for the appellants submitted that claimant No. 4 was the owner of the property and was in possession of the same since 1954-55 and his name was re-elected as owner in Khasra pahani under Ex.P-8 and after the death of claimant No. 4, claimant No. 5, who succeeded the properties of claimant No. 4, executed a registered sale deed in favour of claimant No. 3 over an extent of Acs.3-20 guntas. She further contended that when claimant No. 5, son of claimant No. 4 sold Acs.3-20 guntas effected sale in favour of claimants 1 and 2 under Exs.A-8 to A-12-un-registered sale deeds, they will not acquire any right to the property which has already been transferred under a registered sale deed to claimant No. 3. Unless it is proved that revenue officials after following due procedure validly validated the agreements of sale, they (claimant Nos. l and 2) are not entitled to claim any compensation, without examining any person on their behalf to prove validation.

5. Sri V. Tulasi Reddy, learned Counsel for the respondents 2, 4 and 5 contended that if the dispute is only with regard to sale of Acs.3-20 guntas between the claimants 1 and 2 on one hand and claimant No. 3 on the other hand. Even as per the finding that the claimants 1 and 2 are entitled to the share of claimant No. 5, which comes to Acs.3-331/2 guntas, they are nothing to do with the dispute between them and they are entitled to receive compensation to the extent of their share and claimants 7 and 8 are entitled to their share. As the reference Court gave finding that sale made by claimant No. 5 is confined only to the extent of his share to claimants 1 and 2, they are entitled to withdraw the compensation.

6. Facts in the present case clearly depict that claimant No. 3, father of the appellants herein, purchased Acs.3-20 guntas of land under the original of Ex.B-12 from claimant No. 5, from whom claimants 1 and 2 purchased the same property under un-registered sale deeds, and claimant No. 3 purchased property in the year 1987 much prior to the validation of the un-registered sale deeds in

favour of the claimants 1 and 2. Claimant No. 7, son, claimant No. 8-wife succeeded to the properties of claimant No. 4 along with claimant No. 5, another son of claimant No. 4. Claimant No. 3 was examined himself as PW.9.

7. The crucial question which arises for consideration is whether claimant No. 1 and 2 who have purchased property under un-registered sale deeds can claim priority over the registered sale deed (Ex.B-12) on the ground that their un-registered sale deeds have been validated by the Mandal Revenue Officer, since no objection has been raised by claimants 5, 7 and 8?

8. Indisputably, notification u/s 4(1) of the Land Acquisition Act, 1894 has been issued on 11-7-1984 and claimant No. 3 filed claim petition on 27-5-1988 claiming compensation for the lands acquired on the basis of sale deed obtained by him under Ex.B-12. The Land Acquisition Officer in his award No. 4/89 dated 4-8-1989 determined the compensation stating that claimant No. 3 is entitled to receive the same. Section 12(2) notice was issued on 29-11-1989 intimating that the amount will be deposited in view of the rival claims of the parties. Only after passing award, it appears that claimants 1 and 2 moved the Mandal Revenue Officer for validating un-registered sale deeds obtained by them u/s 5-A of the A.P. Rights in Land and Pattadar Pass Books Act, 1971 (for short "the Act") and Rule 22(5) of the A.P. Rights in Land and Pattadar Pass Book Rules, 1989 (for short "the Rules") and they have been validated by issuing certificates in Form XIII-B prescribed under the Rules on 28-2-1990. There is no evidence adduced by claimants 1 and 2 that before issuing Form XIII(B) certificates in their favour, necessary notice has been issued to the claimant No. 3 who purchased the property under a registered sale deed covered under Ex.B-12.

9. Explanation-I to Section 3 of Transfer of Property Act, draws a presumption that where any transaction relating to improvable property is required by law to be and has been effected by a registered instrument, any person acquiring such property or any part of, or share or interest in such property shall be deemed to have notice of such instrument as from the date of registration, provided that instrument has been registered and its registration completed in the manner prescribed by the Indian Registration Act, 1908 and the rules made thereunder, and the instrument of memorandum has been duly entered or filed, as the case may be, in books kept u/s 51 of the At, and the particulars regarding the transaction to which the instrument relates have been correctly entered in the indexes kept u/s 55 of the Act. Further it is appropriate to notice Section 5-A of the A.P. Rights in Land and Pattadar Pass Books Act, 1971, under which un-registered sale deeds have validated in favour of claimants 1 and 2 by issuing certificates in Form XIII(B).

