
(2002) 06 AP CK 0036
In the Andhra Pradesh High Court
Case No : A No. 396 of 1987

Pulla Prakasarao and Others	Vs	APPELLANT
Nimmana Nagabhushanam		RESPONDENT

Date of Decision : 04-06-2002

Acts Referred:

Andhra Pradesh (Andhra Area) Tenancy Act, 1956 — Section 12, 15

Citation : (2002) 4 ALD 489

Hon'ble Judges : C.Y. Somayajulu, J

Bench : Single Bench

Advocate : K. Narasimham, for the Appellant; S.V. Bhatt, for the Respondent

Final Decision : Dismissed

Judgement

C.Y. Somayajulu, J.—Defendants in OS No. 81 of 1981 on the file of the Court of the Subordinate Judge, Kakinada are the appellants.

2. Respondent filed the aforesaid OS No. 81 of 1981 against the appellants for declaration of his title to 1 acre 86 cents of land in S.No. 178/12 within the boundaries mentioned in the scheduled appended to the plaint, hereinafter called the suit land, and for recovery of possession thereof and profits from the appellants.

3. The case, is brief, of the respondents is that the suit land originally belonged to three brothers viz., Chittoori Venkata Raju, Viswanatham and Swamy, who had 1/3rd share each therein. After the death of his two brothers Venkata Raju and Viswanatham, Swamy let out the suit land to Pulla Naraiah, father of the appellants on an yearly rent of 10 bags of paddy payable on Makara Sankranti day every year. After the death of Naraiah, who committed default in payment of rent, since none of his legal heirs exercised their option to continue the lease in respect of the suit land, appellants lost their right to continue in the suit land as tenants and therefore their status is that of trespassers. They cultivated the suit land in such status and delivered 10 bags of paddy to Swamy who received the

same towards damages for use and occupation without prejudice to his right and issued receipts. Chittoori Swamy and the heirs of his brothers executed a sale deed dated 13-3-1981 in favour of the respondent in respect of the suit land and got it registered, and so respondent who became the absolute owner of the suit land, got issued a registered notice dated 17-3-1981 to the appellants through his advocate seeking possession of the suit land apart from damages for use and occupation. Appellants without surrendering possession, sent a reply with contentious allegations. Since a babul tree in the suit was cut and removed by the appellants, value of the tree and damages for use and occupation of the suit land also are due from the appellants. Hence the suit.

4. Appellants filed a common written statement admitting that Swamy let out the suit land to their father on an yearly rent of 10 bags of paddy and thus he used to collect rents as owner. They denied the allegation that their father was in arrears of rent by the time of his death. After the death of their father, they informed Swamy about their willingness to continue the lease and accordingly have been continuing the lease and were paying rent to him, as tenants, but not as trespassers. They were not verifying the receipts issued by him for the rents paid by them since they are not worldly wise. Only after receipt of summons in the suit, did they come to know about mischief was played by Swamy by issuing receipts with incorrect facts. Since they, after paying Maktha for the year 1979-80 to Swamy through K. Satyanarayana before Pongal, got issued a notice dated 27-3-1980, a piqued Swamy is alleging that they are trespassers; Civil Court has no jurisdiction to entertain a suit for possession since they are cultivating tenants. They denied their liability to pay damages for use and occupation or the value of the babul tree allegedly cut and removed by them.

5. Basing on the above pleadings as many as eight issues were settled for trial by trial Court. In support of his case, respondent examined himself as PW1 and four others witnesses as PWs.2 to 5 and marked Exs.A1 to A19. In support of the case of appellants, they examined first appellant as DW1 and two other witnesses as DWs.2 and 3 and marked Exs.B1 to B6 on their behalf. Exs.C1 and C5 were marked from the Court record. It should be stated here that in the appendix of evidence attached to the judgment of the trial Court, Ex.A13 is wrongly described as the notice issued by the Advocate for plaintiff to defendants 1 to 4, instead of describing it as the registered sale deed executed by Swamy and others in favour of the respondent. On the basis of the evidence on record, the learned trial Judge held on issue No. 1, which relates to the question whether the registered sale deed (Ex.A13) executed by Swamy and others in favour of the respondent is true, in favour of the respondent. On issue Nos.2 and 3 relating to the question whether the appellants are not the cultivating tenants of the plaint schedule property and whether Ex.A13 sale deed is vitiated by Section 15 of the Andhra Pradesh (Andhra Area) Tenancy Act, 1956 (the Act) as amended in 1974 in favour of respondent. On issue No.4 which relates to the question whether the respondent is entitled to claim damages for use and occupation from the appellants for the year 1980-81 and if so to what amount,

held against the respondent. On issue Nos.5 and 6, which relates to the question whether the appellants cut the Babul tree in the plaint schedule property and are liable to pay the value of the Babul tree to the respondent, held that appellants and removed the Babul tree and hence are liable to pay Rs. 150/- towards the value of that tree to the respondent. On issue No.7, which relates to question whether civil Court has jurisdiction, held in favour of the respondent, and on the basis of the findings on other issues, on issue No. 8, which relates to relief, decreed the suit for declaration and possession and granted a decree for recovery of Rs. 150/- towards the value of the Babul tree in favour of the respondent with proportionate costs and dismissed the rest of the claim of the respondent without costs. Aggrieved by the declaration and relief on possession granted to the respondent, this appeal is preferred by the defendants.

