
(2007) 11 AP CK 0081

In the Andhra Pradesh High Court

Case No : Second Appeal No. 111 of 1997

Veppalem Batti Gopal Rao (died) and Others

APPELLANT

Vs

Yerragudi Subramanyam Varma

RESPONDENT

Date of Decision : 14-11-2007

Acts Referred:

Transfer of Property Act, 1882 — Section 106, 111, 111(g)(2), 53A

Citation : (2008) 2 ALD 713

Hon'ble Judges : P.S. Narayana, J

Bench : Single Bench

Advocate : L.J. Veera Reddy, for the Appellant; M.P. Chandra Mouli and Janardhana Rao Katta, for the Respondent

Final Decision : Dismissed

Judgement

P.S. Narayana, J.—Heard Sri L.J. Veera Reddy, the learned Counsel representing the appellants and Sri M.P. Chandramouli, the learned Counsel representing the respondent.

2. Sri L.J. Veera Reddy, the learned Counsel representing the appellants had taken this Court through the substantial questions of law on the strength of which the second appeal was admitted and would maintain that even if the findings of the Court of first instance and also the Appellate Court are to be taken into consideration, the tenancy not being in serious controversy unless and until the appellants are evicted by due process of law, the possession cannot be disturbed. The learned Counsel also would maintain that when specific stand had been taken by the appellants relating to the execution of the agreement of sale by the wife of the plaintiff, the non-examination of the wife is a serious lapse and adverse inference should have been drawn in this regard, and hence, the findings recorded cannot be sustained and the second appeal is to be allowed.

3. Per contra, Sri M.P. Chandramouli, the learned Counsel representing the respondent would submit that the fact that the respondent/plaintiff is the owner

of the property is not in serious controversy. Even otherwise, it is not the case of the appellants that the owner of the property at any point of time executed any agreement of sale. Even otherwise, the agreement of sale cannot be believed for the reasons, which had been recorded in detail by the Appellate Court. The learned Counsel also would maintain that though the appellate Court slightly modified the relief virtually in a way, the findings recorded being concurrent findings, in a second appeal normally such findings need not be disturbed. The learned Counsel also placed strong reliance on the relevant statutory provision u/s 111(g)(2) of the Transfer of Property Act, 1882 and would maintain that in the light of the same, the relief of recovery of possession also which had been granted by the appellate Court cannot be found fault. The learned Counsel also placed reliance on certain decisions.

4. Perused the findings recorded by the Court of first instance and also the findings recorded by the Appellate Court.

5. On 28.02.1997, this Court made the following order:

ADMIT. The substantial question of law is, that involves in this second appeal is, as framed in ground No. 1 of the grounds of appeal. Ground No. 1 specifies, is it permissible under law to draw adverse inference against the person who could not secure the witness in spite of his best efforts when the other side is very much able to produce the same to have the adverse inference against the said person?

6. In addition to the substantial question of law, Sri L.J. Veera Reddy, pointed out yet another substantial question of law as hereunder:

Is it permissible to evict a tenant without due process of law?

7. In the light of the submissions made by the learned Counsel, the said substantial question of law is also to be taken up for consideration by this Court.

8. This Court on 28.02.1997 granted interim suspension in C.M.P. No. 2224 of 1997.

9. The second appeal is preferred by the unsuccessful defendants being aggrieved of the decree and judgment in A.S. No. 29 of 1993 on the file of the Subordinate Judge, Rajampet. The first appellant died and appellants 3 and 4 were brought on record by virtue of an order, dated 24.07.1007 in C.M.P. No. 1825 of 2007.

10. It is needless to say that the respondent is the plaintiff in the suit O.S. No. 408 of 1987 on the file of the Munsif Magistrate, Rajampet. For the purpose of convenience, the parties hereinafter would be referred to as plaintiff and defendants as shown in O.S. No. 408 of 1987.

11. The plaintiff filed the suit praying for declaration of title and recovery of possession. The same was resisted by the defendants. On settlement of issues, the Court of first instance recorded the evidence of P.W.1, D.Ws.1 to 3, marked

Ex.A1, A.2, Ex.B.1, B.2 and B.3 and decreed the suit partly, declaring the title of the plaintiff relating to the plaint schedule property, but negated the relief of possession on the ground that the plaintiff had not followed the procedure prescribed under law. Aggrieved by the same, the plaintiff preferred the appeal A.S. No. 29 of 1993 on the file of the Subordinate Judge, Rajampet. It is needless to say that the defendants had not preferred any appeal and in view of the same, as far as the relief of declaration of title granted by the Court of first instance is concerned, the same had attained finality. It appears that the plaintiff being aggrieved of negating the relief of recovery of possession had preferred the appeal A.S. No. 29 of 1993. The appellate Court after recording the reasons, came to the conclusion that declaring the title in favour of the plaintiff, negating the relief of possession cannot be sustained and accordingly, allowed the appeal. Aggrieved by the same, the present second appeal had been preferred by the appellants/defendants.

