

(2011) 01 AP CK 0051
In the Andhra Pradesh High Court
Case No : C.R.P. No. 2482 of 2007

Shaik Junna

APPELLANT

Vs

Abdul Salam and Another

RESPONDENT

Date of Decision : 19-01-2011

Acts Referred:

Andhra Pradesh (Andhra Area) Tenancy Act, 1956 — Section 15, 16
Civil Procedure Code, 1908 (CPC) — Section 47
Evidence Act, 1872 — Section 106

Citation : (2011) 8 RCR(Civil) 1234

Hon'ble Judges : K.G. Shankar, J

Bench : Single Bench

Advocate : Satyanarayana Nimmagadda, for the Appellant;

Final Decision : Dismissed

Judgement

K.G. Shankar, J.—The revision Petitioner laid a tenancy case before the Tenancy Special Officer-cum-Principal Junior Civil Judge, Repelled u/s 16 of the Andhra Pradesh (Andhra Area) Tenancy Act ("Tenancy Act", for short) to declare him as a cultivating tenant and to declare that the Petitioner has a preemptive right to purchase the schedule property. He also sought for a consequential perpetual injunction. The tenancy Tribunal dismissed the tenancy case laid by the tenant. The tenant preferred an appeal before the tenancy appellate Tribunal-cum-Principal District Judge, Guntur. Through the impugned order, the appellate Tribunal dismissed the appeal. Aggrieved by the same, the tenant came forward with this revision.

2. The revision Petitioner, who laid the tenancy case, claims to be the tenant. The parties in the revision are the same parties in the tenancy case and tenancy appeal. The first Respondent is the landlord. The second Respondent is the decree holder in respect of the schedule property against the first Respondent for the specific performance of the agreement of sale of the schedule property. The schedule property is Ac.1.00 cents of agricultural land in D. No. 146, Kanagala

Village, Bhattiprolu Mandal in a total extent of Ac.9.86 cents.

3. The Petitioner claimed that he has been the tenant of the schedule property under the first Respondent since 1986 through an oral tenancy. He further contended that the first Respondent set up the second Respondent with a suit for specific performance in O.S. No. 226 of 1988 and allowed the second Respondent to obtain a decree against the first Respondent for specific performance. His claim is that the first Respondent ought to have offered the schedule land to the Petitioner for sale and that the first Respondent was entitled to sell the same to third parties in the event the Petitioner was not ready to purchase the same. Section 15 of the Act ordains that when a landlord intends to sell the land, he shall first offer the same to the cultivating tenant. The tenant, who laid the revision, inter alia contends that the first Respondent landlord violates the right of preemption conferred upon the Petitioner/tenant by Section 15 of the Tenancy Act. It is further contended that even otherwise, the tenancy continues even if the landlord changes and that the tenancy of the Petitioner would not stand determine with the change of ownership of the property.

4. The learned trial Judge considered that the tenancy set up by the Petitioner was not bona fide. It was alleged that there was collusion between the Petitioner-tenant and the first Respondent-landlord to defeat the rights of the second Respondent decree holder against the first Respondent. The learned Counsel for the Petitioner contends that the tenant has been in possession of the schedule property and that the possession of the Petitioner-tenant deserves to be protected. The second Respondent set up a contention that the second Respondent took possession of the petition schedule property through execution proceedings under Ex.R.1 and that the property was delivered to the second Respondent on 04.10.1996 through delivery receipt certified copy of which is Ex.R.2. The learned Counsel for the Petitioner, as already pointed out, however, contends that he still has been in possession of the petition schedule property and that the delivery of the same was a mere paper delivery. The trial Court and the appellate Court rejected the contention of the Petitioner that the delivery evidenced by the delivery receipt under Ex.R.2 is nominal and that the Petitioner-tenant is still in possession of the petition schedule property.

