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**(2000) 12 AP CK 0044**  
**In the Andhra Pradesh High Court**  
**Case No : WA No. 1635 of 2000**

Pulli Ramaiah and another

APPELLANT

Vs

Potta Nagobhushanama and others

RESPONDENT

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**Date of Decision :** 26-12-2000

**Acts Referred:**

Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands Act, 1950 — Section 32, 38  
Civil Procedure Code, 1908 (CPC) — Order 41 Rule 33  
Transfer of Property Act, 1882 — Section 43

**Citation :** (2001) 1 ALD 525 : (2001) 2 ALT 38 : (2001) 1 APLJ 1

**Hon'ble Judges :** S.B. Sinha, C.J; B. Subhashan Reddy, J

**Bench :** Division Bench

**Advocate :** Mr. R. Kameswara Rao, for the Appellant; Mr. A. Ramalingeswara Rao, Government Pleader for Revenue, for the Respondent

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## Judgement

Satyabrata Sinha, CJ.

1. This writ appeal is directed against the judgment dated 1-11-2000, passed by a learned single Judge of this Court, whereby and whereunder, the writ petition being WP No.10048 of 2000, filed by writ petitioners-respondent Nos.1 and 2 herein was disposed of in the manner following;

"In the impugned order, the first respondent himself directed the second respondent to take action in accordance with Section 32 of the Act. The only objection of the learned Counsel for the petitioners is that the various observations made by the first respondent would not leave anything to be decided by the second respondent in the enquiry. Therefore, as directed by the first respondent, the matter shall stand remitted to the second respondent who shall decide the application of respondents 3 and 4 in accordance with law. He shall decide the same without being influenced by the report submitted by the MRO or by any of the observations made by the first respondent in the impugned order".

2. With a view to dispose of this writ appeal, it is necessary to state the basic facts of the case. The appellants, who were in possession of the land in question, abandoned it, and created a lease in favour of the predecessor-in-interest of the writ petitioners-respondent Nos. 1 and 2 herein. The said land changed to two different hands, the last purchasers being the writ petitioners-respondent Nos.1 and 2 herein. With regard to the aforementioned transaction, a dispute arose between the successor-in-interest of appellant No.1 and the predecessor-in-interest of respondent Nos. 1 and 2 herein, which led to the filing of suit being OS No.190 of 1982 on the file of the Court of the Principal District Munsif, Kothagudem, wherein inter alia, the following two issues were framed:

1. Whether the defendants sold the suit schedule property to the plaintiff and whether they executed the agreement of sale dated 15-6-1962?

2. Whether the plaintiff is in possession of the suit schedule property on the date of filing of the suit?

3. The learned trial Court answered the above two issues in the following terms:

"The learned Counsel for the defendant has made strenuous efforts to support the case of the defendants by citing a decision reported in S. Radhakrishna Murthy Vs. K. Narayanadas and Another, , wherein three ingredients for granting of interlocutory injunction are laid down, a decision reported in The Municipal Corporation of Delhi Vs. Shri Suresh Chandra Jaipuria and Another, , wherein also principles for granting interim injunctions are laid down and also a decision reported in Dayalu Narayan Swamy Vs. Kanika Ramaswamy Dora and Others, . But, I feel that the facts pleaded and established in this case do not attract the aforesaid decision, since we are considering possession for granting perpetual injunction whereas the aforesaid decisions are relating to principles of granting of interim injunction. Any way, when the Court comes to the conclusion finding lawful possession and when the defendants are not found in possession, the plaintiff would be entitled for legal protection. Therefore, I find these two issues in favour of the plaintiff and against the defendants".

4. The judgment and decree passed in the afore-mentioned suit attained finality. Thereafter, appellant No.1 herein having regard to the fact that he was declared to be the owner of the land, purportedly in terms of the provisions of Section 38-E of the A.P. (Telangana Area) Tenancy and Agricultural Lands Act, 1950, (for short "the Act") which came into force from 1-1-1973, he filed an application before the Revenue Divisional Officer, purported to be one u/s 98 thereof, in which the Mandal Revenue Officer, upon conducting enquiry, was directed to handover possession of the land in favour of the appellants herein. The said order became subject-matter of the aforementioned writ application.

5. Sri R. Kameswara Rao, the learned Counsel appearing on behalf of the respondent Nos.3 and 4 appellants herein inter alia submitted that having regard to the fact that there has been no transfer made by appellant No.1 in favour of any other person, in terms of the proviso appended to Section 38-E of the Act,

the order passed by the Revenue Divisional Officer must be held to be correct, and in support of the said contention he placed strong reliance on the Full Bench decision of this Court in SADA v. Tahsildar, Utnoor 1987 (2) ALT 749 (FB). He would further urge that the doctrine of adverse possession cannot have any application whatsoever in a case arising under the Act in question.

