
(1997) 12 AP CK 0076

In the Andhra Pradesh High Court

Case No : Writ Petition No. 11173 of 1997

P. Bharathi and Others

APPELLANT

Vs

State of Andhra Pradesh and Others

RESPONDENT

Date of Decision : 30-12-1997

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11

Citation : (1998) 2 ALT 385

Hon'ble Judges : S.V. Maruthi, J

Bench : Single Bench

Advocate : P.S. Narayana, for the Appellant; G.P., for the Respondent

Final Decision : Allowed

Judgement

S.V. Maruthi, J.—This writ petition is filed for a declaration declaring the action of the respondents in interfering with the peaceful possession and enjoyment of the petitioners' property over an extent of Acs. 1.20 cents in Survey No. 479/1 of Tirupati Accounts, Tirupati Urban Mandal, Chittoor Dist. And proceedings of the fourth respondent dated 17-5-97 handing over the land to the police department and the action of respondents 5 to 9 in demolishing the compound wall and causing damage to a tune of rupees one lakh to the petitioners as illegal, arbitrary etc. The facts of the case in brief are as follows:

The petitioners purchased Acs. 1.20 cents in S. No. 479/1 of Tirupati village Accounts under various sale-deeds dated 23-1-95, 5-1-97, 5-2-97, 29-3-97 and 13-3-97. This land purchased by the petitioners forms part of an extent of Ac. 1.50 cents which was accordingly assigned in favour of Ex. Serviceman A.V. Balakrishna Reddy on 9-9-1978. He continued in possession pursuant to the said assignment. In 1994, A.V. Balakrishna Reddy wanted to alienate the property as ten years period hi already expired from the date of assignment. Accordingly, he sold the property in favour of the first petitioner and also in favour of Sri C. Raja Reddy, V. Jagadish, Smt. G. Madhura Vani and also in favour of the second petitioner. Sale-deeds were presented to the Sub-Registrar for the purpose of

registration, but the Sub-Registrar refused to register the same on the ground that the said property was Government land and it cannot be alienated. Therefore the said A.V. Balakrishna Reddy filed Writ Petition No. 19372/94 on the file of this Court impleading the District Collector, Chittoor and also the Mandal Revenue Officer, Tirupati Urban Mandal as respondents 1 and 2. The said writ petition was allowed on 21-12-94. Pursuant to the judgment in the said writ petition, A.V. Balakrishna Reddy executed registered saledeeds in favour of the petitioners and also in favour of C. Raja Reddy, V. Jagadish and G. Madhura Vani. The petitioners 1 and 2 thereafter intended to sell the land in favour of the petitioners 3 to 5 and certain others. The registering authority raised similar objection and therefore, the petitioners issued a notice on 8-1-96 requesting the Sub-Registrar to furnish the market value enabling the petitioners to register the documents in favour of the third parties which was again refused. Thereafter, the petitioners filed W.P. No. 5311/96 on the file of this Court impleading the Mandal Revenue Officer, Tirupati Urban Mandal. The said writ petition was allowed on 13-11-1996. Pursuant to the judgment of this Court in W.P. No. 5311/96, registered saledeeds were executed in favour of petitioners 3 to 5. When one of the purchasers namely G. Madhuravani sought permission for construction of a house, the Tirupati Municipality refused to consider her application and she filed W.P. No. 13605/95 and obtained interim directions in W.P.M.P. No. 16617/95 dated 23-8-1995 to consider the application submitted by her for permission to construct the house without reference to the proceedings dated 22-5-1995 in which an objection was raised that the land is Government land. Thereafter, the 5th respondent Mandal Revenue Officer issued proceedings u/s 145 Cr.P.C. in M.C. No. 26/97. The petitioners filed Criminal Petition No. 824/97 u/s 482 Cr.P.C. to quash the said proceedings which was admitted and interim stay was also granted for a period of ten weeks and the said matter is pending disposal. The petitioners constructed small sheds and compound wall protecting the property and dug a bore well and installed an Electric Motor containing service connection No. 40319. While so, on 23-5-1997 at about 12 noon, respondents 5 to 9 namely Mandal Revenue Officer, Tirupati Urban Mandal; Superintendent of Police, Chittoor; Deputy Superintendent of Police, Tirupati; Circle Inspector of Police, Tirupati Rural area and the Sub-Inspector of Police, Tirupati came to the property and placed a Board stating that the said land belongs to Police Department and trespassers will be prosecuted. The petitioners protested the action of respondents 5 to 9. Again on 24-5-97 the 9th respondent came along with his subordinates and began demolishing the Eastern side of the compound wall causing damage to a tune of Rs. One lakh. The petitioners approached the concerned authorities protesting against the action of respondents 5 to 9 and submitted that S. No. 479/1 in an extent of Acs. 1.20 cents, is a private land belonging to the petitioners and the action of the respondents is without authority of law. However, no action is taken by the concerned authorities. Further, the 4th respondent issued proceedings in Roc. No. B6/5974/97 dated 17-5-97 under which the Mandal Revenue Officer was permitted to handover the land covered by Survey No. 479/1 of Tirupati village to the Police Department for