12. The substantial question of law on the strength of the second appeal had been admitted. Yet another substantial question of law, which had been pointed out by the learned Counsel representing the appellants already had been referred to supra.

13. The plaintiff pleaded in the plaint as hereunder:

The plaintiff is the owner of the suit schedule property having purchased the same under a registered sale deed dated 19.11.1978, that after the said purchase, he constructed a house therein and was residing in it till he left for Kuwait about 3 years prior to the filing of the suit, that the said house was let out to the defendants at a monthly rent of Rs. 30/- to be payable to the plaintiff's wife as he is leaving for Kuwait, that after this return from Kuwait asked the defendants to vacate the said house for his personal use and for repairs. Then, the defendants replied that the plaintiff has no right in the suit property and he can do whatsoever he likes. Hence, the suit for declaration and for possession.

14. The first defendant filed the written statement and the same was adopted by the second defendant, and the following averments were made in the said written statement.

The defendants admitted that the plaintiff was the owner of the property. But they denied that they were let into possession as tenants and that the said plea was invented to explain their lawful possession of the suit property. It is further pleaded in the written statement that at the time of leaving for Kuwait and also subsequently the plaintiff's wife by name Yerragudi Lakshmiddevamma was authorized by the plaintiff to deal with the suit property on his behalf, that under such authority, she sold the suit property to the second defendant for a sum of Rs. 6,000/- under an agreement of sale dated 19.10.1984 executed by her on behalf of the plaintiff to discharge the debts contracted by the plaintiff and for family necessity. The plaintiff's father also assured the defendants that the

plaintiff's wife had due authority to dispose of the suit property on behalf of the plaintiff and he also attested the agreement of sale mentioned supra and that on the very date of the said agreement of sale, the possession of the suit property was delivered to the defendants and they have been in continuous possession and enjoyment of the same in their own right from the date of the said agreement of sale and that having acted upon the said agreement of sale, they constructed a kitchen in the said site and the slabs were also spread by spending a sum of Rs. 8,000/- and obtained electric connection to the suit property in their name. It is also stated that the suit property stands in their name in the panchayat records also, that three months prior to the filing of the suit, the plaintiff returned from Kuwait and ratified the transaction done by his wife in the presence of elders and that having received Rs. 200/- from the defendants, the plaintiff supplied some mangalore tiles for the use of the defendants to put up haveli in the suit site and the plaintiff, his father by their conduct made the defendants believe that the plaintiff's wife was authorized to deal with the suit property on their behalf and that the plaintiff's wife also made a representation to the defendants to that effect by showing some letters written by her husband and offered to sell the suit property to the defendants, that believing the same to be true and being convinced by the conduct of the plaintiff and his father, the second defendant purchased the suit property by paying Rs. 6,000/- to the plaintiff's wife. At the time of the execution of the agreement of sale, the title deeds of the plaintiff as well as his predecessor-in-title were also handed over to the defendants.

15. On the strength of these pleadings, the following issues were settled:

1. Whether the plaintiff is entitled for declaration?
2. Whether the plaintiff is entitled for possession?
3. To what relief?

16. Subsequent thereto the plaintiff moved IA. No. 517 of 1991 praying for permission to file rejoinder and the averments made in the said rejoinder are as hereunder:

Either at the time of leaving for Kuwait or subsequently either in writing or orally or by conduct or by writing letters, the plaintiff did not authorize his wife to deal with the suit property in any manner. On his enquiry, his wife told him that she never made any such representation to the defendants, that she did not receive any amount from the defendants, that she never executed the agreement of sale in favour of the defendants. He further pleaded that the agreement of sale is fabricated and in the alternative he pleaded that even if it is true, the said agreement of sale is not binding on the plaintiff, as it is not a legal agreement. It is also stated that taking advantage of the possession of the suit property, as tenants, they might have misrepresented and manipulated the records in collusion with the officers of the Gram Panchayat and Electricity Department and that he never recognized the second defendant as rightful owner of the suit

property. He denied the claim of the defendants that they spent Rs. 8,000/- for the construction and repairs of the suit property and also denied of having received Rs. 200/- from the defendants for supply of mangalore tiles to them.

