

(2000) 12 AP CK 0072
In the Andhra Pradesh High Court
Case No : CRP No. 42 of 1998

Vaka Punnamma

APPELLANT

Vs

Yadavali Jurala Narasimham

RESPONDENT

Date of Decision : 15-12-2000

Acts Referred:

Andhra Pradesh Assigned Lands (Prohibition of Transfer) Act, 1977 — Section 3, 4
Civil Procedure Code, 1908 (CPC) — Order 21 Rule 54, Order 21 Rule 64, Order 21 Rule 66

Citation : (2001) 1 ALD 306 : (2001) 1 ALT 362

Hon'ble Judges : S.B. Sinha, C.J

Bench : Single Bench

Advocate : Mr. P. Prabhakar Rao, for the Appellant; Mr. P. Srinivasa Reddy, for the Respondent

Judgement

S.B. Sinha, cJ.

1. This civil revision petition is directed against the judgment and order dated 6th November, 1997 passed by the District Munsif, Nandigama, in EPNo.36 of 1993 arising out of OS No.42 of 1987 whereby and whereunder an application for attachment of the property filed by the decree holder-opposite party in terms of Order 21 Rule 54 and Order 21, Rules 64 and 66 of the Code of Civil Procedure, was disposed of directing as follows:

"Perused the evidence on record and as per the evidence of PW1, the property under attachment was assigned to the J.Dr. in the year 1980 and since 10 years is elapsed. She has got salable interest and therefore the property is liable for sale. Whereas RW1, the son of J.Dr. deposed to the effect that the J.Dr. has no salable interest in the property in question since it was assigned by the Government As per the evidence from both sides no doubt the property under attachment was assigned to the J.Dr. But since already 10 years ceiling period is elapsed from the date of assignment in the year 1980, the J.Dr. Has got salable interest in the said property and, therefore, it is liable for sale for the recovery of

the decretal amount. Hence, for S.P. and E.C. to be filed, call on 18-12-97."

2. The only contention raised in this application is that by reason of the provisions of A.P. Assigned Lands (Prohibition of Transfer) Act, 1977 (Act 9 of 1977), the said order could not have been passed. Sections 3 and 4 of the aforementioned order read as under :

"3. Prohibition of transfer of assigned lands :--(1) Where, before or after the commencement of this Act, any land has been assigned by the Government to a landless poor person for purposes of cultivation or as a house-site, then, notwithstanding anything to the contrary in any other law for the time being in force or in the deed of transfer or other document relating to such land, it shall not be transferred and shall be deemed never to have been transferred; and accordingly no right or title in such assigned land shall vest in any person acquiring the land by such transfer.

(2) No landless poor person shall transfer any assigned land, and no person shall acquire any assigned land, either by purchase, gift, lease, mortgage exchange or otherwise.

(3) Any transfer or acquisition made in contravention of the provisions of sub-section (1) or sub-section (2) shall be deemed to be null and void.

(4) The provisions of this section shall apply to any transaction of the nature referred to in sub-section (2) in execution of a decree or order of a civil Court or of any award or order of any other authority.

(5) Nothing in this section shall apply to an assigned land which was purchased by landless poor person in good faith and for valuable consideration from the original assignee or his transferee prior to the commencement of this Act and which is in the possession of such person for purposes of cultivation or as a house site on the date of such commencement.

4. Consequence of breach of provisions of Section 3 :--(1) If in any case, the District Collector or any other officer not below the rank of a Mandal Revenue Officer, authorized by him in this behalf, is satisfied that the provisions of sub-section (1) of Section 3, have been contravened in respect of any assigned land, he may, by order--

(a) take possession of the assigned land, after evicting the person in possession in such manner as may be prescribed; and

(b) restore the assigned land to the original assignee or his legal heir, or where it is not reasonably practicable to restore the land to such assignee or legal heir, resume the assigned land to government for assignment to landless poor persons in accordance with the rules for the time being in force.

Provided that the assigned land shall not be so restored to the original assignee or his legal heir more than once, and in case the original assignee or his legal heir transfers the assigned land again after such restoration, it shall be resumed

to the Government for assignment to any other landless poor person.

(2) Any order passed in revision u/s 4-B, and subject to such order, the decision in appeal u/s 4-A and subject to the said orders in revision and appeal any order passed under sub-section (1) shall be final and shall not be questioned in any Court of law and no injunction shall be granted by any Court in respect of any proceeding taken or about to be taken by any officer or authority or Government in pursuance of any power conferred by or under this Act.

(3) For the purposes of this Section, where any assigned land is in possession of a person, other than the original assignee or his legal heir, it shall be presumed, until the contrary is proved, that there is a contravention of the provisions of sub-section (1) of Section 3."

3. A bare perusal of the aforementioned provisions clearly show that the learned trial Judge committed an error in arriving at a finding that since 10 years had elapsed after the lands were assigned in favour of the petitioner herein in terms of the provisions of the said Act, he had acquired a salable interest. The aforementioned finding arrived at by the learned trial Judge is contrary to law and thus cannot be sustained. It is set aside accordingly and the matter is remitted to the learned trial Judge for executing the decree in accordance with law, if any.

4. The civil revision petition is allowed accordingly. No costs.