

(2004) 08 AP CK 0098

In the Andhra Pradesh High Court

Case No : Civil Miscellaneous Appeal No. 50 of 2004

Ratnala Bheemarao and Another

APPELLANT

Vs

Sivangi Purushottam and Others

RESPONDENT

Date of Decision : 02-08-2004

Acts Referred:

Andhra Pradesh (Andhra Area) Tenancy Act, 1956 — Section 13, 14
Civil Procedure Code, 1908 (CPC) — Section 96

Citation : (2004) 08 AP CK 0098

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : M. Ram Mohan, for the Appellant; M.S.R. Subrahmanyam, for the Respondent

Final Decision : Dismissed

Judgement

L. Narasimha Reddy, J.—This civil miscellaneous appeal is filed assailing the Judgment and decree dated 28.10.2003 in A.S. No.79 of 1998 passed by the II Additional District & Sessions Judge (Fast Track Court), Srikakulam.

2. Appellants are plaintiffs in O.S. No. 98 of 1990 on the file of Subordinate Judge, Sompeta. The suit was filed for the relief of declaration of title and perpetual injunction against the defendants therein.

3. The appellants pleaded that the land was held by respondents 4 and 5 and that they transferred the same in their favour through sale deeds dated 23.07.1986, 29.11.1986 and 19.01.1987 marked as Exs. A2 to A4 respectively. According to them, notwithstanding the sale and delivery of possession under the sale deeds referred to above, the respondents started interfering with their possession. The suit was mainly contested by respondents 1 to 3 herein (defendants 1 to 3). According to them, one late Danayya, their ancestor, was the tenant in respect of the suit land and after his death, they continued as the tenants. They pleaded that even while their tenancy was subsisting, they purchased the lands through two registered sale deeds dated 15.09.1990,

marked as Exs. B1 and B2. It was their specific case that they were in possession of the land as tenants before the sale took place and after they purchased the same under Exs. B1 and B2, their right of possession is coupled with ownership.

4. The trial Court framed six issues touching the questions of title, possession, joinder of parties and Court fee etcetera. Before the trial Court, P.Ws. 1 to 3 were examined and Exs. A1 to A22 were marked on behalf of the appellants. On behalf of the respondents, D.Ws. 1 to 4 were examined and Exs. B1 and B2 were marked. On an appreciation of oral and documentary evidence adduced before it and the contentions advanced on behalf of the parties, the trial Court decreed the suit through its Judgment dated 23.03.1998. Aggrieved thereby, respondents 1 to 3 filed appeal u/s 96 C.P.C. Through its Judgment under appeal, the lower appellate Court took the view that the trial Court did not address itself to the questions as to whether the tenancy, in respect of the suit land that existed in favour of the ancestor of respondents 1 to 3 herein, was terminated at all and as to whether they gained the lawful possession of the land. It was in this context that the lower appellate Court had set aside the Judgment and decree of the trial Court and remanded the matter for fresh adjudication.

5. Sri M. Ram Mohan, appearing for Sri M.S.R. Subrahmanyam, learned counsel for the appellants, submits that the trial Court recorded specific findings both as regards title and possession and that there was no warrant for the lower appellate Court to remand the matter. He further contends that the tenancy that existed in favour of the ancestor of respondents 1 to 3 was terminated in accordance with law. He contends that the very fact that respondents 1 to 3 have chosen to purchase the land through sale deeds, Exs. B1 and B2 and that there is no reference in the said documents about the existence of such tenancy, discloses that there was no dispute as to the possession of respondents 4 and 5 over the land before the sale deeds were executed.

6. The appellants filed the suit claiming the relief of declaration of title and perpetual injunction restraining the respondents herein from interfering with their possession. They based their title upon the sale deeds, marked as Exs. A2 to A4. The suit was contested mainly by respondents 1 to 3. They based their claim to the suit land on the tenancy as well as the transfer of the land in question in their favour through Exs. B1 and B2. The trial Court was mostly impressed by the fact that the sale deeds in favour of the appellants were anterior in point of time and that respondents 1 to 3 have chosen to purchase that very land from respondents 4 and 5 few years later. It accordingly recorded a finding that the title in respect of the suit schedule property vests with the appellants.

7. For the purpose of granting the relief of perpetual injunction, the trial Court was expected to record a specific finding as to whether the possession was passed on to the appellants herein. For this purpose, a finding as to whether their vendors viz. respondents 4 and 5 were in possession of the suit schedule property is also necessary.

8. In the ordinary parlance, delivery of possession of an immovable property is almost presumed, whenever sale of the same takes place. However, where the land is subject to any tenancy and the same is governed by any statute, further enquiry into the mode of termination of tenancy becomes not only relevant but also imperative.

9. It is not in dispute that one Danayya, ancestor of respondents 1 to 3, was the tenant in respect of the suit schedule property owned by respondents 4 and 5. It is also a matter of record that several proceedings were ensued between them under the A.P. (Andhra Area) Tenancy Act. That enactment provides for protection of rights of tenants and also prescribes the procedure for termination of the same. Termination of the tenancy, otherwise than through proceedings in the Court, is required to be in accordance with Section 13 thereof. Any surrender of tenancy rights, otherwise than through the procedure prescribed u/s 14, cannot divest the tenants of the rights which have accrued to them under that Act.

10. After the death of Danayya, respondents 1 to 3 succeeded to his rights. The appellants claimed that their vendors, respondents 4 and 5, have gained possession of the land duly terminating the tenancy. However, they failed to plead as to the manner in which either the tenancy was terminated or the possession was resumed. In the absence of a finding in relation to termination of tenancy or resumption of possession, a presumption needs to be drawn as to the continuance of the tenancy. A reading of the Judgment of the trial Court does not disclose that this issue was properly addressed to. It was for this reason that the lower appellate Court remanded the matter for fresh adjudication.

11. In view of the facts and circumstances of the case, no exception can be taken to the course adopted by the lower appellate Court. The civil miscellaneous appeal is accordingly dismissed. There shall be no order as to costs.