6. The main contention of Sri K. Narasimham, learned Counsel for the appellants is that the Court below was in error in holding that the appellants are not the cultivating tenants in respect of the suit land when Swamy, who admittedly let out the suit land to the father of appellants received rent from the appellants and issued receipts it when Swamy acknowledged the status of the appellants as his tenants the Court below was in error in holding the appellants status as trespassers. He contended that in any event since the recitals in Exs.B1 and B2 show that a relationship of landlord and tenants is existing between the appellants and Swamy, the appellants are but cultivating tenants of Swamy within the meaning of the act and so civil Court has no jurisdiction to grant decree for possession of suit land and the Tenancy Court alone can order eviction of the appellants as per the provisions of the Act. He contended that the decisions relied on by the learned trial Judge have no application to the facts of this case. The contention of Sri S. V. Bhatt, learned Counsel for the respondent is that Section 12 of the act is mandatory in nature and so if notice exercising option to continue the lease by the legal heirs of the deceased cultivating tenant is not given within three months from the date of death of cultivating tenant, the heirs of the deceased cultivating tenant would be deemed to be trespassers, and in this case since no notice, admittedly, was issued by the appellants u/s 12 of the act to Swamy, the trial Court rightly held them to be trespassers. He contended that mere fact that Swamy issued Exs.B1 and B2 receipts to appellants is of no consequence because Exs.B1 and B2 do not disclose either continuance of the relationship of landlord and tenant or creation of a fresh tenancy after the death of the father of appellants between the respondent and appellants. He placed strong reliance on a Division Bench judgment of this Court in K. Jampareddi v. Y. Krishnareddy 1979 (2) ALT 258, M. Ramayya v. M. Govindu 1966 (1) AWR 352 and Rajulagari Ellamma and Others Vs. Sri Pedda Jeeyangar Mutt, , in support of his contention, that notice in writing u/s 12 of the act by the legal heirs of deceased tenant is mandatory for them to claim the status cultivating tenants after the death of the original tenants.

7. The point for consideration in the appeal is:

1. Whether the appellants are cultivating tenants in respect of the suit land?
2. Whether the civil Court has no jurisdiction to entertain a suit for recovery of possession from the appellants?

Point No. 1:

8. The fact that the father of the appellants was the cultivating tenant in respect of the suit land is not denied or disputed. The date of death of Naraiah is not mentioned in the written statement, but 1st appellant as DW1, during cross-examination, stated that his father died in the middle of summer in 1977. Therefore, it is clear that the father of the appellants died before 1978 itself. Section 12 of the Act reads:

"If a cultivating tenant dies, his widow and lineal heirs shall have the option to continue the tenancy for unexpired portion of the lease on the same terms on which the deceased-cultivating tenant was holding such option shall be exercised by serving a notice in writing on the landlord within a period of three months from the date of demise of such cultivating tenant."

In K. Jampareddi case (supra) the question before the Division Bench was whether the heir of a deceased-cultivating tenant sending the rent payable in respect of the demised land by Money Order, informing the landlord that he is tendering rent after the death of the original tenant amounts to notice in writing as contemplated by Section 12 of the Act. In that case after the cultivating tenant died on 8-3-1971, one of his heirs claiming to be a legatee under a Will dated 2-9-1970 said to have been executed by the tenant, sent Rs. 200/- by money order on 30-3-1971 towards rent for the year 1970-71 i.e., well within the period of three months from the date of death of the cultivating tenant. The Bench after considering the rival contentions, after referring to Rules 9 and 11 of the Rules framed under the Act, held that the notice contemplated by Section 12 of the Act has to be served on the landlord in person or through Registered Post Acknowledgment Due only and so the heir of the deceased tenant sending the rent by money Order does not amount to his exercising the option u/s 12 of the Act, and rejected the claim of the heir of the deceased tenant that he became the cultivating tenant in respect of the land let out to his father repelling the contention that receipt of rent by the landlord from the heir of the deceased cultivating tenant amounts to allowing the heir exercising his option to continue the lease and over ruled the decision rendered in K Veerabhadramma v. Ramanath 1977 (1) AWR 420. In M. Ramayya case (supra) it is held that the widow and the sons of a deceased-cultivating tenant in order to exercise the option given to them u/s 12 of the Act to continue the tenancy have to send notice in writing on the landlord within a period of three months from the date of demise of the cultivating tenant, and if they fail to do so, they cannot be called "cultivating tenants" within the meaning of Section 2(c) of the Act and their possession over land let out their ancestor would be that of trespassers. In this case appellants admittedly did not issue any notice in writing to the landlord of

their father i.e., Swamy as contemplated by Section 12 of the Act. So their possession over the suit land after the death of their father, as the above decision is that of trespassers, but not that of a cultivating tenant.

