
(1996) 09 AP CK 0065

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 1898 of 1995

Nawab Mohammed Kabiruddin Khan and Another	APPELLANT
Vs	
M. Krishna Rao and Others	RESPONDENT

Date of Decision : 06-09-1996

Acts Referred:

Andhra Pradesh Land Grabbing (Prohibition) Act, 1982 — Section 2, 8(8)
Civil Procedure Code, 1908 (CPC) — Section 115

Citation : (1996) 2 ALD(Cri) 808 : (1996) 4 ALT 328

Hon'ble Judges : P. Venkatarama Reddi, J

Bench : Single Bench

Advocate : K. Venkata Ramaiah, for the Appellant; N.V. Jagannath, for the Respondent

Judgement

P. Venkatarama Reddi, J.—The plaintiffs in O.S. No.1543of 1987 on the file of IV Additional Judge, City Civil Court are the petitioners in this CRP.The CRP arises out of an orderpassed by the IV Addl. Judge on a memo filed by the petitioners-plaintiffs seeking transfer of the suit to the Special Court constituted under A.P. Land Grabbing (Prohibition) Act for trial and decision. The memo was filed on 9-9-1994. The application was allowed by an order dt. 12-9-1994 and the Court returned the plaint for presentation to proper Court. Against this order CRP No3786 of 1994 was filed by the 1st respondent-defendant. On 13-3-1995 this Court set aside the aforementioned order on the ground that the order was passed without hearing the counsel for the defendant and the order did not disclose any reasons. The case was remitted to the 4th Addl. Judge for fresh disposal. After hearing both the counsel the impugned order was passed on 10-4-1995 rejecting the petitioner's request to transfer the suit. Aggrieved by this order the present CRP is filed by the plaintiffs in the suit.

2. The suit was filed for permanent injunction restraining the defendant from interfering with the petitioner's possession and enjoyment of an extent of Ac.7-00 situate in Sy. No. 202/2 of Baghlingampally. It is the case of the plaintiff

that the said land was granted to his father by Nawab Sir Khursheed Jan in 1347 Fasli. It is the contention of the plaintiff that the defendants' land in Sy. No. 65, 66 and 67 is situated at Baghamberpet Revenue Village and it has nothing to do with the suit schedule land. It may be mentioned that as far as Sy. No. 65, 66 and 67 of Baghamberpet village is concerned the right and title of the defendants and their predecessors in title was upheld in O.S. No. 294 of 1980 on the file of Additional Chief Judge, Hyderabad and the said judgment and decree was confirmed by the High Court and Supreme Court. The decision of the Supreme Court is reported in State of Andhra Pradesh Vs. Kalva Suryanarayana and others, .

3. Coming back to the contention of the petitioners-plaintiffs, they alleged in the plaint that on 4-9-1987, defendants 1 to 7 trespassed into the plaintiff's land which is at Baghlingampally, removed the name board of the plaintiff high-handedly and started digging up the land and putting up boundary stones and sheds. The defendants denied the allegations. It is their case that the land which is being claimed by the petitioners in O.S. No. 1543 of 1987 is nothing but the same land which was the subject-matter of dispute in O.S. No. 294 of 1980. The defendants contend that the subsequent suit filed by the petitioners herein is an instance of the abuse of the process of Court and is meant to circumvent the decree in O.S. No. 294 of 1980 which was affirmed by the Supreme Court.

4. The learned Counsel for the petitioner Mr. K. Venkata Ramaiah submits that there are sufficient averments in the plaint which unmistakably indicate that the respondents-defendants committed acts amounting to "Land Grabbing" within the meaning of A.P. Land Grabbing (Prohibition) Act. If so the Civil Court has no jurisdiction to try the suit, as it falls within the exclusive jurisdiction of the Special Tribunal or Special Court set up under the Act. It is submitted that by virtue of Section 8 sub-section(S) the suit pending in the Civil Court shall stand transferred to the Special Court as if the cause of action on which the suit is based had arisen after the constitution of the Special Court. Reliance is placed on the decision of Ramakrishnam Raju, J. in Govt. of A.P. and Others Vs. Sathaiah, . This decision is relied upon by the learned Counsel for three purposes: firstly, for the proposition any dispute in regard to the title to, ownership and possession of the land shall be exclusively tried by the Civil Court and the bar of jurisdiction of the Civil Court is clearly implied; secondly for the proposition that application of the Act cannot be confined only to completed or concluded acts of land grabbing and thirdly, to support his contention that the allegations in the plaint have to be looked into to judge whether the case falls within the purview of the Act. The decision rendered by Radhakrishna Rao, J. which was followed by the learned Judge has also been relied upon in support of the second proposition, canvassed by the learned counsel. It is also pointed out that the lower Court has committed a serious error in proceeding on the basis that the Supreme Court's decision rendered in a litigation to which the petitioners were not parties governs the subject-matter of his suit as well.

5. On the other hand, the learned counsel for the respondents M/s. N.V. Jagannath and Y. Krishna Reddy argued that the application filed by the petitioner for transfer just before the trial of the suit is started is not bona fide; that the provisions of the A.P. Land Grabbing (Prohibition) Act have no application as the respondents are entitled to deal with and remain in possession of the land by virtue of the judgment and decree in O.S. No. 294 of 1980 affirmed by the Supreme Court and that a second round of litigation has been created in respect of the same land raising an unfounded doubt as to the identity of the land. It is submitted that the petitioners were never in possession of the land that is being claimed by them by giving different survey numbers in the suit schedule. My attention has been drawn to the findings in the Order in I. A. No. 1305 of 1987 dated 25-9-1987 vacating the injunction granted initially in favour of the petitioners. It is also contended that the Revenue Department did not at any time in the course of trial of earlier suit or appeals (sic) the identity of the land in Sy. Nos. 64 and 65.