17. In the light of the same, the following additional issues were settled:

1. Whether the sale agreement dated 19.10.1984 is true and valid?

2. To what relief?

18. On behalf of the plaintiff, the plaintiff himself was examined as P.W.1. Ex.A.1 is the registration extract of the sale deed dated 19.11.1978 by virtue of which the plaintiff purchased the property. Ex.A.2 is the office copy of the notice, dated 10.12.1987.

19. On behalf of the defendants, DW.1 was examined. The scribe of the agreement of sale was examined as D.W.2 and the attestor was examined as D.W.3. Exs.B.1 to B.3 were marked. Ex.B.1 is the registered sale deed equivalent to the registration extract marked as Ex.A.1. Ex.B.2 is the sale deed dated 12.12.1974, the title deed of the purchaser of the plaintiff. Ex.B.3 is the agreement of sale, dated 19.10.1984.

20. The Court of first instance, on appreciation of the evidence came to the conclusion that the plaintiff is entitled for the relief of declaration of title. As already referred to supra, this portion of the decree had not been challenged by the defendants. Hence, the same had attained finality. As far as the plaintiff is concerned, being aggrieved by the negating of the relief of possession, the matter was carried by way of appeal A.S. No. 29 of 1993 on the file of the Subordinate Judge, Rajampet. The Appellate Court at para 13, framed the following points for consideration:

1. Whether the appellant/plaintiff who was declared as having right and title over the suit schedule property is entitled for possession of the same?

2. Whether the impugned judgment and decree is correct, legal and sustainable in law?

3. To what relief?

21. The appellate Court recorded findings in detail and came to the conclusion that the plaintiff is bound to succeed and accordingly, decreed the suit granting the relief of recovery of possession in addition to the relief of declaration of title, which had been granted by the Court of first instance. Aggrieved by the same, the present second appeal had been preferred by the appellants/defendants.

22. As can be seen from the evidence available on record, P.W.1 deposed in detail relating to his purchase and the other averments made in the plaint. Exs.A.1 and A.2 had been relied upon. It is no doubt true that the original of Ex.A.1, Ex.B.1 produced by the defendants are one and the same. Apart from this document Ex.B.1, Exs.B.2 and B.3 had also been relied upon. It is also true

that the wife of the plaintiff was not examined. Submissions at length were made in relation thereto to the effect that in the light of the same, adverse inference ought to have been drawn. To strengthen the submissions, heavy reliance was placed on the evidence of D.W.2 and D.W.3 and also Exs.B.1, B2 and B.3. The appellate Court recorded reasons as to why the stand taken relating to adverse inference cannot be sustained. The appellate Court also recorded reasons in detail why Ex.B.3 cannot be believed. Even in the light of the nature of the evidence of D.Ws.2 and 3, finding was recorded that the execution of Ex.B.3, agreement of sale by the wife of the plaintiff had not been established. In this context, no doubt, it is true that the executant of Ex.B3 did not enter into the witness box. It is pertinent to note that Ex.B.3 is only an agreement of sale and even as per the stand taken by the appellants/defendants, true owner is the husband (plaintiff) and the wife is only an ostensible owner and on some representation made, the same had been obtained. Hence, in the light of the same, the plea of part performance u/s 53A of the Transfer of Property Act, 1882 also would not come to the aid of the appellants/defendants.

23. The second substantial question of law on the strength of which elaborate submissions had been made, is in relation to the relief of recovery of possession, which had been granted by the Appellate Court. The specific stand taken by the learned Counsel representing the appellants is that it may be that the respondent/plaintiff in the second appeal may be the owner of the property, but even then, since the status of these appellants as tenants in a way having been affirmed by both the courts, ordering eviction unless and until the procedure contemplated by the provisions of the Transfer of Property Act, 1882 is followed, would be illegal. This submission made by the learned Counsel for the appellants though prima facie appears to be attractive, the same can not withstand legal scrutiny for the reasons specified infra.