6. Sri A. Ramalingeswara Rao, learned Counsel appearing on behalf of the writ petitioners-respondent Nos. 1 and 2 herein on the other hand strongly placed reliance on the decision of the Apex Court in Ponnala Narsing Rao Vs. Nallolla Pantaiah and Others, , wherein in paragraph 3, it was held as under:

"So far as the second contention is concerned, it is true that though no express period of limitation is provided for filing application u/s 32 of the Act, such application have to be moved within reasonable time. It may be because of such belated applications, the other side may stand adversely affected. It may have changed its position in the meantime. Equities may have arisen in his favour, he may have spent large amounts on the land by improving it. But all these questions have to be pleaded and proved. Surprisingly, no such contention was ever canvassed muchless tried to be proved on any equitable ground by the petitioner. Therefore, this second contention on the facts of the present case cannot be sustained. It has also to be noted that no plea of adverse possession was put forward by the petitioner in support of his case".

7. The learned Counsel appearing on behalf of the writ petitioners-respondent Nos.1 and 2 herein submits that having regard to the fact that the purported transfer by appellant No.1 by way of grant of sub-lease has taken as far back as in the year 1958, the purported application filed by appellant No.1 before the Revenue Divisional Officer in the year 1999 u/s 98 of the Act, is not maintainable as it has been filed after a long lapse of 41 years.

8. It may be true that in the afore-mentioned suit OS No.190 of 1982, the appellants herein were not parties, but there cannot be any doubt whatsoever having regard to the judgment rendered therein, in which a question had arisen as to whether appellant No.1 had transferred his right, title and interest in favour of the defendants in the said suit, who in turn transferred their right, title and interest in favour of the plaintiff in the said suit, and a finding of fact thereof was arrived at by the competent civil Court holding that a transfer did take place wherein appellant No.1 transferred his right, title and interest in favour of the defendants in the said suit, who in turn transferred their right, title and interest in favour of the plaintiff.

9. As indicated above, the judgment and decree passed in the aforementioned suit attained finality. It is placed on record that after the judgment and decree was passed in the said suit, the plaintiff therein has transferred her right, title and interest in favour of the writ petitioners-respondents 1 and 2 herein, and therefore, in the facts and circumstances of the case, it cannot be said that the respondent Nos.3 and 4, appellants herein were forcibly dispossessed, and as a

result whereof, provisions of Section 32 of the Act could be attracted. A finding of fact has also been arrived at by the concerned revenue authorities holding that appellant No.1 did abandoned his land as far back as in the year 1958. Although the judgment and decree passed by the civil Court in the aforementioned suit cannot be strictly binding on the parties herein, but the same has evidentiary value, and having regard to the findings of fact arrived at therein, the burden to prove contra lies upon appellant No.1, which he failed to do so.

10. Merely because at a later stage a Certificate in terms of sub-section (1) of Section 38-E of the Act was issued in appellant No.1's favour, that by itself will not change the situation and put the clock back, depriving the writ petitioners-respondent Nos.1 and 2 herein of their lawful title and possession of the land. Once it is held that appellant No.1 has transferred his right to defendants in the suit, Section 43 of the Transfer of Property Act, 1882 (for short "the TP Act"), comes into play. Section 43 of the TP Act reads as follows:

"Transfer by unauthorised person who subsequently acquires interest in property transferred: When a person fraudulently or erroneously represents that he is authorised to transfer certain immovable property and professes to transfer such property for consideration, such transfer shall, at the option of the transferee, operate on any interest which the transfer or may acquire in such property at any time during which the contract of transfer subsists.

Nothing in this section shall impair the right of transferee in good faith for consideration without notice of the existence of the said option."

11. In the circumstances, the appellants were estopped and precluded from pleading that they had no transferable interest in the land as on the afore mentioned date. The Doctrine of Issue Estoppel, as embedded in Section 43 of the TP Act, is attracted in all force in the instant case. It therefore, cannot be said that the writ petitioners-respondent Nos. 1 and 2 herein are claiming title to the land by adverse possession. Hence, it is not necessary for us to go into the aforementioned contention raised by the learned Counsel for the appellants.

12. Although in this case, the writ petitioners-respondent Nos.1 and 2 herein had not filed any separate appeal or cross-objections, but having regard to the decision of the Apex Court in Ponnala Narsing Rao's case (supra), and further having regard to the fact that we have arrived at a conclusion that Section 43 of the TP Act is squarely attracted to the instant case, we are of the opinion that the lis between the parties should be given a quietus by applying the principles laid down under Order XLI, Rule 33 of the Code of Civil Procedure, 1908.

13. For the reasons aforementioned, we hold that the writ application, filed by the writ petitioners-respondent Nos.1 and 2 herein ought to have been allowed by setting aside the order impugned therein.

14. Accordingly, with the modification as above to the order of the learned single Judge, we allow the writ application and dismiss the writ appeal. No order as to

costs.