6. The expression "Land grabbing" as defined in Section 2(e) of the Act means every activity of grabbing of any land by a person or group of persons without any lawful entitlement and with a view to illegally taking possession of such lands or with a view to entering into illegal agreements in respect of such lands or to construct unauthorised structures thereon or to give such lands to an} " parson on lease or licence, etc. The first and foremost thing to be established in order to bring the case within the fold and ambit of the Act is that the status-quo as to possession of the land is sought to be disturbed by the alleged land grabber, who has no lawful entitlement of any sort in relation to the disputed land. The same is an indispensable criterion for the grant of temporary or permanent injunction. In the present case as pointed by the learned Additional Judge, there is a clear rinding in I.A. No. 1305 of 1987 which is an application for grant of temporary injunction that the petitioners-plaintiffs were prima facie not in possession of the land and therefore the grant of temporary injunction does not arise. It is an admitted case that this rinding was con firmed in appeal and revision also. The learned Counsel for the petitioner, however submits that the Court should go only by plaint allegations and the Civil Court had no competence to give any rinding in the injunction petition as to which of the parties were in possession at the relevant point of time. It looks strange that after the petitioners invited the decision of the Civil Court in the injunction petition (I.A.) and got an adverse decision now complain that the Civil Court had no jurisdiction at all to decide the question of possession or title which logically means that it should" not have entertained the injunction petition. Another factor which should be taken note of is that the petitioners could have filed the suit before the Special Tribunal under the Act (Chief Judge, City Civil Court, being such special tribunal) which was constituted even by the date of filing the suit and seeking injunction. Nevertheless, the petitioners chose to file the suit before the Civil Court and it is only after the entire gamut of proceedings arising out of I.A. No. 1305 of 1987 was gone through and the suit became ripe for trial, they came forward with the

request of transfer to the Special Court for land grabbing cases. By the time such request was made through a memo, the order in LA. to the effect that there was no prima facie proof of the petitioners' possession stared at the face of the petitioners. In view of these circumstances and having regard to the conduct of the petitioners in moving the Court at a belated stage after the Court recorded a finding that they were not in possession, I do not think that it is a fit case to exercise the revisional jurisdiction u/s 115 CPC in favour of the petitioners. The revisional jurisdiction u/s 115 is not meant to lend helping hand to the litigants who blow hot and cold according to their convenience and try to repudiate the very proceedings which were initiated at their instance. Ramakrishnam Raju, J. was not confronted with a fact situation similar to the one obtaining here. This case had travelled beyond the stage of mere scrutiny of pleadings in order to determine whether Civil Court has jurisdiction or not. On an application filed by the petitioners themselves a finding was reached by the trial Court on Aprima jack examination of the material on record that the petitioners were not in possession of the land. That finding was affirmed in appeal and revision. It is not now open to the petitioner to come back to square one and say that the trial Court should ignore the order passed in the I.A. at the instance of the petitioner himself and fall back upon the pleadings for the purpose of determining whether the case should go to the Special Court. When once a prima facie finding as to possession was reached without any objection from any quarter, it would be neither good law nor good sense to disregard that finding while considering the question of jurisdiction. It is only after the evidence is taken at the trial that the question whether the petitioners are in possession of the land in question and whether the respondents tried to grab the land could finally be decided by the Civil Court and it is only then that a fresh view could be taken on the question whether the suit should be transferred to the Special Court. Till then, as I observed supra, the City Civil Court, which is seized of the suit could proceed on the basis that the sine-qua-non for the transfer of case u/s 8(8) is absent and therefore proceed to deal with the suit. It may also be noticed from the judgment of my learned brother Ramakrishnam Raju, J, that nowhere it is stated in categorical terms or as a proposition of law that the plaint allegations are conclusive and that the Court cannot go behind the pleadings in the plaint to decide the jurisdictional question. The case in Government of A.P. v. Sathaiah (1 supra) was a case in which the objection as to jurisdiction of the Civil Court was raised by the defendant-Government but not the plaintiff as in the instant case nor was it a case where at the instance of the plaintiff himself, the Civil Court had already rendered a decision on the question of possession even before the request for transfer was made by the plaintiff.

7. For the reasons aforesaid, I do not see any merit in the C.R.P.

8. Before I close the case, I express my reservations in accepting the view expressed by Radhakrishna Rao, J. in Anji Reddy v. M.A. Ali Khan 1990 (1) An. W.R. 717 that the Act applies not only to cases where grabbing had already taken place but also to continuing or attempted acts of grabbing the land. In a fit

case, it has to be considered by Division Bench whether that decision followed by Ramakrishnam Raju, J. also, lays down the correct law. If that interpretation coupled with the proposition that plaint allegations alone have to be looked into is to be applied, the virtual result would be that almost all the injunction suits will have to go before the Special Court or Special Tribunal, as the case may be, to the exclusion of Civil Courts. Whether such was the result contemplated by the framers of the Act is a point which seriously deserves consideration in an appropriate case; Having regard to what I held above, I do not want to dilate further on this aspect.

9. The CRP is dismissed. No costs.