safeguarding the land. The said proceedings are without authority of law and illegal and are liable to be quashed.

2. The respondents in the counter-affidavit stated that the petitioners are not the absolute owners of land measuring Acs. 1.20 cents in S. No. 479/1 of Tirupati village. The said land is Government Poramboke land classified "Chakalivani Gunta". It is not a Patta land. The land does not belong to A.V. Balakrishna Reddy. According to Village accounts S. No. 479/1 in an extent of Acs.2.80 cents is classified as Government Poramboke land, locally as Chakalavani gunta and the same entries are continued to reflect even today and no D.K.T. Patta No. 681/4/138 dated 9-9-1978 was granted in favour of A.V. Balakrishna Reddy but it is a forged document. Taking advantage of the conditions mentioned in G.O.Ms. No. 1117, Revenue (Assignment-1) Department dated 11-11-93 stipulating that an Ex-serviceman can alienate the D.K.T. Patta after expiry of ten years from the date of grant one A.V. Balakrishna Reddy prepared forged document and managed to place the file in the records of Mandal Revenue Officer, Chandragiri. When this fact was noticed and the endeavour of A.V. Balakrishna Reddy was effectively opposed, he approached the High Court and filed W.P. No. 19372/96. A Civil Suit O.S. No. 141/95 in respect of S. No. 479/1 was filed by one T. Siddaiah and others against A.V. Balakrishna Reddy and the said suit is pending on the file of Prl. Dist. Munsif, Tirupati and A.V. Balakrishna Reddy is restrained by I.A. No. 466/95 in O.S. No. 141/95. In respect of this land there is law and order problem for assignment of house sites to different persons. They admitted that the said land was handedover to the Police Department under proceedings dated 17-5-1997 by the Dist. Collector, Chittoor for safeguarding the Government land. They have admitted filing of writ petition and directions issued by this Court. Further, the claim that A.V. Balakrishna Reddy was granted D.K.T. Patta was false as from the records, Tahsildar, Chandragiri granted a lease of Acs.1.50 cents in S. No. 479/1 in favour of G. Gopala Naidu on an application filed on 6-3-1978 before the Tahsildar Chandragiri. After holding an enquiry the Tahsildar granted lease to the said G. Gopala Naidu dated 15-12-1978. In view of the lease granted to G. Gopala Naidu the claim that A.V. Balakrishna Reddy was granted D.K.T. Patta is false.