5. It may be noticed that the Petitioner and the second Respondent have been attributing mala fides against each other. The Petitioner claims that the first Respondent connived with the second Respondent and set up the second Respondent to defeat the claim of the Petitioner. On the other hand, the second Respondent contended that the first Respondent set up the Petitioner with a view to defeat the execution of the decree in O.S. No. 226 of 1988 obtained by the second Respondent against the first Respondent. As against the plea of the Petitioner that he is a tenant of the first Respondent and that the tenancy is an oral tenancy, the first Respondent admitted the tenancy of the Petitioner. Through his counter, the first Respondent denied selling the petition schedule property or attempting to sell the same, much less, selling the same to the

second Respondent. Thus, the claim of the second Respondent, through O.S. No. 226 of 1988 and later through E.P. No. 84 of 1996, is denied by the first Respondent. Needless to state that the first Respondent has been denying the delivery of possession of the petition schedule property to the second Respondent on 04.10.1996, through the original of Ex.R.2 delivery receipt.

6. The Petitioner produced Exs.P.1 to P.3 rent receipts in support of his claim. He also placed reliance upon the oral evidence of PW.2. PW.2 would appear to have stated that the Petitioner has been tenant of the schedule premises since about 14 years prior to the evidence of PW.2. He asserted that he was present when the Petitioner paid rents to the first Respondent under Exs.P.1 and P.2 and that Exs.P.1 and P.2 were about 14 years old. He also would appear to have gone on record that the rent was Rs. 1,400/- per annum. While so, Exs.P.1 and P.2 are dated 27.12.1994 and 25.01.1996. Both of them show that the rent was Rs. 3,500/- per annum. They were not 14 years old as claimed by PW.2. They are not even for Rs. 1,400/-, but for Rs. 3,500/-. The other rent receipt under Ex.P.3 is even in a later point of time. Ex.P.3 is dated 20.07.1997.

7. So far as the evidence of PW.2 is concerned, the evidence of PW.2 did not agree with the dates of Exs.P.1 and P.2 nor did they agree with the amount in Ex.P.1 and P.2. The Tribunal as well as the appellate Tribunal, therefore, were justified in holding that the evidence of PW.2 is not reliable and cannot establish the possession of the Petitioner over the petition schedule property either for a long time or at the time of the lis.

8. The added factor is that Exs.P.1 to P.3 are at the end of 1994, at the beginning of 1996 and during the middle of 1997 respectively, whereas the second Respondent laid the suit in 1988 itself as O.S. No. 226 of 1988. He even took out the execution proceedings in 1996. Ex.R.2 would appear to show that the petition schedule property was delivered to the second Respondent on 04.10.1996. Ex.P.3 was subsequent to 04.10.1996. Thus, Exs.P.1 and P.2 become unreliable having arisen subsequent to the filing of the suit by the second Respondent, while Ex.P.3 became unreliable as the same was subsequent to even the delivery of the property to the second Respondent. The Tribunal and the appellate Tribunal therefore were perfectly justified in refusing to place reliance upon Exs.P.1 to P.3.

9. Apart from the alleged supportive evidence of PW.2 and supportive piece of evidence through Exs.P.1 to P.3, the Petitioner deposed as PW.1. Where the evidence of PW.2 is not reliable and cannot be accepted and where Exs.P.1 to P.3 are not trustworthy to be acted upon, the evidence of PW.1 alone is not sufficient to hold that the Petitioner has been the tenant of the first Respondent, that the Petitioner continues to be the tenant of the first Respondent and that the Petitioner, therefore, is entitled to right of preemption u/s 15 of the Tenancy Act and to an injunction restraining the Respondents from interfering with his possession.

10. It may be noticed that the first Respondent did not choose to depose supporting either the Petitioner or second Respondent. The first Respondent would appear to sit back and enjoy the forensic fight between the Petitioner and the second Respondent. The first Respondent did not let in any evidence and did not produce any document in support of his stand through the counter that the Petitioner has been a tenant, that he never alienated the petition schedule property and that he has no intention to disturb the possession of the Petitioner over the petition schedule property. On the other hand, the second Respondent had to let in evidence by examining herself as RW.1. She produced Ex.R.1 certified copy of the decree in EP proceedings in EP No. 84 of 1996 and the certified copy of the delivery receipt under Ex.R.2. There is no real challenge to either Ex.R.1 or Ex.R.2. I am afraid that Ex.R.2 is sacrosanct. A competent civil Court recorded that possession of the petition schedule property was delivered to the second Respondent. The Petitioner cannot challenge the same contending that the delivery was mere paper delivery and that the Petitioner continuous to be in possession of the property.