24. On a careful scrutiny of the pleadings of the respective parties, this stand had not been taken and in the absence of such specific pleas in this regard, such pleas cannot be permitted to be raised in a second appeal. Even otherwise, it is pertinent to note that the specific stand taken by the defendants is that by virtue of Ex.B.3, the defendants had been inducted into possession. A person, who is not true owner, it may be that these parties may be husband and wife, but in Indian law, it can be said that the husband and the wife would constitute one entity. Relating to the status of the appellants/defendants as tenants, the plea of tenancy was not put forth. Even otherwise, in the light of Ex.B.3, it cannot be said that these appellants enjoy the status of the tenants as such, especially, in the light of the specific stand taken in the written statement.

25. Section 111 of the Transfer of Property Act, 1882 deals with determination of lease and Section 111(g)(2) specifies a lease for immovable property determines by forfeiture that is to say in case the lessee renounces his character as such by setting up a title in a third person or by claiming title in himself. By virtue of the agreement of sale which had been set up it may have to be taken that the

tenancy rights, if any, had been put an end to and again the defendants cannot fall back on such rights. Reliance was placed on the decision of the Apex Court in *Majati Subbarao Vs. P.V.K. Krishna Rao (Deceased) by Lrs., . In Paida Mangamma v. Digumarthi Gunnamma* 1989 (3) A.L.T. 514 the learned Judge observed at para 2 as follows-

Therefore, the existence of the lease and the consequential jural relationship of lessor and lessee between the parties is a condition precedent for the applicability of Section 111(g) of the T.P. Act. In this case, the agreement of sale does not create any title. Therefore, mere assertion of the appellants that they came into possession by virtue of an agreement of sale entered into between themselves and the stepson of the plaintiff, does not create any title in the appellants. Therefore, the question of their setting up a title in themselves does not arise. The definite case of the appellants is that there is no jural relationship of landlord and tenant between the respondent and the appellants. Under those circumstances, the renouncing of the character as a lessee and setting up a title in themselves does not arise. It is not the case that any lease is executed by the respondent, in view of the fact that the appellants themselves are renouncing the character as a lessee. Thus considered the issue of notice of forfeiture does not arise. The court below has rightly distinguished the ratio *Bhura and Another Vs. Bahadursingh and Another*, relied on. In that case it was held that the principles of justice, equity and good conscience would not govern the lease prior to coming into force of the T.P. Act. That situation does not arise in this case. Under those circumstances, I do not find any substantial question of law warranting admission. The second appeal is accordingly dismissed. One month's time is granted to the appellants for vacating the premises.

26. Reliance also placed on the decision of the Division Bench of this Court in *Harikishan v. Balakishan Panwar* 1980 (1) A.L.T. 209. The learned Division Bench observed in para 7 and 8 as follows:

On the strength of the above observations Mr. Gururaja Rao, the learned Counsel for the appellant contends that before approving the sale deed and before directing eviction of the appellant and delivery of vacant possession to the plaintiff-decree holder, it was the duty of the executing court to decide whether the appellant, who claimed to be a tenant was entitled to the benefit of the provisions of the Act or not. That the decree-holder sought not only execution of the sale deed but also physical possession of the property in his execution petition is not disputed. A draft sale deed to that effect was filed. No objections were raised to the draft sale deed. That sale deed was duly executed and registered. After the registration of the sale deed, the present E.A. is filed. The executing court disposed of the E.P. by executing a sale deed, which entitled the plaintiff-decree holder to physical possession of the properties. Against that order, no appeal was filed and that order in the E.P. has become final. While so, we do not see how any relief could be granted in E.A.200/78 which is filed after the registration of the sale deed. Unless the sale deed entitling the plaintiff to

physical possession of the property itself is set aside no relief could be granted in E.A. No. 200/78. The contention of the appellant that his status as a tenant of the building was distinct and that status continued to exist even after the execution of the registered sale deed in his favour in the circumstances of the case cannot be countenanced. Mr. Gururaja Rao relief upon a decision of this Court in *Bangar Raju v. Kithali Avatharam* 1965 (1) ALT 182. As rightly pointed out by the learned single Judge that was a case of a mortgage in favour of a lessee and the court held that there was no extinction of the lease because the lessees acquired a fraction of the reversion under the deed of usufructuary mortgage. So also the decision of *Satar Mohd. v. Saraj-ud-Dia* AIR 1962 J & K 1979 cannot help the appellant, for even in that judgment it was observed:

A lesser estate is not merged in a greater if that it shall be kept alive. Where no intention is expressed, the intention may be presumed from the circumstances, as where the estates are held by the same person in different rights, for example, "one beneficially and the other as trustee, or where it is for the advantage of the holder of the two estates that the less estate should be kept alive."