3. The fact that D.K.T. patta granted to the said A.V. Balakrishna Reddy is forged one is evident from the fact that condition No. 2 stipulated in the D-form has been incorporated with reference to G.O. No. 1142, Revenue dated 19-6-1981, whereas the claim of the original vendor A.V. Balakrishna Reddy is that he was granted D.K.T. patta on 9-9-1978. Further, the said A.V. Balakrishna Reddy withdrew the W.P. No. 9189/94 on his own accord which was filed challenging interference of the Mandal Revenue Officer, Tirupati and other Revenue Officials with regard to the possession and enjoyment of S. No. 479/1 of Tirupati. Since the original vendor himself has no title to the property, the present writ petitioners do not get any title to the property. In view of the above, the writ petition is liable to be dismissed.

4. On the basis of the above facts, the Counsel for the petitioners contended that the respondents had an occasion to bring it to the notice of this Hon''ble Court that the D.K.T. patta obtained by A.V. Balakrishna Reddy was forged in the writ petitions W.P. Nos. 19372/94 and 5311/96. They have not raised a plea that the patta granted to the said A.V. Balakrishna Reddy was a forged one. Therefore, they are precluded from raising the plea by the principle of constructive res judicata. No suit is pending as it was withdrawn. In support of the contention, he relied on a number of judgments. While the Counsel for the respondents submitted that A.V. Balakrishna Reddy withdrew W.P. No. 9198/94 and therefore, A.V. Balakrishna Reddy is precluded from raising objection to the impugned proceedings as the principles of constructive res judicata applies to that also. While the Counsel for the petitioners contended that withdrawal of writ petition by A.V. Balakrishna Reddy is justified as he has alienated the property and there was no interference by the Mandal Revenue Officer, the case of the respondents is that the patta of A.V. Balakrishna Reddy is a forged document and therefore, that the land in question namely S. No. 479/1 is a Government Poramboke and therefore, the petitioners do not got any title to the property and since it is Government land the impugned proceedings are valid. While the petitioners contend that the plea that the patta obtained by A.V. Balakrishna Reddy was forged was not raised in W.P. Nos. 19372/94 and W.P. No. 5311/96. Therefore, they are precluded from raising the said plea by virtue of principle of constructive res judicata. In State of U.P. Vs. Nawab Hussain, the facts in brief are that the petitioner was dismissed from service. He filed a petition for quashing the disciplinary proceedings on the ground that he was not afforded a reasonable opportunity to meet the allegations made against him and the action taken against him was mala fide which was dismissed. Thereafter, he filed a suit in which he challenged the order of the dismissal on the ground, inter alia, that he had been appointed by the I.G.P. and that the Dy. IGP was not competent to dismiss him by virtue of Article 311(1) of Constitution. It was held that the suit was barred by the principle of constructive res judicata. It is necessary to refer to the observations made which are as follows:-

"The principle of estoppel per rem judicatum is a rule of evidence. It may be said to be "the broader rule of evidence which prohibits the reassertion of a cause of action." This doctrine is based on two theories: (i) the finality and conclusiveness of judicial decisions for the final termination of disputes in the general interest of the community as a matter of public policy and (ii) the interest of the individual that he should be protected from multiplication of litigation."

It was further held that:

"In the circumstances of the case, the petitioner did not raise the plea, in the writ petition that by virtue of Clause (1) of Article 311 of the Constitution he could not be dismissed by the Deputy Inspector General of Police as he had been appointed by the Inspector General of Police. It was an important plea which was within the knowledge of the respondent and could well have been taken in the

writ petition, but he contented himself by raising the other pleas that he was not afforded a reasonable opportunity to meet the case against him in the departmental enquiry and that the action taken against him was mala fide. It was, therefore, not permissible for him to challenge his dismissal in the subsequent suit, on the other ground that he had been dismissed by an authority subordinate to that by which he was appointed. That was clearly barred by the principle of constructive res judicata."