11. The learned Counsel for the Petitioner contended that the second Respondent did not prove the delivery and that mere tendering of the delivery receipt under Ex.R.2 would not prove the delivery of property by the executing Court in favor of the second Respondent. On the other hand, delivery receipts are clinching proof that the property has been delivered under the delivery receipt. If anybody intends to question the same, such a person shall have to raise a dispute primarily u/s 47 of the Code of CPC (for short "CPC") assailing the recording of the delivery by the execution Court. Admittedly, the Petitioner has not chosen to do so. He did not even file a suit to declare the recording of the delivery in EP No. 84 of 1996 through the original of Ex.R.2 as non est. He merely laid a tenancy case asserting his possession. It may also be noticed that the very tenancy case was filed in 1997 whereas delivery was effected on 04.10.1996 under the original of Ex.R.2. It is not open for the Petitioner now to contend that he has been in possession of the petition schedule property subsequent to 04.10.1996 when the Petitioner has not challenged the recording of delivery in favor of the second Respondent by the execution Court.

12. The learned Counsel for the Petitioner inter alia contended that u/s 106 of the Indian Evidence Act, the burden lies upon the person who has special knowledge about the facts alleged and that it is for the second Respondent, therefore, to establish her possession over the petition schedule property. Where the Petitioner contends that he has been in possession of the petition schedule property, the Petitioner as much as the second Respondent must be in possession of facts regarding possession or absence of possession in respect of the Execution Petition schedule property. Indeed, the evidence on the Petitioner's side would more be negative in nature. At the same time, when the second Respondent has produced Ex.R.2 showing that a competent civil Court delivered possession of the schedule property to the second Respondent, the second Respondent has discharged the burden which initially rested upon him to

show that she has taken possession of the petition schedule property. The Petitioner, who has been disputing the same, is indeed entitled to disprove the same. The Petitioner failed to do so. I, therefore, consider that the second Respondent is not guilty of not discharging the burden resting upon him u/s 106 of the Indian Evidence Act so as to lead to an assumption that the claim of the Petitioner is true. The Petitioner has to establish that he is a tenant under the first Respondent, that the tenancy has been continuing and that the Petitioner has been in possession of the petition schedule property. He has not established any of these facts.

13. It would appear that the learned Counsel for the Petitioner is claiming that admitted facts need not to be proved and that when the first Respondent admitted that the Petitioner has been his tenant, the Petitioner need not prove the tenancy. The first Respondent is not the only opposite party to the Petitioner in the case. The second Respondent has been urging that the first Respondent has been in collusion with the Petitioner to defeat the claim of the second Respondent. He denied the claim of the Petitioner that the Petitioner is and has been a tenant. The property as on today is in the possession of the second Respondent in view of Ex.R.2 delivery receipt and in view of the oral evidence of second Respondent as RW.1. The Petitioner, therefore, shall make out a case against the second Respondent and not against the first Respondent. The first Respondent more or less did not participate in the proceedings after filing counter. The Petitioner has not established any of the claims regarding his tenancy, continuation of the tenancy and possession. There is contrary evidence from the second Respondent through the oral evidence of RW.1 and Exs.R.1 and R.2. The Tribunal and the appellate Tribunal, therefore, are perfectly justified in concluding that the Petitioner failed to establish his tenancy and his possession over the petition schedule property. The Petitioner, consequently, is neither entitled to preemptive rights nor is he entitled to be a tenant under the second Respondent. The evidence is such that the Petitioner is not in possession of the petition schedule property as on today. The Petitioner, therefore, is not entitled to the declaration and consequently injunction sought for. The findings of the tenancy Tribunal and the appellate Tribunal do not deserve to be interfered with. There are no merits in this revision.

14. This civil revision petition is, therefore, dismissed. However, there shall be no order as to costs.