9. The contention that of the learned Counsel for appellants that a fresh tenancy between the appellants and Swamy can be inferred from Exs.B1 and B2 cannot be accepted because there is no such plea in the written statement of the appellants. It is also not the evidence on behalf of appellants that they took a fresh lease from Swamy after the death of their father. Exs.B1 and B2 do not show that they are receipts for payment of rent. They only show that Swamy received some amount towards the crop that was raised in the suit land. The recitals in Ex.B1 show that from out of an amount of Rs. 606/- towards the value of 12 bags at the rate of Rs. 50.50 ps per bag, an amount of Rs. 515/- was paid on that day and that an amount of Rs. 91/- is still due. In Ex. B2 it is stated that from out of an amount of Rs. 696/- towards the value of 12 bags at Rs. 58/- per bag, Rs. 580/- was paid on that day and that Rs. 116/- is still due. It is the specific case of the respondent that the amounts covered by Exs.B1 and B2 were received towards damages for use and occupation but not towards rent. It is not the case of the appellants that there was a fresh tenancy between them and respondents in respect of the suit land, at a rent of 12 bags per year. Mentioned in Ex.B1 and Ex.B2--When the rent fixed between Swamy and the father of the appellant was 10 bags per year why they agreed to pay value of 12 bags to Swamy is not explained by the appellants. It is not even the case of appellants that the agreed rent between them and Swamy was 12 bags per year. So Exs.B1 and B2 do not help the appellants. When the appellants have not exercised their option to continue the tenancy as per the provisions of Section 12 of the Act, their status in respect of the suit land would be that of trespassers. Therefore, the mere fact that some amount was received by Swamy from them under Exs.B1 and B2, which was not received towards rent due and payable as per the agreed terms between the father of the appellants and Swamy, does not establish creation of a fresh tenancy between the appellants and Swamy. Therefore Exs.B1 and B2 do not make them "cultivating tenants" within the meaning of the Act.

10. It is not doubt true that Ex.B3 shows that Swamy filed a case against the appellants for their eviction from the suit land before the Tribunal under the act, prior to the institution of the suit, and that the same was withdrawn later. Since there is no admission in Ex.B3 that there was a relationship of landlord and tenant between Swamy and the appellant subsequent to the death of the father of the appellants, and since appellants did not issue notice as contemplated by Section 12 of the Act within three months after the death of their father, their legal status would be that of trespassers and since the Tribunal under the Act will have jurisdiction to entertain a petition for eviction only if the relationship of landlord and tenant exist, between the parties, but not between the owner and trespasser, it is easy to see that Ex B3 was withdrawn on the basis that the Tribunal under the Act has no jurisdiction to grant the prayer made therein.

Therefore withdrawal of the petition ATC No.22 of 1982 i.e., Ex.B3 filed by respondent and Swamy is not a ground to hold against the respondent, and appellants cannot take advantage of the fact that ATC No.22 of 1982 filed earlier was withdrawn when the averments therein do not support any of their contention.

11. For the above reasons, I hold that the appellants are not cultivating tenants in respect of the suit land and that their status vis-a-vis the suit land and respondent is that of trespassers. The point is answered accordingly.

Point No. 2:

12. Appellants have no locus standi to question Ex.A13 sale deed in favour of the respondent because they are third parties to the said sale deed. Only if the appellants were cultivating tenants in respect of the suit land, would they be entitled to the benefits of Section 15 of the Act as amended by Act 39 of 1974, which came into force with effect from 1-7-1980, as per which they would have had the first option to purchase the property let out to them. When they are not the cultivating tenants of the suit land, they have no right to question Ex.A13. Even if they were cultivating tenants, they could only say that the transaction of sale covered by Ex.A13 does not bind them and that they have a first right to purchase, but cannot question the genuineness of Ex.A13-passing of consideration thereunder.

13. Since a Tenancy Tribunal will have jurisdiction only if there is relationship of landlord and tenant between the appellants and Swamy but not otherwise, and since it is held that the status of appellants over the suit land is that of trespassers, and since the respondent purchased the suit land from Swamy, respondent can file a civil suit for recovery of possession against the appellants. Therefore the decree directing ejection of appellants passed by the Court is unassailable. The point is answered accordingly.

14. In view of my above findings, I find no merits in this appeal and hence the appeal is dismissed. Parties are directed to bear their own costs.