In *Forward Construction Co. and Others Vs. Prabhat Mandal (Regd.), Andheri and Others*, it was held that:

"So far as the first reason is concerned the High Court in our opinion was not right in holding that the earlier judgment would not operate as res judicata as one of the grounds taken in the present petition was conspicuous by its absence in the earlier petition. Explanation IV to Section 11 C.P.C. provides that any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in suit. An adjudication is conclusive and final not only as to the actual matter determined but as to every other matter which the parties might and ought to have litigated and have had it decided as incidental to or essentially connected with the subject matter of the litigation and every matter coming within the legitimate purview of the original action both in respect of the matters of claim or defence. The principle underlying Explanation IV is that where the parties have had an opportunity of controverting a matter that should be taken to be the same thing as if the matter had been actually controverted and decided. It is true that where a matter has been constructively in issue it cannot be said to have been actually heard and decided. It could only be deemed to have been heard and decided."

In *Daryao and Others Vs. The State of U.P. and Others*, the Supreme Court laid down the guidelines under which the principles of constructive res judicata operates. It was held:

"If the petition filed in the High Court under Article 226 is dismissed not on the merits but because of the laches of the party applying for the writ or because it is held that the party had an alternative remedy available to it, then the dismissal of the writ petition would not constitute a bar would depend upon the nature of the order. If the order is on the merits it would be a bar; if the order shows that the dismissal was for the reason that the petitioner was guilty of laches or that he had an alternative remedy it would not be a bar, except in cases which are already indicated. If the petition is dismissed in limini without passing a speaking order then such dismissal cannot be treated as creating bar of res judicata.

If the petition is dismissed as withdrawn it cannot be a bar to a subsequent petition under Article 32, because in such a case there has been no decision on the merits by the Court."

5. It follows from the above that if a party to the proceedings fails to raise a plea in the earlier proceedings which plea is available to them and which is within their knowledge then the party is precluded from raising the said plea in a subsequent proceedings and the principle underlined on such bar is public policy as there should be an end to the litigation and the party should not be put to litigation successively. From the facts narrated above, the plea that A. V. Balakrishna Reddy obtained the patta by forging the document was available to the respondents and it was within their knowledge. They have not raised the said plea in the writ petitions W.P. Nos. 19372/94 and 5311 /96. Had they raised the plea in the earlier proceedings, perhaps this Court would have directed an enquiry to be conducted into the correctness or otherwise of the said plea. Having failed to raise the said plea in the earlier two proceedings, the respondents cannot now set up the plea that the patta obtained by A.V. Balakrishna Reddy is forged. It is not permissible under law to allow the respondents to set up such a plea. Therefore, the Counsel for the petitioners is right in his contention that the respondents should not be allowed to set up a plea that the patta obtained by A.V. Balakrishna Reddy is forged. It is not the case of the respondents that in fact they have raised such a plea. Since O.S. No. 141/95 filed by T. Siddaiah against the said A.V. Balakrishna Reddy is withdrawn, it is not a case where the petitioners should be driven to the Civil Court. It is contended by the learned Counsel for the respondents that the said A.V. Balakrishna Reddy filed a writ petition W.P. No. 9189/94 against the Mandal Revenue Officer on 26-4-95 and the same was withdrawn. In the said writ petition the relief claimed was an injunction restraining the Mandal Revenue Officer from interfering with his possession and enjoyment of the land in S. No. 479/1 of Tirupati village. Since, he has withdrawn the writ petition the principle of constructive res judicata applies and therefore, the writ petition is barred by the principle of res judicata. I have already referred to the judgment of the Supreme Court in *Daryo v. State of U.P.* (3 supra) wherein it was held that if the petition is withdrawn, it cannot be a bar to subsequent petition under Article 32 because in such case there has been no decision on merits of the case. In view of the above, it follows that the respondents have no jurisdiction to issue the impugned proceedings namely proceedings dated 17-5-1997 in permitting the Mandal Revenue Officer to handover the land in S. No. 479/1 of Tirupati village to the Police Department on the ground of safeguarding the Government land. The proceedings are declared as without authority of law and therefore, quashed. The respondents are directed not to interfere with the possession of the petitioners. The writ petition is accordingly allowed with costs. Advocate's fee Rs. 1,000/-.