Such intention is not evidence in this case. In fact, it may be noticed that the appellant never took up the plea in the written statement that he was entitled to the benefit of the provisions of the A.P. Building (Lease, Rent & Eviction) Control Act and if for any reason the sale in his favour is not upheld he is entitled to continue as it statutory tenant of the plaintiff decree-holder after the execution of the sale-deed in his favour. What all the observations of our learned brother Kuppuswamy J., in disposing of the appeal referred to above could mean is that the claim of the appellant that he is entitled to the benefit of the provisions of the Act may be considered. In directing the execution of the sale entitling the plaintiff decree-holder to vacant possession of the building, the court must be deemed to have over ruled his objections to eviction from the building. In any event as the order in the E.P., is not the subject matter of this appeal it is unnecessary for us to go into that question. Suffice to note that CMA. No. 336 of 1979 itself is directed against the order in E.A. No. 200/78 and not against the order in the Execution Petition. Another unreported decision of the Delhi High Court in *Ramkrishna Das v. Zahira* ILR 1968 (7) Del 11 is also relied upon by Mr. Gururaj Rao, learned Counsel for the appellant to contend that Section 111(d) of the Transfer of Property Act has no application to a statutory tenant and on account of the merger of the lesser estate of tenancy in the larger right of ownership the tenancy does not stand terminated. That was a case of a pre-emptor who secured a preemption decree. The court held that such a person merely steps into the shoes of the vendee and that it was not a re-sale in his favour. In that case it was held that such a pre-emptor could not evict the tenant. In the case on hand no such question arises. The learned Counsel also relied upon a judgment of the Supreme Court in *Firm Sardarilal Vishwanath and Others Vs. Pritam Singh*, .

The Supreme Court held as follows:

Lease of urban immovable property represents a contract between the lessor and the lessee. If the contract is to be put to an end, it has to be terminated by a notice to quit as envisaged u/s 106 of the Transfer of Property Act, but it is equally clear as provided by Section 111 of the T.P. Act that lease of immovable property determines by various modes therein prescribed. Now, if the lease of immovable property determines in any one of the modes prescribed u/s 111 the contract of lease comes to an end, and the landlord can exercise his right of reentry. This right of re-entry is further restricted and fettered by the provisions of the Rent Restriction Act. Nonetheless the contract of lease has expired and the tenant lessee continues in possession under the protective wing of the Rent Restriction Act until the lessee loses protection. But, there is no question of terminating the contract because the contract comes to an end once the lease determines in any one of the modes prescribed u/s 111, There is therefore, no question of giving a notice to quit to such a lessee who continued in possession after the determination of the lease, i.e., after the contract came to an end under the protection of the Rent Restriction Act. If the contract once came to an end there was no question of terminating the contract over again by afresh notice.

We are unable to see how this can help the appellant's contention. Firstly, even in this decision it is recognized that where a contract of lease is put an end to no question of terminating the contract over again by a fresh notice arises. Secondly the lease in question is not one governed by the Transfer of Property Act but governed by the provisions of the Rent Control Act and notwithstanding any agreement as to the period of tenancy the tenant cannot be evicted except under the orders of the Rent Controller on the grounds mentioned therein. But it must be remembered that there is no provision under the Rent Control Act which prevents the tenant from vacating the premises or renouncing status as that of a tenant and becoming the owner of the premises occupied by him. There is no provision in the Rent Control Act which prohibits a tenant from acquiring the status of an owner. There is also no provision therein which continues his status as that of a statutory tenant even after he has become the owner thereof. The question of applying the provisions of Section 111(d) of the Transfer of Property Act does not arise to a situation where a statutory tenant himself renounces his status and acquires title under a registered sale deed and the Civil Court subsequently holds that the ownership acquired by him under the registered sale deed cannot prevent another person who has a prior agreement for sale in his favour obtaining a registered sale deed and dispossess him in pursuance of that sale deed and the decree for possession in his favour. This is not a case of termination of a lease on the expiry of the period or any other ground by the lessor but the eviction of a person who on the date of the commencement of the suit was in possession as an owner.

27. Hence, in the light of the fact that since a specific plea relating to tenancy

rights had not been raised in the pleadings and even otherwise, on facts, in a way impliedly such tenancy, if any, had been relinquished or had been put an end to the relief of recovery of possession granted by the Appellate Court, and finding relating to the relief of title granted by the Court of first instance, cannot be found fault.

28. Accordingly, the second appeal shall stand dismissed. In view of the peculiar facts and circumstances, the parties do bear their own costs.