5A. Regularization of certain alienations or other transfers of lands--(1) Notwithstanding anything contained in this Act, the Transfer of Property Act, 1882, the Registration Act, 1908 or any other law for the time being in force, where a person is an occupant by virtue of an alienation or transfer made or effected otherwise than by registered document, the alienee or the transferee may, within such period as may be prescribed, apply to the Mandal Revenue Officer for a certificate declaring that such alienation or transfer is valid.

(2) x x x;

(3) x x x;

(4) The Mandal Revenue Officer on deposit of an amount specified in Sub-section (2), shall issue a certificate to the alienee or the transferee declaring that the alienation or transfer is valid from the date of issue of certificate and such certificate shall, notwithstanding anything the Registration Act, 1908, be evidence of such alienation or transfer as against the alienor or transferor or any person claiming interest under him.

(5) x x x.

10. The Legislature in its wisdom thought it fit to validate un-registered sale deeds from the date of issuance of certificate, which were admittedly issued on 28-2-1990, by the time claimant No. 5 will not have any right to alienate the said property, in view of the registered instrument executed by him in favour of claimant No. 3 under Ex.B-12 on 23-4-1987, which is much prior to validation of the un-registered sale deeds.

11. Learned trial Judge without noticing the same in a perfunctory manner held that the un-registered sale deeds, which have been validated, will have priority over the registered sale deed covered under Ex.B-12. The said finding has been made in ignorance of statutory provisions. It is well settled u/s 47 of the Indian Registration Act, 1908 that when a sale deed drafted if registered, the same will relate back to the date of execution. But in view of the specific provision under Sub-section (4) of Section 5-A of the Act, such a presumption cannot be drawn, at best, against the unregistered sale deeds validated u/s 5-A of the Act and the same will be validated only from the date of such certificates. If that be the case, the registered sale deed obtained by claimant No. 3 is in earlier point of time will have priority over the certificates issued in Form XIII(B) covered under Exs.A-13 to A-15.

12. Further no evidence has been let in by the claimants 1 and 2 that before validating the un-registered sale deeds, the Mandal Revenue Officer issued notice to claimant No. 3 (father of the appellants herein), who is no more and the validation made will not bind on the appellants. The learned Judge having accepted that sale was made by PW.5 in favour of claimant No. 3; in view of the evidence of PWs.9 and 10; and the revenue records show his possession for sometime under Ex.B-12, prior to validation of un-registered sale deeds under Exs.A-13 to A-15, has not considered the effect of validation, which will have the effect of setting aside the sale deed made in favour of claimant No. 3. In exercise of power u/s 5-A for validating the un-registered sale deeds, the Mandal Revenue Officer has not been conferred the power to set-aside the sale validly obtained by claimant No. 3, which can be done only by the civil Court in a properly

constituted civil suit seeking appropriate reliefs under Sections 31 and 34 of the Specific Relief Act. The reference Court without adverting to the said facts proceeded on the footing that once un-registered sale deeds validated by the Mandal Revenue Officer will relate back from the date of execution of sale deed and they will have to be treated as registered sale deeds. The said finding arrived by the learned Judge cannot be sustainable unless the authority under the Record of Rights Act have conferred the right to set-aside the registered sale and validate the unregistered sale deeds from antedate.

13. For the aforementioned reasons, the judgment and decree of the trial Court to the extent of apportioning the share of claimant No. 5 over an extent of Acs.3.20 cents to the share of claimants 1 and 2 and creating charge over the compensation of claimant No. 6 is set-aside. Instead, claimant No. 3 is entitled to receive the said compensation. The rest of the impugned order is undisturbed.

14. The appeal suit is allowed to the extent indicated above. No costs.

